



## Contract for Commercial Land and Buildings

Eighth Edition

This document has been approved by The Real Estate Institute of Queensland Limited and the Queensland Law Society Incorporated as being suitable for the sale and purchase of Commercial Land and Buildings in Queensland.

The Seller and Buyer agree to sell and buy the Property under this Contract.

## REFERENCE SCHEDULE

A  
NOTE 1

## CONTRACT DATE

24th SEPTEMBER 2021

B

## AGENT:

NAME: Southern Downs Realty

ADDRESS: 112 Palmerin Street

SUBURB: WARWICK

STATE: QLD POSTCODE: 4370

PHONE: FAX:

EMAIL:

LICENCE NO:

ABN/ACN:

07 4661 8403

matthew@sdrealty.com.au

3617052

20163312865

C

## SELLER:

NAME: Andrew Alan Woodside atf Woodside Family Trust

ADDRESS: 1306 Felton - Clifton rd

SUBURB: Nobby

STATE: QLD POSTCODE: 4370

PHONE: FAX:

MOBILE:

EMAIL:

ABN/ACN:

0428 221 509

ankwoodside@gmail.com

44706260650

NAME:

ADDRESS:

SUBURB:

STATE: POSTCODE:

PHONE: FAX:

MOBILE:

EMAIL:

ABN/ACN:

D

## SELLER'S SOLICITOR:

NAME: Stanley Loader

ADDRESS: 123 Margaret Po Box 1439

SUBURB: Toowoomba

STATE: qld POSTCODE:

PHONE: FAX:

MOBILE:

EMAIL:

ABN/ACN:

0478415371

stanley@loaderlaw.com.au

E

## BUYER:

NAME: Willglen Super Property Pty Ltd atf the Willglen Super Trust

ADDRESS: 10 Willow st

SUBURB: Warwick

STATE: qld POSTCODE: 4370

PHONE: FAX:

MOBILE:

EMAIL:

ABN/ACN:

0437727511

ben.bartlett@tek-pac.com.au

652562519

NAME:

ADDRESS:

SUBURB:

STATE: POSTCODE:

PHONE: FAX:

MOBILE:

EMAIL:

ABN/ACN:

**F BUYER'S SOLICITOR:**

NAME: Neil Maxwell

ADDRESS: 33 Guy st

SUBURB: Warwick

PHONE:

4661 8822

FAX:

MOBILE:

EMAIL:

neil@mlsolicitors.com.au

STATE: qld

POSTCODE: 4370

ABN/ACN:

**G DEPOSIT HOLDER:**

NAME:

Southern Downs Realty

PHONE:

**H LAND:**

ADDRESS:

Commercial Shed &amp; Office Building

41 Activity Street

SUBURB:

Warwick

STATE: QLD

POSTCODE: 4370

NOTE 2  
(See  
Warning)

Present Use: (if any) work shop &amp; Office

Description: L7 CP844627

Title Reference:

Area: 4037m2

← more or less

NOTE 3

Type of Holding:

Lease No:

Local Government: Southern Downs Regional Council

**I IMPROVEMENTS INCLUDED IN SALE:**

NOTE 4 Nature of Buildings:

Unless excluded below the Purchase Price includes all partitions, stoves, hot water systems, wall-to-wall floor coverings, drapes and tracks, blinds, light fittings, clothes lines, hoists, fixed television or satellite antennae or dishes, in-ground shrubs and all fixtures as inspected by the Buyer.

Exclusions:

**J OTHER CHATTELS INCLUDED IN SALE: ← Attach inventory if insufficient space****K THE LAND IS SOLD AS:**

Choose which applies →



Freehold

← Subject to the reservations exceptions and conditions in the deed of grant



Leasehold

← Subject to the conditions of the Crown leasehold title

**L ENCUMBRANCES:**Is the Property sold subject to any Encumbrances? ☒ No

Yes, listed below:

← **WARNING TO SELLER:** You are required to disclose all Title Encumbrances which will remain after settlement (for example, easements on your title and statutory easements for sewerage and drainage which may not appear on a title search). Failure to disclose these may entitle the Buyer to terminate the contract or to compensation. It is NOT sufficient to state "refer to title", "search will reveal", or similar.

**M LEASES AND SERVICE CONTRACTS:**

NOTE 5 See Lease Schedule and Service Contract Schedule.

**N PURCHASE PRICE:**

\$ 725 000

INITIALS (Note: initials not required if signed with Electronic Signature)



**O DEPOSIT:**

\$ \$5000 Initial Deposit payable on the day the Buyer signs this contract unless another time is specified below:

\$ \$20 000 Balance Deposit (if any) payable on:  
On Finance approval

Deposit Holder's Trust Account  
Southern Downs Realty Trust Account

BANK: NAB

BSB: 084 983

ACCOUNT NO: 942 175 859

**P DEFAULT INTEREST RATE:**

CLAUSE 11 & NOTE 6 % ← If no figure is inserted, the Contract Rate applying at the Contract Date published by the Queensland Law Society Inc. will apply.

**Q SETTLEMENT DATE:**

Date: 30 Days from Finance Approval  
or the next Business Day if that is not a Business Day in the city or town in item R

**R CITY OR TOWN FOR SETTLEMENT:**

CLAUSES 25.1 & 25.2 Toowoomba  
Warwick QLD

**FINANCE**

**NOTE 7 SUBJECT TO FINANCE:**

If this Contract is subject to finance then Items S, T and U must be completed in every respect and Item V must be deleted and initialled.

**CLAUSE 31 NOT SUBJECT TO FINANCE:**

If this Contract is not to be subject to finance then Items S, T and U must be deleted and initialled and Item V shall apply.

**S LENDER OR CLASS OF LENDER:**

Any Bank or other financial institution

**T THE APPROVAL DATE:**

The \_\_\_\_\_ day of \_\_\_\_\_  
MONTH YEAR

OR the next Business Day if that is not a Business Day in the city or town in item R  
30 Days from Contract Date

**U AMOUNT OF LOAN:**

\$ Sufficient to complete the Purchase

**W NEIGHBOURHOOD DISPUTES (DIVIDING FENCES AND TREES) ACT 2011**

The Seller gives notice to the Buyer in accordance with section 83 of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 that the Land:

(select whichever is applicable)

☒ \*is not affected by any application to, or an order made by, the Queensland Civil and Administrative Tribunal (QCAT) in relation to a tree on the Land

☐ \*is affected by an application to, or an order made by, QCAT in relation to a tree on the Land, a copy of which has been given to the Buyer prior to the Buyer signing the contract.

← **WARNING:** Failure to comply with section 83 Neighbourhood Disputes (Dividing Fences and Trees Act) 2011 by giving a copy of an order or application to the Buyer (where applicable) prior to Buyer signing the contract will entitle the Buyer to terminate the contract prior to Settlement.

**INITIALS** (Note: initials not required if signed with Electronic Signature)

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## GOODS AND SERVICES TAX - WARNING

Marking the GST Items in the GST Table may have significant consequences for the Seller and Buyer. The Seller and Buyer should seek professional advice about the completion of the GST Items and not rely on the Agent to complete the GST items.

Notes to Completion:

A. Only 1 box in the selected item must be marked.

B. If the Yes box in item GST 1 is marked:

- items GST2 and GST3 must not be marked;
- despite any markings of Items GST2 and GST3, Clauses 34.4, 34.5 and 34.6 do not apply.

C. If the Yes box in item GST2 is marked:

- item GST1 and GST3 must not be marked;
- despite any marking of Items GST1 and GST3, Clauses 34.4, 34.5 and 34.7 do not apply.

## GST1 GOING CONCERN:

Is this a sale of a Going Concern?

Yes ☒

If Yes, Clause 34.7 (If the Supply is a Going Concern) applies.

Otherwise Clause 34.7 (If the Supply is a Going Concern) does not apply.

If the Yes box is marked, do not complete Items GST2 and GST3.

←WARNING: There are strict requirements for the sale of a Going Concern under the GST Act. If in doubt about complying with these provisions, seek professional advice before marking this item.

## GST2 MARGIN SCHEME:

Is the Margin Scheme to apply to the sale of the Property?

Yes ☐

If Yes, Clause 34.6 (Margin Scheme) applies.

Otherwise Clause 34.6 (Margin Scheme) does not apply.

The Seller must not apply the Margin Scheme to the Supply of the Property if Clause 34.6 does not apply.

If the Yes box is marked, do not complete Items GST1 and GST3.

## GST3 INCLUSIVE OR EXCLUSIVE PURCHASE PRICE:

Does the Purchase Price include GST?

Yes ☐ No ☐

If Yes, Clause 34.4 (Purchase Price Includes GST) applies.

If No, Clause 34.5 (Purchase Price Does Not Include GST) applies.

If neither box is marked or both boxes are marked, Clause 34.4 (Purchase Price Includes GST) applies.

↑ Mark 1 box only

←Do not complete Item GST3 if Item GST1 (Going Concern) or Item GST2 (Margin Scheme) are marked Yes.

## GST WITHHOLDING OBLIGATIONS

Is the Buyer registered for GST and acquiring the Land for a creditable purpose?

(select whichever is applicable)

☒ Yes

☐ No

[Note: If the Buyer selects [No] the Seller may be required to give a notice under section 14-255 of the Withholding Law prior to settlement]

←WARNING: the Buyer warrants in clause 4.5 that this information is true and correct.

## Y BUILDING AND/OR PEST INSPECTION DATE

Inspection Date: 21 Days from Date of Contract

← If "Inspection Date" is not completed, the contract is not subject to an inspection report and clause 35 does not apply.



## LEASE SCHEDULE\*

See Clause 32 of Standard Commercial Terms

### LEASE 1:

Name of Tenant: M&K Spiteri T/A M&K Rural Projects

Use: Operation of Transport Business

Location / Tenancy No: 41 Activity st Shed Portion

Area of Tenancy (m<sup>2</sup> approx): 2635

Current Rental per Annum: \$ 19 760

☐ inclusive of outgoings ☒ exclusive of outgoings

Current Commencement Date: 20 May 2020

Current Lease Term: 2 years

Remaining Option/s: Option 1 Term: 2 years

Option 2 Term: years

Option 3 Term: years

Tenant Carpark: No.: Rate: \$ per ☐ annum ☐ month

### LEASE 2:

Name of Tenant: Louvreclad

Use: Office

Location / Tenancy No: 41 Activity st Office Portion

Area of Tenancy (m<sup>2</sup> approx): 1402

Current Rental per Annum: \$ 2574

☒ inclusive of outgoings ☐ exclusive of outgoings

Current Commencement Date: 01 October 2021

Current Lease Term: 3 months

Remaining Option/s: Option 1 Term: 3 Months years

Option 2 Term: years

Option 3 Term: years

Tenant Carpark: No.: Rate: \$ per ☐ annum ☐ month

\* Attach further Schedule if insufficient space

## SERVICE CONTRACT SCHEDULE\*

See Clause 32 of Standard Commercial Terms

### CONTRACT 1:

Contractor:

Service Performed:

Cost: \$ \_\_\_\_\_ per ☐ annum ☐ quarter ☐ month

### CONTRACT 2:

Contractor:

Service Performed:

Cost: \$ \_\_\_\_\_ per ☐ annum ☐ quarter ☐ month

### CONTRACT 3:

Contractor:

Service Performed:

Cost: \$ \_\_\_\_\_ per ☐ annum ☐ quarter ☐ month

### CONTRACT 4:

Contractor:

Service Performed:

Cost: \$ \_\_\_\_\_ per ☐ annum ☐ quarter ☐ month

### CONTRACT 5:

Contractor:

Service Performed:

Cost: \$ \_\_\_\_\_ per ☐ annum ☐ quarter ☐ month

\* Attach further Schedule if insufficient space



## SPECIAL CONDITIONS

### Due Diligence

1. Completion of this Contract is subject to the Buyer within 30 days from the date of this Contract (due diligence date):

(a) carrying out such inspections, searches and enquiries relating to:

(i) the title to the property;

(ii) matters affecting the property (and any improvements on the property); and

(iii) the Buyer's use and enjoyment of the property; and

the Buyer being satisfied in the Buyer's absolute discretion with the results thereof.

(b) The Buyer shall give notice as to the satisfaction or otherwise of Clause 1(a) by the due diligence date: and

i. In the event that the Buyer gives written notice to the seller that Clause 1(a) is satisfied this Contract shall be unconditional in that respect; or

ii. In the event that the Buyer gives written notice to the Seller Clause 1(a) is not satisfied, this Contract shall be at an end and the Seller shall refund the deposit to the Buyer and neither party shall have any continuing right against the other.

(c) The Seller may terminate this contract by notice to the Buyer if notice is not given under Clause 1(b) by 5.00pm on the due diligence date. This is the Seller's only remedy for the Buyer's failure to give notice.

(d) The Seller's right under Clause 1(c) is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver of Clause 1(a).

(e) The Seller shall permit the Buyer and its agents to enter the property and carry out inspections for the purpose of this clause.

2. Clauses 4.1(i), 7.7 and 32 of the Standard Commercial Terms do not apply. The Buyer acknowledges that the Leases are satisfactory to the Buyer. The Buyer agrees to be bound by each Lease from the Settlement Date as if the Buyer were named as landlord in each Lease in substitution for the Seller.

The approval by The Real Estate Institute of Queensland Limited and the Queensland Law Society Inc does not extend to any alterations to the printed text of the Standard Commercial Terms or to any Special Conditions of this Contract. The Standard Commercial Terms may need to be added to or varied by inserting specifically prepared Special Conditions in this Contract. If the printed text of the Standard Commercial Terms is altered, or Special Conditions are included, it is recommended that the Seller and the Buyer consult their respective legal advisers prior to signing this Contract.

**SIGNATURES:**

Buyer's signature:

Name of person signing:

By signing this contract, I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

Witness's signature:

Name of witness:

NEIL DOUGLAS MAXWELL

(Note: No witness is required if the Buyer signs using an Electronic Signature)

Buyer's signature:

Name of person signing:

By signing this contract, I warrant that I am the Buyer named in the Reference Schedule or authorised by the Buyer to sign.

Witness's signature:

Name of witness:

NEIL DOUGLAS MAXWELL

(Note: No witness is required if the Buyer signs using an Electronic Signature)

Seller's signature:

Name of person signing:

By signing this contract, I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

Witness's signature:

Name of witness:

(Note: No witness is required if the Seller signs using an Electronic Signature)

Seller's signature:

Name of person signing:

By signing this contract, I warrant that I am the Seller named in the Reference Schedule or authorised by the Seller to sign.

Witness's signature:

Name of witness:

(Note: No witness is required if the Seller signs using an Electronic Signature)

**DEPOSIT HOLDER'S ACKNOWLEDGEMENT:**

NOTE 8 The deposit holder acknowledges having received \$ \_\_\_\_\_ as the Deposit or on account of the Deposit and agrees to hold that amount and any balance of the Deposit when received as deposit holder for the parties as provided in this Contract.

Deposit holder's  
Signature:

Licence No.: 3617052

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# Standard Commercial Terms | Commercial Land and Buildings

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## 1 DEFINITIONS

1.1 In this Contract, terms in bold in the Reference Schedule have the meanings shown opposite them and unless the context otherwise indicates:

- (a) **"Agent"** means the person named in item B and includes Auctioneer;
  - (b) **"ATO"** means the Australian Taxation Office;
  - (c) **"ATO Clearance Certificate"** means a certificate issued under section 14-220(1) of the Withholding Law which is current on the date it is given to the Buyer;
  - (d) **"Bond"** includes any security for payment of rent or other monies or performance of any obligation pursuant to any Lease;
  - (e) **"Business Day"** means a day other than:
    - (i) a Saturday or Sunday
    - (ii) a public holiday in the city or town named in Item R; or
    - (iii) a day in the period 27 to 31 December (inclusive);
  - (f) **"Buyer"** means the party named in Item E;
  - (g) **"CGT Withholding Amount"** means the amount determined under section 14-200(3)(a) of the Withholding Law or, if a copy is provided to the Buyer prior to settlement, a lesser amount specified in a variation notice under section 14-235.
- NOTE 6 (h) **"Contract Rate"** means the rate of interest at the Contract Date published by the Queensland Law Society Incorporated for the purposes of clause 11;
- (i) **"Deposit"** means the sum stated in Item O;
  - (j) **"Deposit Holder"** means the person named in Item G or, where no person is named in Item G, the Agent;
  - (k) **"Electronic Signature"** means an electronic method of signing that identifies the person and indicates their intention to sign the contract;
  - (l) **"Encumbrances"** includes but is not limited to:
    - (i) unregistered encumbrances;
    - (ii) statutory encumbrances; and
    - (iii) Security Interests;
  - (m) **"Enterprise"** means the enterprise (as the term is defined in the GST Act) carried on using the Property;
  - (n) **"Financial Institution"** means a bank, building society or credit union;
  - (o) **"GST"** means the goods and services tax under the GST Act;
  - (p) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (q) **"GST Withholding Amount"** means the amount (if any) determined under section 14-250 of the Withholding Law required to be paid to the Commissioner of Taxation;
  - (r) **"Guarantee"** means a guarantee or an undertaking in relation to any tenant or occupier under a Lease;
  - (s) **"ITAA"** means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;
  - (t) **"Item"** means an item of particulars in the Reference Schedule;

- (u) **"Keys"** means implements or instruments necessary for the purposes of fastening or unfastening:
  - (i) the lock on any gate, door, grille, shutter or lift which secures any means of entrance to or exit from the Land (whether or not such gate, door, grille, shutter or lift forms part of the Property);
  - (ii) any other lock attached to or included in the Property; and includes electronic devices and written records of all codes and combinations necessary for the purposes of fastening or unfastening any such lock;
- (v) **"Land"** means the land described in Item H;
- (w) **"Lease"** means all leases, subleases, agreements for lease, agreements for sublease and tenancy agreements whether oral or in writing, and as the context admits, licences and rights to occupy, and which are set out in the Lease Schedule;
- (x) **"Local Government"** means the relevant local government (and includes the Brisbane City Council);
- (y) **"PPSR"** means the Personal Property Securities Register established under the *Personal Property Securities Act 2009* (Cth);
- (z) **"Property"** means the Property listed in Items H, I and J and includes any part of the Property;
- (aa) **"Purchase Price"** means the sum stated in Item N;
- (bb) **"Rent"** means base rent, turnover rent, percentage rent, contributions to outgoings and any money payable by a tenant to the Seller.
- (cc) **"Security Interests"** means all security interests registered on the PPSR over the Property;
- (dd) **"Seller"** means the party named in Item C;
- (ee) **"Service Contract"** for the purposes of clause 32 of this Contract means any contract between the Seller and another party pertaining to services performed for the benefit of the Property, which are capable of assignment, and which are set out in the Service Schedule Contract and **"Service Contractor"** means any party performing those services;
- (ff) **"Settlement Date"** means the date stated in Item Q or such other date as may be agreed in writing by the parties or fixed pursuant to the conditions of this Contract;
- (gg) **"Site Value"** means:
  - (i) in the case of non-rural land, site Value under the *Land Valuation Act 2010*; or
  - (ii) in the case of rural land, the unimproved value of the Land under the *Land Valuation Act 2010*;
- (hh) **"Solicitor"** means a solicitor currently entitled to practice in Australia whether acting as principal or agent;
- (ii) **"Transport Infrastructure"** has the meaning in the *Transport Infrastructure Act 1994*; and
- (jj) **"Withholding Law"** means Schedule 1 to the *Taxation Administration Act 1953* (Cth).

1.2 Unless the contrary is shown, the Contract shall be deemed to have been formed on the date of this Contract and the date of this Contract shall be deemed to be the date stated in Item A.

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- 1.3 Any reference in this Contract to a statute includes:
- (a) any statute amending, consolidating or replacing the statute; and
  - (b) Orders in Council, proclamations, regulations, rules, by-laws and ordinances made under the statute.
- 1.4 In this Contract, unless inconsistent with the context or subject matter, where the term "Item" is used in conjunction with a particular letter of the alphabet, it is a reference to the Item set opposite the letter referred to.
- 1.5 Any defined terms used in any part of this Contract shall have the same meaning when used in any other part of this Contract.
- 1.6 The marginal notes in the Reference Schedule are references to clauses or notes, as the case may be, in the Standard Commercial Terms.
- 1.7 This Contract shall be governed by the laws of Queensland.
- 1.8 Headings and notes have been included for ease of reference and guidance and this Contract shall be construed without reference to them.

## 2 BUSINESS DAYS

- 2.1 If anything is required to be done on a day that is not a Business Day, it must be done instead on the next Business Day.

## 3 DEPOSIT <sup>2</sup> Clauses 4.1(i), 7

- 3.1 The Deposit shall be paid by the Buyer to the Deposit Holder at the times stated in Item O.

- 3.2 If the Buyer:

- (a) fails to pay the Deposit as provided in clause 3.1;
- (b) pays the Deposit by cheque which is post-dated; or
- (c) pays the Deposit by cheque which is not honoured on presentation;

then, the Buyer shall be in substantial breach of this Contract and the Seller may:

- (i) affirm this Contract and exercise the rights expressed in clause 13.2; or
- (ii) terminate this Contract and exercise the rights expressed in clause 13.3.

- 3.3 The rights and powers conferred by clause 3.2 are in addition to any other rights the Seller may have at law or in equity.

- 3.4 The Deposit shall be retained by the Deposit Holder until settlement or earlier termination of this Contract whereupon the Deposit Holder shall pay the Deposit to the person entitled to it.

- 3.5 If this Contract is terminated pursuant to the provisions of clauses 7.6, 9.3(a), 19, 20.1, 21.1 31.2(a), 32.2, 32.3(b) or 35.4, the Deposit and other monies paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be but without interest, costs or damages and the same shall be accepted by the Buyer in full and final satisfaction of all claims.

## 4 SETTLEMENT AND POSSESSION

- 4.1 The balance of the Purchase Price shall be paid on the Settlement Date as the Seller or the Seller's Solicitor directs in exchange for:

- (a) possession of the Property (such possession to be vacant except for any Lease);

<sup>9</sup> NOTE (b) a properly executed transfer for the Land in favour of the Buyer capable of immediate registration (after stamping) in the appropriate office free from Encumbrances (other than those set out in Item L) and title to the Property (other than the Land) free from Encumbrances (other than those set out in Item L) but subject to the conditions of this Contract;

- (c) any declaration required, by the *Duties Act 2001*, to be furnished to procure the stamping of the transfer;
- (d) such other instruments or declarations as are required by law to be signed by the Seller to procure the stamping and/or registration of the transfer;
- (e) except as otherwise provided in this Contract, any instrument of title for the Land required to register the transfer;
- (f) notices of assignment issued pursuant to clause 16.5
- (g) all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property and which are exclusive to the Property;
- (h) true copies of all other instruments (which shall be duly stamped) in the possession or control of the Seller evidencing estates and interests affecting the Property but which are not exclusive to the Property;
- (i) the Certificate of Classification pursuant to the *Building Act 1975* appropriate to the uses stated in Item H (if the improvements on the Land may not be lawfully occupied unless such certificate has issued);
- (j) all plans and drawings relating to the construction of the improvements on the Land in the possession or control of the Seller; and
- (k) all documents in the possession or control of the Seller which the Buyer would reasonably require to enable the Buyer to manage the Property and to prepare returns under the ITAA.

- 4.2 If both of the following apply:

- (a) the sale is not an excluded transaction under section 14-215 of the Withholding Law; and
- (b) the Seller has not given the Buyer on or before settlement for each person comprising the Seller either:
  - (i) an ATO Clearance Certificate; or
  - (ii) a variation notice under section 14-235 of the Withholding Law which remains current at the Settlement Date varying the CGT Withholding Amount to nil,

then:

- (c) for clause 4.1, the Seller irrevocably directs the Buyer to draw a bank cheque for the CGT Withholding Amount in favour of the Commissioner of Taxation or, if the Buyer's Solicitor requests, the Buyer's Solicitor's Trust Account;
- (d) the Buyer must lodge a *Foreign Resident Capital Gains Withholding Purchaser Notification Form* with the ATO for each person comprising the Buyer and give copies to the Seller with the payment reference numbers (PRN) on or before settlement;
- (e) the Seller must return the bank cheque in paragraph (c) to the Buyer's Solicitor (or if there is no Buyer's Solicitor, the Buyer) at settlement; and
- (f) the Buyer must pay the CGT Withholding Amount to the ATO in accordance with section 14-200 of the Withholding Law and give the Seller evidence that it has done so within 2 Business Days of settlement occurring.

- 4.3 For clause 4.2 and section 14-215 of the Withholding Law, the market value of the CGT asset is taken to be the Purchase Price less any GST included in the Purchase Price for which the Buyer is entitled to an input tax credit unless:

- (a) the Property includes items in addition to the Land and Improvements; and
- (b) no later than 2 Business Days prior to the Settlement Date, the Seller gives the Buyer a valuation of the Land and Improvements prepared by a registered valuer,

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in which case the market value of the Land and Improvements will be as stated in the valuation.

**4.4** If the Buyer is required to pay the GST Withholding Amount to the Commissioner of Taxation at settlement pursuant to section 14-250 of the Withholding Law:

- (a) the Seller must give the Buyer a notice in accordance with section 14-255(1) of the Withholding Law;
- (b) prior to settlement the Buyer must lodge with the ATO:
  - (i) a *GST Property Settlement Withholding Notification* form ("Form 1"); and
  - (ii) a *GST Property Settlement Date Confirmation* form ("Form 2");
- (c) on or before settlement, the Buyer must give the Seller copies of:
  - (i) the Form 1;
  - (ii) confirmation from the ATO that the Form 1 has been lodged specifying the Buyer's lodgement reference number and payment reference number;
  - (iii) confirmation from the ATO that the Form 2 has been lodged; and
  - (iv) a completed ATO payment slip for the Withholding Amount.
- (d) the Seller irrevocably directs the Buyer to draw a bank cheque for the GST Withholding Amount in favour of the Commissioner of Taxation and deliver it to the Seller at settlement; and
- (e) the Seller must pay the GST Withholding Amount to the ATO in compliance with section 14-250 of the Withholding Law promptly after settlement.

**4.5** The Buyer warrants that the statements made by the Buyer in the Reference Schedule under GST Withholding Obligations are true and correct.

**5 KEYS**

**5.1** Immediately on settlement, the Seller shall deliver all Keys, which are in the possession or under the control of the Seller, in accordance with any notice given in writing by the Buyer to the Seller and failing such notice the Seller shall deliver the Keys:

- (a) to the Buyer, if the Buyer is present personally at settlement;
- (b) to the Buyer's Solicitor at settlement, if the Buyer is not present personally;
- (c) to the Seller's Agent at the address shown in Item B, if neither the Buyer nor any Solicitor acting for the Buyer is present personally at settlement;
- (d) to and will leave the keys at the Property if none of the provisions of clauses 5.1(a), 5.1(b) or 5.1(c) are applicable.

**5.2** At or prior to settlement, the Seller shall make a written record of all codes and combinations necessary for the purposes of fastening or unfastening any lock referred to in the definition of Keys.

**6 INVESTMENT OF DEPOSIT**

**6.1** If either party directs by notice in writing to the Deposit Holder to invest the Deposit then (where the Deposit Holder is lawfully able) the Deposit Holder shall invest the Deposit with any Financial Institution permitted by law for the investment of trust monies until the Settlement Date.

**6.2** If this Contract is completed, all interest accruing on the investment of the Deposit shall be shared equally between the Seller and the Buyer. If this Contract is not completed for any reason, the interest accruing on the Deposit shall be paid to the party entitled to the Deposit upon termination of this Contract.

**6.3** The Deposit and any accrued interest shall be invested at the risk of the party to whom the Deposit and accrued interest is ultimately payable and the Deposit Holder shall not be liable for any loss suffered by the parties in consequence of an investment pursuant to clause 6.1.

**6.4** To facilitate investment of the Deposit, each party shall notify its tax file number to the Deposit Holder within 4 Business Days following the date of this Contract.

**6.5** The parties authorise the Deposit Holder to prepare and lodge any taxation return necessary in respect of the Deposit and interest and to pay any tax assessed out of the Deposit and interest and indemnify the Deposit Holder against any taxation assessed in respect of such interest

**6.6** The Seller and the Buyer shall be deemed to be presently entitled in equal shares to any interest accrued for the purposes of ITAA.

**7 SELLER'S STATEMENT**

**7.1** The Buyer is not entitled to deliver to the Seller requisitions or enquiries on or to the Seller's title to the Property.

**7.2** The Seller states that, except as disclosed in this Contract, each of the following statements is accurate at the time the Seller executes this Contract:

- (a) the Seller has free and unqualified capacity and power to contract and to complete this Contract;
- (b) the Seller is not under any legal disability which affects the Seller's capacity to contract and to complete this Contract; and
- (c) if the Seller is a trustee, the Seller has free and unqualified power of sale under the instrument creating the trust, and that instrument does not require the consent or authority of any person to the entering into of this Contract or the settlement of this Contract.

**7.3** The Seller states that, except as disclosed in this Contract, each of the following statements will be accurate at the Settlement Date:

- (a) there is no current litigation by any person claiming an estate or interest in the Property;
- (b) there is no unsatisfied judgement, order or writ of execution which effects the Property;
- (c) no order has been made under Part 11 of the *Property Law Act 1974* which would operate as a charge on the Land;
- (d) there is no order of a Court or other competent authority affecting the ability of the Seller to complete this Contract;
- (e) no notice has been issued by a competent authority or proceedings instituted in a Court pursuant to any statute whereby the interest of the Seller in the Property may be rendered liable to forfeiture to the Crown;
- (f) if the Land is Crown leasehold title, the Crown leasehold title is not rendered liable to forfeiture by reason of the non-observance or non-performance of the covenants or conditions of the Lease;
- (g) if the Seller is a natural person, the Seller is not a bankrupt nor has the Seller signed any authority under section 188 of the *Bankruptcy Act 1966* (Cth);
- (h) if the Seller is a corporation within the meaning of the *Corporations Act 2001* (Cth):
  - (i) the Seller is not in liquidation;
  - (ii) no action has been taken by or against the Seller which could lead to the winding up of the Seller;
  - (iii) an administrator, controller or managing controller has not been appointed to the Seller or in respect of the whole or any part of the Property; and



(iv) a compromise or arrangement has not been proposed between the Seller and its members or creditors nor agreed to by the members or creditors nor sanctioned by a Court; and

(i) the Seller is the registered owner or the lessee of the Land (according to the title expressed or implied in this Contract).

7.4 If a statement contained in either clause 7.2 or clause 7.3 is not accurate then the Buyer may terminate this Contract by notice in writing to the Seller.

7.5 If this Contract is terminated pursuant to clause 7.4, the Deposit and other monies paid under this Contract shall be refunded to the Buyer by the Seller or the Deposit Holder as the case may be and the Seller shall be liable by way of damages as compensation for the loss suffered by the Buyer in such sum as at the time this Contract was made was reasonably foreseeable as the loss liable to result, and which does in fact result from a termination of this Contract due to a statement contained in either clause 7.2 or clause 7.3 not being accurate.

7.6 (1) The Seller warrants that, except as disclosed in this Contract or a notice given by the Seller to the Buyer under the *Environmental Protection Act 1994* ("EPA"), at the date of this Contract;

(a) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of a notifiable activity being conducted on the Land; and

(b) The Seller is not aware of any facts or circumstances that may lead to the Land being classified as contaminated land within the meaning of EPA.

(2) If the Seller breaches a warranty in clause 7.6(1), the Buyer may:

(a) terminate this Contract by notice in writing to the Seller given 14 days after the date of this Contract; or

(b) complete this Contract and claim compensation, but only if the Buyer claims it in writing before settlement of this Contract.

7.7 If requested by the Buyer, the Seller within 14 days of such request shall:

(a) produce to the Buyer all unregistered documents relating to the Property and full and proper particulars of all unregistered dealings that so relate; and

(b) deliver to the Buyer photocopies of such documents or dealings (if the dealings are in writing) certified by the Seller or the Seller's Solicitor as being true copies.

## 8 ERRORS AND MISDESCRIPTIONS

8.1 If there is any immaterial mistake or error in the description or particulars of the Property or as to title, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

8.2 If there is any material mistake or error in the description or particulars of the Property or as to title and the Buyer does not exercise any right which the Buyer has at law to terminate this Contract, the Buyer shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

## 9 SURVEY AND INSPECTION

9.1 The Buyer shall be entitled to conduct a survey of the Land to ascertain the boundaries and area of the Land and to establish the location of structures purporting to be on the Land or on adjoining land.

9.2 If there is any immaterial error in the boundaries or area of the Land or any immaterial encroachment, the Buyer shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Settlement Date) as the case may require. The Buyer shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

9.3 If there is any material error in the boundaries or area of the Land or any material encroachment, the Buyer shall be entitled to elect by notice in writing to the Seller given on or before the Settlement Date either:

(a) to terminate this Contract; or

(b) to complete this Contract with compensation, in which event the Buyer shall be entitled to such compensation as the case may require and shall not be entitled to delay settlement or to withhold any part of the Purchase Price by reason of any such claim for compensation.

## 10 EXECUTION AND PRODUCTION OF DOCUMENTS

10.1 Subject to compliance by the Buyer with the Buyer's obligations under or by virtue of this Contract and subject to clause 10.2, the Seller shall as required do all acts and execute all documents necessary for the purpose of completing the sale and ensuring that the Buyer obtains a good and valid title to the Property.

10.2 All transfer documents, any declaration required pursuant to clause 4.1(c), and all instruments or declarations required pursuant to clause 4.1(d) shall be prepared by and at the expense of the Buyer and delivered to the Seller within a reasonable time prior to the Settlement Date.

10.3 If so requested by the Buyer, the Seller shall deliver to the Buyer, prior to the Settlement Date, photocopies of the documents executed by the Seller.

10.4 After execution of the transfer, if so requested by the Buyer and upon payment of the usual production fee by the Buyer, the Seller shall cause the transfer to be tendered to the Office of State Revenue for stamping, together with any declaration referred to in clause 4.1(c) and thereupon the Seller shall be deemed to have complied with the Seller's obligations under clause 4.1(c).

10.5 If an instrument of title is required to register a transfer of the Land and the instrument of title relating to the Land also relates to other land, the Seller shall not be obliged to deliver it to the Buyer but shall enter into such reasonable covenants with the Buyer as the Buyer may require for production of the instrument of title.

10.6 If the instrument of title is partially cancelled the Seller shall not be obliged to produce a separate instrument of title on settlement.

10.7 Where either clause 10.5 or clause 10.6 applies, the Buyer shall bear the cost of any new instrument of title relating to the Land.

## 11 INTEREST ON LATE PAYMENTS

11.1 The Buyer must pay interest at the annual rate in item P:

(a) on any amount payable under this contract which is not paid when due; and

(b) on any judgement for money payable under this contract.

11.2 Interest continues to accrue:

(a) under clause 11.1(a), from the date it is due until paid; and



(b) under clause 11.1(b), from the date of judgement until paid.

11.3 Any amount payable under clause 11.1(a) in respect of a period prior to settlement must be paid by the Buyer at settlement. If this contract is terminated or if any amount remains unpaid after settlement, interest continues to accrue.

11.4 Nothing in this clause affects any other rights of the Seller under this contract or at law.

## 12 DIVIDING FENCES

Notwithstanding any provision in the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, the Seller need not contribute to the cost of construction of any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

## 13 BUYER'S DEFAULT

13.1 If the Buyer:

- (a) fails to pay the balance of the Purchase Price as provided in clause 4; or
- (b) fails to comply with any of the terms or conditions of this Contract;

then the Seller may:

- (i) affirm this Contract; or
- (ii) terminate this Contract.

13.2 If the Seller affirms this Contract pursuant to clause 3.2 or clause 13.1, the Seller may:

- (a) sue the Buyer for damages for breach or for specific performance and damages in addition to or instead of damages for breach; and
- (b) recover from the Buyer as a liquidated debt the Deposit or any part of it which the Buyer has failed to pay and shall pay the Deposit or any part of the Deposit which is recovered to the Deposit Holder.

13.3 If the Seller terminates this Contract pursuant to clause 3.2 or clause 13.1, the Seller may elect to:

- (a) declare the Deposit (or so much of it as shall have been paid) forfeited and/or sue the Buyer for breach; or
- (b) declare the Deposit (or so much of it as shall have been paid) forfeited and/or resell the Property and if the resale is completed within 2 years from the date of termination any deficiency and any expense arising from such resale shall be recoverable by the Seller from the Buyer as liquidated damages;

and in either case the Seller may recover from the Buyer as a liquidated debt the Deposit or any part of it which has not been paid by the Buyer.

13.4 The rights and powers conferred upon the Seller by this clause 13 are in addition to any other right or power which the Seller may have at law or in equity.

## 14 PARTICULARS OF ADJUSTABLE ITEMS

14.1 Within a reasonable time after written request by the Buyer prior to the Settlement Date, the Seller shall deliver to the Buyer:

- (a) a written statement of all rates, taxes, outgoings, rents and profits not capable of discovery by search or enquiry in any office of public record or pursuant to the provisions of any statute in respect of the Property; and
- (b) (where the Land is subject to a Lease) a written statement disclosing to the extent the same is not disclosed in the Lease Schedule:
  - (i) the names and postal addresses of any tenant or other occupier of the Land;

(ii) the amounts, the due days for and the manner of payment of all periodic sums payable in respect of the Lease;

(iii) the date to which the same shall have been paid; and

(iv) the amounts of any Bond held from any such tenant or other occupier and the identity of the party holding such Bond.

14.2 If the Seller becomes aware of any information at any time between the date of delivering any such statement and settlement the effect of which is or may be to render such statement untrue in a material respect the Seller shall immediately disclose that information to the Buyer by notice in writing.

14.3 The Seller warrants that every such statement shall be true at the Settlement Date.

## 15 ADJUSTMENTS

15.1 The Seller shall pay or discharge all rates, taxes (including land tax) and other outgoings (except insurance premiums on insurances effected by the Buyer) with respect to the Property up to and including the date of possession.

15.2 The Buyer shall pay or discharge all rates, taxes (including land tax) and other outgoings with respect to the Property from the date of possession.

15.3 Except for water charges based on the quantity of water used all rates, taxes and outgoings shall be apportioned:

- (a) in the case of those paid by the Seller, on the amount actually paid;
- (b) in the case of those levied but unpaid, on the amount payable disregarding any discount for early payment;
- (c) in the case of those not levied but the amount can be ascertained by advice from the relevant rating and taxing authority, on the amount advised by the relevant rating and taxing authority disregarding any discount for early payment; and
- (d) in the case of those not levied and not ascertainable from the relevant rating and taxing authority and where a separate assessment was issued for the Land for the assessment period immediately prior to the date of possession, on the amount payable in that separate assessment disregarding any discount for early payment.

15.4 Any rates in the nature of water rates and which are not determined by reference to water usage shall be apportioned in accordance with clause 15.3. Any water charges based on the quantity of water used shall be adjusted in accordance with the following provisions:

- (a) the Buyer, at the expense of the Buyer, shall read or procure the reading of any water meter installed on the Land no more than 5 days and no less than 3 days prior to the date of possession, and shall inform the Seller of the results of the water meter reading;
- (b) the deemed water usage in litres for the whole of the current rating period for water charges ("the deemed water usage") shall be calculated as the amount which is directly proportionate to the water usage between the date of commencement of the current rating period for water charges and the date of the water meter reading referred to in clause 15.4(a) (no allowance being made for seasonal or other factors);
- (c) the likely assessment of water charges for the deemed water usage shall be calculated by using the method and rates then being used by the Local Government or other water supplier ("the likely assessment");
- (d) the likely assessment shall then be apportioned.



**15.5 Land Tax shall be apportioned:**

- (a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Land was the Seller's only land; or
- (b) if there is no separate Site Value for the Land, on a notional Site Value equal to:

$$\frac{\text{Site Value of the parcel}}{\text{Area of the Land}} \times \text{Area of the Parcel}$$

**15.6** If land tax is unpaid at the Settlement Date and the Office of State Revenue advises that it will issue a final clearance for the Land on payment of a specified amount, then the Buyer may deduct the specified amount from the balance of the Purchase Price at settlement and must pay it promptly to the Office of State Revenue. If an amount is deducted under this clause, then land tax will be treated as paid at the Settlement Date for the purposes of clause 15.3.

**16 RENTS AND PROFITS GUARANTEES AND BONDS**

**16.1** The rents and profits with respect to the Property shall benefit the Seller up to and including the date of possession and thereafter shall benefit the Buyer and shall be dealt with as follows:

- (a) all unpaid rents and profits in respect of any period terminating on or prior to the date of possession shall not be apportioned between the parties on settlement but shall be recoverable by the Seller in accordance with clause 16.3;
- (b) all rents and profits paid in advance of the date of possession shall be apportioned between the parties on settlement;
- (c) all rents and profits payable in respect of any period current at the date of possession which have not been paid at the Settlement Date shall be apportioned when received by either party.

**16.2** If on settlement a deduction is made in respect of any Bond, the Buyer shall following settlement keep the Seller indemnified in that respect.

**16.3** The Seller assigns to the Buyer, subject to the settlement of this Contract and with effect from the Settlement Date:

- (a) the benefit of all conditions contained in any Leases on the part of the tenant or other occupier of the Land given in favour of the Seller or any predecessors in title of the Seller;
- (b) the benefit of all terms and conditions contained in the Service Contracts (subject to the consent of Service Contractor); and
- (c) the benefit of all Guarantees or Bonds held by the Seller in respect of the Leases which are capable of assignment.

provided that all unpaid rents and profits in respect of any period terminating on or prior to the date of possession not apportioned upon settlement shall not be assigned to the Buyer but be recoverable by the Seller and to that extent section 117 of the *Property Law Act 1974* shall not apply.

**16.4** The Buyer agrees to retain records relating to the Leases and to produce the Leases and any records relating to the Leases in any proceedings commenced by the Seller to recover any unpaid rents and profits.

**16.5** The Seller shall prepare and execute appropriate notices to give effect to the assignments in clause 16.3.

**17 LIABILITY OF BUYER**

**17.1** The Property shall be at the risk of the Seller until 5:00pm on the next Business Day after the date of this Contract and then the risk shall pass to the Buyer. The Seller whilst continuing in possession will use the Property with reasonable care.

**17.2** From the date of this Contract until settlement, the Seller shall use best endeavours to administer the Property and properly enforce the Leases in accordance with the usual practice of the Seller. Should any matter or circumstance arise which may materially affect the proper performance of the terms of any Lease by any party, the Seller shall immediately notify the Buyer in writing.

**17.3** In addition to the obligations contained in Clause 17.2, the Seller shall not without the prior written consent of the Buyer which shall not be unreasonably withheld:

- (a) accept or agree to accept a surrender of any Lease;
- (b) grant any Lease for any part of the Property which is vacant at the date of this Contract or which may become vacant prior to settlement;
- (c) consent to the variation of any Lease, proposed assignment or any other dealing concerning any Lease; or
- (d) negotiate or set new rent.

**18 ACCESS**

**18.1** The Seller shall permit the Buyer or any person authorised by the Buyer to enter the Property on the Settlement Date for the purpose of checking the inventory of chattels (if any) and ascertaining the existence and state of repair of the Property.

**18.2** The Seller shall permit any person authorised by the Buyer in writing upon reasonable written notice to enter the Property on one occasion for the purposes of reading any water, gas, electricity or other meter.

**19 CONSENTS**

If any consent is required by statute to the sale or the performance of any obligation under or by virtue of this Contract, this Contract is subject to such consent being given and the party who is required, by the statute, to obtain such consent ("Applicant") shall apply for the consent and pursue the application. The Applicant shall pay all costs and fees (other than the other party's solicitor's) in respect of the application. The other party shall if and when required by the Applicant immediately join in the application and/or shall supply such information as shall be reasonably required in support of the application. If the consent is refused or not granted by the Settlement Date then either party may by notice in writing to the other terminate this Contract.

**20 REQUIREMENTS OF AUTHORITIES**

**20.1** If it is established that at the date of this Contract the Local Government has given to the Seller or some other person a notice in writing pursuant to sections 247 and 248 of the *Building Act 1975* or sections 167 or 168 of the *Planning Act 2016* in respect of any building or structure on the Land and the notice is current at the Settlement Date the Buyer may by notice in writing to the Seller given on the Settlement Date terminate this Contract.

**20.2** Except for any notice referred to in clause 20.1, or a tree order disclosed under section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*, any valid notice or order issued pursuant to any statute or by any Local Government or Court necessitating the doing of work or the expenditure of money on or in relation to the Property or any path or road adjoining the Land:



- (a) if issued before the date of this Contract shall be fully complied with by the Seller in a proper and workmanlike manner on or before the Settlement Date; or
- (b) if issued on or after the date of this Contract shall be fully complied with by the Buyer who shall indemnify the Seller in respect of the compliance with the notice or order.

If without default of the Buyer this Contract is terminated, the Seller shall pay to the Buyer on demand any amount expended by the Buyer in complying with any notice or order which was of the nature of a capital expenditure or has resulted in a benefit to the Seller.

## 21 PROPERTY ADVERSELY AFFECTED

### 21.1 If at the Contract Date:

- NOTE**  
2
- (a) the Present Use is not lawful under the relevant town planning scheme;
  - (b) the Land is affected by a proposal of any competent authority to alter the dimensions of any Transport Infrastructure or locate Transport Infrastructure on the Land;
  - (c) access or any service to the Land passes unlawfully through other land;
  - (d) any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land;
  - (e) there is an outstanding condition of a development approval attaching to the Land under section 73 of the *Planning Act 2016* or section 96 of the *Economic Development Queensland Act 2012* which, if complied with, would constitute a material mistake or error as to the Seller's title to the Property;
  - (f) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
  - (g) the Property is declared acquisition land under the *Queensland Reconstruction Authority Act 2011*;
  - (h) there is a charge against the Land under section 104 of the *Foreign Acquisitions and Takeovers Act 1975*, and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given on or before settlement.

21.2 If no notice is given under clause 21.1, the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.

21.3 The Seller authorises the Buyer to inspect records held by any authority, including Security Interests on the PPSR relating to the Property.

21.4 Before the Settlement Date, the Seller must give the Buyer:

- (a) copies of all documents relating to any unregistered interests in the Property; and
- (b) further copies of details if those previously given cease to be complete or accurate;
- (c) if requested by the Buyer, copies of all Security Interests or sufficient details of the Security Interests to enable the Buyer to undertake a search of the PPSR.

## 22 NO WARRANTY ON PRESENT USE

No warranty is implied that the use of the Property as described in Item H is permissible under any town planning scheme and no compensation is payable if the particulars stated in Item H are not correct.

## 23 COSTS

The parties shall pay their own costs of and incidental to the sale and purchase but all stamp duty on this Contract and any duty in respect of the conveyance by the Seller to the Buyer shall be paid by the Buyer and if not paid by the Buyer may be paid by the Seller and recovered from the Buyer as a liquidated debt.

## 24 MERGER

Despite settlement and despite the registration of the transfer in favour of the Buyer, any general or special condition (or any part or parts thereof) to which effect is not given by settlement or registration and which is capable of taking effect after settlement or registration shall remain in full force and effect.

## 25 TIME AND PLACE FOR SETTLEMENT

25.1 Settlement shall be effected at such time and place as may be agreed upon by the parties. The time for settlement shall be between the hours of 9:00am and 4:00pm AEST on the Settlement Date.

25.2 In the absence of agreement as to place, settlement shall be effected in the city or town named in Item R at:

- (a) the office of a solicitor or financial institution nominated by the Seller; or
- (b) if the Seller does not make a nomination at the land registry office in or nearest to the city or town in item R.

25.3 Despite clause 25.2 if a mortgage is to be discharged on settlement the Seller may by notice in writing to the Buyer given not less than 2 Business Days prior to the Settlement Date require settlement to take place at the office of the Seller's mortgagee in the city or town named in Item R or if such mortgagee does not have an office in that city or town at the office of such mortgagee in Queensland nearest to that city or town.

## 26 TIME OF THE ESSENCE

26.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement and except otherwise provided in this Contract.

26.2 Clauses 26.2 to 26.8 apply if a party is unable to perform a Settlement Obligation solely as a consequence of a Delay Event but does not apply where the inability is attributable to:

- (i) damage to, destruction of or diminution in value of the Property or other property of the Seller or Buyer; or
- (ii) termination or variation of any agreement between a party and another person whether relating to the provision of finance, the release of an Encumbrance, the sale or purchase of another property or otherwise.

26.3 Time for the performance of the parties' Settlement Obligations is suspended and ceases to be of the essence of the contract and the parties are deemed not to be in breach of their Settlement Obligations.

26.4 An Affected Party must take reasonable steps to minimise the effect of the Delay Event on its ability to perform its Settlement Obligations.

26.5 When an Affected Party is no longer prevented from performing its Settlement Obligations due to the Delay Event, the Affected Party must give the other party a notice of that fact, promptly.

26.6 When the Suspension Period ends, whether notice under clause 26.5 has been given or not, either party may give the other party a Notice to Settle.



- 26.7 A Notice to Settle must be in writing and state:
- (i) the Suspension Period has ended; and
  - (ii) a date, being not less than 5 nor more than 10 Business Days after the date the Notice to Settle is given, which shall become the Settlement Date;
  - (iii) that time is of the essence.

26.8 When Notice to Settle is given, time is again of the essence of the contract.

26.9 In this clause 26:

- (i) "Affected Party" means a party referred to in clause 26.2;
- (ii) "Delay Event" means:
  - (a) a tsunami, flood, cyclone, earthquake, bushfire or other act of nature;
  - (b) riot, civil commotion, war, invasion or a terrorist act;
  - (c) an imminent threat of an event in paragraphs (a) or (b); or
  - (d) compliance with any lawful direction or order by a Government Agency;
- (iii) "Government Agency" means the government of the Commonwealth of Australia or an Australian State, Territory or local government and includes their authorities, agencies, government owned corporations and authorised officers, courts and tribunals.
- (iv) "Settlement Obligations" means, the obligations of the Buyer and Seller under clause 4;
- (v) "Suspension Period" means the period during which the Affected Party (or if both the Buyer and Seller are Affected Parties, either of them) remains unable to perform a Settlement Obligation solely as a consequence of a Delay Event.

## 27 NOTICES, COMMUNICATIONS, AUTHORITY DIRECTIONS, ETC

27.1 Notices under this contract must be in writing.

27.2 Notices under this contract or notices required to be given by law may be given and received by the party's solicitor.

27.3 Notices under this contract or notices required to be given by law may be given by:

- (a) delivering or posting to the other party or its solicitor; or
- (b) sending it to the facsimile number of the other party or its solicitor stated in the Reference Schedule (or another facsimile number notified by the recipient to the sender); or
- (c) sending it to the email address of the other party or its solicitor stated in the Reference Schedule (or another email address notified by the recipient to the sender).

27.4 Subject to clause 27.5, a notice given after this contract is entered into in accordance with clause 27.3 will be treated as given:

- (a) 5 Business Days after posting;
- (b) if sent by facsimile, at the time indicated on a clear transmission report; and
- (c) if sent by email, at the time it is sent.

27.5 Notices given by facsimile, by personal delivery or by email between 5pm on a Business Day (the "first Business Day") and 9am on the next Business Day (the "second Business Day") will be treated as given or delivered at 9am on the second Business Day.

27.6 If two or more notices are treated as given at the same time under clause 27.5, they will be treated as given in the order in which they were sent or delivered.

27.7 Notices or other written communications by a party's solicitor (for example, varying the Inspection Date, Finance Date or Settlement Date) will be treated as given with that party's authority.

27.8 For the purposes of clause 27.3(c) and clause 36.2 the notice or information may be contained within an email, as an attachment to an email or located in an electronic repository accessible by the recipient by clicking a link in an email.

## 28 REMOVAL OF FIXTURES, FITTINGS AND CHATTELS

28.1 Unless otherwise agreed between the parties any property not sold under this Contract (other than property of any tenant or other occupier of the Land) shall be removed from the Land prior to delivery of possession.

28.2 The Seller shall at the Seller's own expense reinstate and make good prior to delivery of possession any damage done to the improvements in removing that property and if the Seller fails to do so the Buyer may do so and recover the costs of so doing from the Seller as a liquidated debt.

28.3 Any of that property not so removed shall be deemed abandoned by the Seller and the Buyer may without prejudice to any other remedy complete this Contract and appropriate or remove or otherwise dispose of that property as the Buyer thinks fit.

28.4 Any costs incurred by the Buyer in removing that property or in making good any damage done to the improvements in such removal may be recovered by the Buyer from the Seller and the Seller shall indemnify and hold indemnified the Buyer from and against all claims, demands, actions, costs, judgements and expenses which the Buyer may suffer or incur by reason of any other person claiming any interest in that property.

## 29 CHATTELS

29.1 Title to any chattels agreed to be sold by or under this Contract shall pass at settlement.

29.2 The Seller assigns to the Buyer subject to the settlement of this Contract and with effect from the Settlement Date, the benefit of all warranties capable of assignment held by the Seller in respect of the chattels agreed to be sold. The Seller shall deliver to the Buyer at settlement all documents in the possession or control of the Seller evidencing the warranties referred to in this clause which would be sufficient to enable the Buyer to enforce those warranties.

## 30 APPOINTMENT OF AGENT

In the absence of any specific appointment the Seller by executing this Contract confirms the appointment of the Seller's Agent (jointly with any other agent in conjunction with whom the Seller's Agent has sold) as the agent of the Seller to introduce a Buyer.

## 31 FINANCE CLAUSE

31.1 If Items S, T and U are not deleted, this Contract is subject to the Buyer obtaining approval of a loan from the lender or class of lender specified in Item S on or before the approval date specified in Item T not less than the amount of loan specified in Item U on terms satisfactory to the Buyer. The Buyer must take reasonable steps to obtain the approval.

NOTE 7

31.2 The Buyer may give notice to the Seller that:

- (a) approval has not been obtained by the approval date and the Buyer terminates this contract; or
- (b) the finance condition has been either satisfied or waived by the Buyer.



31.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 31.2 by 5pm on the approval date. This is the Seller's only remedy for the Buyer's failure to give notice.

31.4 The Seller's right under the clause 31.3 is subject to the Buyer's continuing right to give written notice to the Seller of satisfaction, termination or waiver pursuant to clause 31.2.

## 32 PROPERTY SOLD SUBJECT TO LEASES AND SERVICE CONTRACTS

### 32.1 Seller's Statement

Where the Property is sold subject to any Lease or Service Contract, the Seller states that, except as disclosed in this Contract, each of the following statements shall be accurate at the Settlement Date:

- (a) the particulars in the Lease Schedule and the Service Contract Schedule are true and correct;
- (b) that no circumstances exist as far as the Seller is aware that would render any Lease liable to forfeiture nor has the Seller agreed to a surrender of any Lease;
- (c) that all Leases and Service Contracts have been disclosed to the Buyer prior to execution of this Contract;
- (d) the Seller is not aware of any breach by the Seller of any Lease or Service Contract;
- (e) where any of the Leases are subject to the application of the *Retail Shop Leases Act 1994* ("Act"), the following further statements by the Seller apply:
  - (i) as far as the Seller is aware the Seller has in all respects complied with the Act in relation to the Leases;
  - (ii) no Lease is subject to an existing or renewed retail tenancy dispute within the meaning of the Act;
  - (iii) there are no mediation agreements, Queensland Civil and Administrative Tribunal proceedings or orders in existence in respect of any Lease;
  - (iv) no tenant has notified the Seller requesting the right to renew any Leases for a further period;
  - (v) no tenant has made a claim upon the Seller to pay compensation for loss or damage suffered by the tenant by virtue of sections 43, 46G or 46K of the Act nor are there any circumstances existing to the Seller's knowledge which might give rise to a claim for such compensation.

### 32.2 Inaccurate Statement

If a statement contained in clause 32.1 is not accurate then the Buyer may terminate this Contract by notice in writing to the Seller.

### 32.3 Acceptance of Lease and Service Contract Terms

- (a) Within 7 days of the date of this Contract, the Seller will deliver to the Buyer or the Buyer's solicitor true copies of all Leases and Service Contracts together with a written statement that they constitute the whole of every agreement or arrangement with each of the tenants stated in those Leases or with each of the Service Contractors in those Service Contracts.
- (b) If:
  - (i) the Seller does not deliver to the Buyer or the Buyer's solicitor true copies of all Leases and Service Contracts pursuant to clause 32.3(a); or

- (ii) true copies of all Leases and Service Contracts have been delivered pursuant to clause 32.3(a) and the Buyer is not satisfied with any of the terms and conditions of any Lease or Service Contract;

then in the case of clause 32.3(b)(i) the Buyer shall be entitled to terminate this Contract by notice in writing to the Seller or in the case of clause 32.3(b)(ii) the Buyer shall be entitled to terminate this Contract by written notice to the Seller within 7 days from the date upon which all Leases and Service Contracts have been delivered.

- (c) If the Buyer does not give written notice to the Seller pursuant to clause 32.3(b)(i) or 32.3(b)(ii), the Buyer agrees to be bound by the terms and conditions of each Lease and Service Contract disclosed by the Seller in the Lease Schedule and the Service Contract Schedule from the Settlement Date as if the Buyer were named as lessor in such Lease or as a contracting party in such Service Contract in substitution for the Seller.
- (d) With respect to Service Contracts, clause 32.3(c) will apply subject to the consent of the Service Contractor.
- (e) The amounts paid or payable in respect of the Service Contracts shall be outgoings for the purposes of clause 15 and shall be apportioned accordingly.

## 33 FOREIGN BUYER APPROVAL

NOTE 10 The Buyer warrants that either:

- (1) the Buyer's purchase of the Property is not a notifiable action; or
- (2) the Buyer has received a no objection notification, under the *Foreign Acquisitions and Takeovers Act 1975*.

## 34 GOODS AND SERVICES TAX

### 34.1 Definitions

Words and phrases defined in the GST Act have the same meaning in this Contract unless the context indicates otherwise.

### 34.2 Reference Schedule and Notes

The Reference Schedule and the Notes to Completion are part of this clause 34.

### 34.3 Taxable Supply

This clause 34 applies where the transaction is:

- (a) a Taxable Supply; or
- (b) not a Taxable Supply because it is the Supply of a Going Concern.

### 34.4 Purchase Price Includes GST

If this clause 34.4 applies, the Purchase Price includes the Seller's liability for GST on the Supply of the Property. The Buyer is not obliged to pay any additional amount to the Seller on account of GST on the Supply of the Property.

### 34.5 Purchase Price Does Not Include GST

If this clause 34.5 applies, the Purchase Price does not include the Seller's liability for GST on the Supply of the Property. The Buyer must on the Settlement Date pay to the Seller in addition to the Purchase Price an amount equivalent to the amount payable by the Seller as GST on the Supply of the Property.