

# CONTRACT FOR SALE OF COMMERCIAL LAND AND BUILDINGS

(Note: Where there is insufficient space in any Item place details in an Annexure and refer to the Annexure in the Item  
- e.g. 'Refer Additional Expenses Annexure')

Item	Item Schedule
<b>1. CONTRACT DATE</b>	<i>Clause 1(11)</i>
THE _____ DAY OF _____ 20 _____	(Note: Seller/Seller's Agent must complete)
(Last party signing to insert date)	
<b>2. SELLER'S AGENT</b>	<i>Clause 33</i>
Name: <b>Landmark Harcourts Toowoomba</b>	
Address: <b>1/227 West Street</b>	ACN: <b>104342725</b>
<b>Harristown QLD 4350</b>	ABN: <b>93104342725</b>
Phone: <b>( 07 ) 4688 9700</b>	Mobile: <b>0407 787 579</b>
Email: <b>mark.abra@landmarkharcourts.com.au</b>	
Licence Number: <b>2607798</b>	Expiry Date: <b>04/06/2020</b>
<b>3. SELLER</b>	<i>Clauses 1(42), 11.1, 28, 32.1, 41, 43, 44 and 48</i>
Name: <b>THREE TREES AUSTRALIA PTY LTD</b>	
Address: <b>PO BOX 1497</b>	ACN: _____
<b>TOOWOOMBA QLD 4350</b>	ABN: _____
Phone: _____	Mobile: _____
Email: _____	Contact: _____
Solicitor / Self Acting _____	
Address: _____	
Phone: _____	Mobile: _____
Email: _____	Contact: _____
<b>4. BUYER'S AGENT (If Applicable)</b>	
Name: _____	
Address: _____	ACN: _____
	ABN: _____
Phone: _____	Mobile: _____
Email: _____	
<b>5. BUYER</b>	<i>Clauses 1(8), 6.12, 10, 11, 12, 25, 36(2), 37, 38.1(3), 38.3 and 39</i>
Name: _____	
Address: _____	ACN: _____
	ABN: _____
Phone: _____	Mobile: _____
Email: _____	Contact: _____
Solicitor / Self Acting _____	
Address: _____	
Phone: _____	Mobile: _____
Email: _____	Contact: _____

**6. LAND**

*Clauses 1(37), 20, 21, 22, 23 and 24*

Address: **615-617 Greenwattle Street**

**Glensvale QLD 4350**

Lot No. **L20**

on GTP / BUP / SP / RP **816987**

Title Reference: **18772185**

Area: **2,653m2**

(approx.)

Freehold

Leasehold

(Complete as Applicable. If neither checked, it is assumed to be Freehold)

If Leasehold: Type of Holding:

Lease No.:

Local Government: **Toowoomba Regional**

**7. PURCHASE PRICE**

*Where applicable, include GST.*

*Clauses 1(38), 35, 36 and 38*

Purchase Price \$

**(WARNING: Some property sales may attract GST and require a tax invoice to be issued separate to this Contract. Seek appropriate professional advice if unsure)**

**8. DEPOSIT**

*Clause 3*

Initial Deposit: **10%**

Payable: **DATE OF CONTRACT**

Balance Deposit:

Payable by a date no later than:

**9. DEPOSIT HOLDER**

*Clauses 3.1 and 3.7*

**Abra Team Pty Ltd t/a Landmark Harcourts Toowoomba**

**10. FINANCE**

*If you do not complete all details Clause 5 will not apply.*

*Clauses 5 and 31.2*

Finance Amount:

Finance Date:

Lender:

**11. INSPECTIONS**

*Complete for Clause 4 to apply.*

*Clauses 4, 16 and 31*

Inspection Date:

(Date to be completed by)

*Unless otherwise specified the Inspection Date will be 14 days from the Date of Contract.*

Acknowledged Defects and Exclusions:

**12. SETTLEMENT**

*Clauses 1(12), 1(37), 1(46), 8, 10 and 31*

12.1 Date:

**/ /**

**OR 45**

days from the Date of Contract

**OR**

12.2 Settlement will be conducted by: *(If neither (a) nor (b) is checked, e-conveyance will apply)*

(a) e-conveyance (Clause 8.1) and;

the Electronic Workspace will be opened by the Seller unless otherwise agreed.

(b) Non e-conveyance (Clause 8.2) and the place of settlement will be:

**TOOWOOMBA QLD 4350**

**13. EXCLUDED IMPROVEMENTS**

*Note: unless excluded, all Improvements are included.*

*Clauses 1(26), 9.3, 11.1(11) and 37*

*Note: {If any Items are excluded this may have an adverse effect on Going Concern provisions (see Clause 37)}*

**14. INCLUDED CHATELS**

*Clauses 1(26), 1(37), 11.1(2) and 37*

**15. PRESENT USE**

*Note: the Buyer must satisfy itself as to the use being lawful or otherwise.*

*Clauses 8.3(8) and 24*

**16. WORK ORDERS / NOTICES / APPLICATIONS**

*Clauses 1(32), 1(50), 11.3(1), 11.1(8), 19 and 32*

- (a) 1. Local Government / Statutory Authorities: ..... Date: / /
- 2. .... Date: / /
- 3. .... Date: / /
- 4. .... Date: / /
- (b) Copies of Applications or Orders given to the Buyer in accordance with Section 83 of the NDRA prior to the Date of Contract:
- 1. .... Date: / /
- 2. .... Date: / /

**17. ENCUMBRANCES** (If Property is sold subject to Encumbrances details **must** be inserted)

*Clauses 1(19), 8.2(4)(b), 8.3(10) and 14*

Title: ..... (eg. Easement)

Other:

(eg. Statutory Dealings; Unregistered Dealings; Licenses; Security Interests)

*Ambiguous references similar to "searches will reveal" will not impose upon the Buyer an obligation to accept the Encumbrance.*

**18. INTEREST ON UNPAID MONIES**

*Clauses 17 and 28*

- (a) Rate: ..... (If left blank Item 18(b) is applicable)
- (b) Queensland Law Society Inc Contract Default Interest Rate

**19. GST ON SALE**

*Clauses 35, 36, 37, 38, 39 and 40*

**Tick only One of the following options below:**

- Method of dealing with GST on the supply of the Property:
- a) Purchase Price includes GST (see Clause 35)
  - b) Purchase Price excludes GST (see Clause 36)
  - c) Going Concern (see Clause 37)
  - d) Margin Scheme (see Clause 38)
  - e) GST not applicable (see Clause 39)

**(WARNING: It is advised that both the Seller and Buyer give consideration to the implications of the method chosen and request appropriate Professional advice in completing this Item)**

**20. LEASES** All Leases must be noted here

*Clauses 1(30), 6.1, 8.3(4), 8.3(5), 14, 23, 42 and 43*

**Lease 1:** Tenant: **Ramsay Bourne Acquisitions Pty Ltd**

Term: .....

Completion Date: **12 / 07 / 2022** Rent: **\$125,800 Plus GST & Outgoings per annum** Allocated unit no.: .....

Intended use: **Childcare Centre**

Options: .....

Options exercised: **Yes / No** Rental Bond: ..... Rental Adjustment Date: / /

**Lease 2:** Tenant: .....

Term: .....

Completion Date: / / Rent: ..... Allocated unit no.: .....

Intended use: .....

Options: .....

Options exercised: **Yes / No** Rental Bond: ..... Rental Adjustment Date: / /

**Lease 3:** Tenant: .....

Term: .....

Completion Date: / / Rent: ..... Allocated unit no.: .....

Intended use: .....

Options: .....

Options exercised: **Yes / No** Rental Bond: ..... Rental Adjustment Date: / /

**20. LEASES (Continued)** All Leases must be noted here

*Clauses 1(30), 6.1, 8.3(4), 8.3(5), 14, 23, 42 and 43*

**Lease 4:** Tenant: .....

Term: .....

Completion Date:     /     /                      Rent: .....

Allocated unit no. ....

Intended use: .....

Options: .....

Options exercised: **Yes / No**   Rental Bond: .....

Rental Adjustment Date:     /     / .....

**21. SERVICE CONTRACTS** All Service Contracts must be noted here

*Clauses 1(43), 1(44), 8.3(4), 8.3(5), 23 and 44*

	Service Provider	Services	Fee	Pay Period
(1)				
(2)				
(3)				
(4)				

**22. SPECIAL CONDITIONS**

*Clause 29*

*The Special Conditions are inserted under instruction from a party to this Contract and where not prepared by that party, were prepared by an Australian Legal Practitioner and not the Agent. No legal advice has been given or warranty provided by the Agent. Legal advice should be sought.*

**23. SIGNING**

*Clause 37*

*(Note: should the provisions of Clause 37 apply to this Contract then by signing both parties agree that the supply is of a Going Concern to satisfy the terms of Section 38-325 (c) of the GST Act (refer Item 19))*

**Buyer's Acknowledgement**

By signing below the Buyer/Buyers Agent acknowledges, prior to signing this contract, having, where applicable, received copies of any Application or Order in accordance with Section 83 of the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011* as more particularly set out in Item 16(b).

**WARNING: By signing this Contract the parties confirm that no legal advice as to the conditions contained herein was provided by the Agent. The parties have been advised to seek legal advice with respect to this Contract.**

Buyer(s) Signature(s)	(*) Witness(es) Signature(s)	Date Signed
1. ....	.....	/ /
2. ....	.....	/ /
3. ....	.....	/ /
4. ....	.....	/ /

Seller(s) Signature(s)	(*) Witness(es) Signature(s)	Date Signed
1. ....	.....	/ /
2. ....	.....	/ /
3. ....	.....	/ /
4. ....	.....	/ /

Deposit Holder: ..... (To be signed on receipt of Initial Deposit)

**(\*) Witness Signature is not required where a party signs electronically (refer Clause 48.9)**

**IMPORTANT NOTE:**

**All Parties should sign annexures, initial any alterations to the Contract and, except where the Contract is signed electronically, initial at the bottom of each page of the Contract** *(Failure to do so does not invalidate this Contract)*

*Copies to be provided to all parties*

## Terms and Conditions

### 1. Definitions

In this Contract (which includes the Item Schedule) the following terms mean:

- (1) **Adjustment Date:** The earlier of:
  - (a) the date of possession being given to the Buyer; or
  - (b) the Settlement Date.
- (2) **Balance Purchase Price:** Monies payable, by the Buyer, on Settlement after deducting the Deposit, if paid, from the Purchase Price and allowing for adjustments as provided in this Contract.
- (3) **Bank:** A business carrying on a bank business as defined in section 5 of the *Banking Act 1959 (CTH)*, the Reserve Bank or Bank constituted under State law.
- (4) **Bank Bond/Guarantee:** Deposit Bond or Guarantee issued by a Bank or insurance company to secure the Deposit in accordance with Clause 3.4 of this Contract.
- (5) **Bank Cheque:** An unendorsed Cheque drawn by any Bank or, if authorised by the Seller, some other cheque.
- (6) **Bond:** The Tenant's performance security with respect to its Lease obligations.
- (7) **Business Day:** Any day other than a Saturday, Sunday or public holiday in the State of Queensland and excluding the period from 27th December to 31st December inclusive (unless otherwise agreed between the parties).
- (8) **Buyer:** The Buyer named in Item 5, including any additional Buyers listed in an attached annexure.
- (9) **Contract:** means this Contract including Item Schedule, Terms and Conditions, Special Conditions and attached annexures or documents referred to in the Item Schedule.
- (10) **Data Collection Agency:** means an agency or organisation that collects real estate data to provide information to the real estate, finance and property valuation industries to enable data analysis.
- (11) **Date of Contract:** The date as set out in Item 1 or the date of the last party signing, whichever is the later.
- (12) **e-conveyance:** means a conveyancing transaction to be completed using e-conveyancing.
- (13) **e-conveyancing:** means a system of land conveyancing that uses an ELN to lodge documents electronically for the purposes of the land titles legislation.
- (14) **ECNL:** means *Electronic Conveyancing National Law (Queensland)*.
- (15) **Electronic Document:** means any electronic communication (including Notices) as defined in the *Electronic Transactions (Queensland) Act 2001* including any electronically generated document situated on an external server readily accessible via a link within an electronic communication or other electronically generated document.
- (16) **Electronic Workspace (Workspace):** for an e-conveyance, means a shared electronic Workspace within an ELN that allows the participating subscribers to the e-conveyance:
  - (a) to lodge a document electronically under the ECNL; and
  - (b) if relevant, to authorise or complete Financial Settlement of the e-conveyance.Once opened such Electronic Workspace will be an electronic address designated by the parties in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001*.
- (17) **Electronically Signed:** means an electronically generated signature and includes a digital signature as defined in the ECNL.
- (18) **ELN:** means an Electronic Lodgment Network under the ECNL.
- (19) **Encumbrance:** means matters affecting title to the Property, both registered and un-registered, including statutory easements, rights referred to in the Certificate of Title and personal property security interests as defined in Section 12 of the *Personal Property Securities Act 2009 (CTH)*.
- (20) **Enterprise:** is an activity or a series of activities in the form of a business or otherwise as described in Section 9-20 of the GST Act.
- (21) **Financial Settlement:** of an e-conveyance, means the exchange of value, in an ELN, between financial institutions in accordance with the instructions of participating subscribers to the e-conveyance.
- (22) **Financial Settlement Schedule:** means a schedule within the electronic workspace listing financial settlement details for source and destination accounts necessary to complete Financial Settlement.
- (23) **GST:** Where used in this Contract, has the meaning used in the *A New Tax System (Goods and Services Tax) Act 1999 (CTH)* and "GST" includes any applicable rulings issued by the Commissioner of Taxation.
- (24) **GST Act:** means the *A New Tax System (Goods and Services Tax) Act 1999 (CTH)*.
- (25) **Guarantee:** personal performance guarantee provided by the tenant or occupant with respect to Lease obligations.
- (26) **Improvements:** All fixed or permanent structures on the Land and any items fixed to them including fixed carpets and tiles, curtains, blinds and fittings, stoves, hot water systems, fixed antennae, fixed satellite dishes, fixed security systems, and all in-ground plants, unless excluded in Item 13.
- (27) **Input Tax Credit:** an entitlement arising under Section 11-20 of the GST Act.
- (28) **Item:** means items detailed in the Item Schedule of this Contract.
- (29) **Land Tax Clearance Certificate:** A certificate issued by the Office of State Revenue that describes the land charged, and showing whether or not any land tax remains unpaid on the land described in the application and where land tax remains unpaid, the amount thereof. (Section 60(5)(a), (b) of the *Land Tax Act 2010*)
- (30) **Lease:** all agreements (including tenancy agreements and licenses) with respect to leasing the Property, in part or in whole, more particularly set out in Item 20.
- (31) **Local Government:** the local government established under the *Local Government Act 2009* having authority with respect to the Property.
- (32) **NDRA:** means the *Neighbourhood Disputes (Dividing Fences and Trees) Act 2011*.
- (33) **Order:** a decision made and issued by a court or judge or a command that is legally binding including an order as a charge on the Land as stated in Part 11 of the *Property Law Act 1974*.
- (34) **Outgoings:**
  - (a) all government and Local Government rates and charges assessed on the Land including land tax, water and sewerage rates, general rates, fire levy and all periodic charges up to and including the Adjustment Date;
  - (b) contributions to the administrative and sinking funds levied from time to time by the Body Corporate and special contributions levied by the Body Corporate under the Regulation Module or pursuant to a by-law for exclusive use; and

- (c) all other periodic expenditure in relation to the Property (including Service Contracts).
- (35) **Participation Rules:** means the rules determined under section 23 of the ECNL.
- (36) **Personal Information:** means personal information as defined in the *Privacy Act 1988 (CTH)*.
- (37) **Property:** The Land described in Item 6 together with Improvements described in Clause 1(26) and the included chattels described in Item 14.
- (38) **Purchase Price:** The sum referred to in Item 7.
- (39) **Related Document:** means any written communication (including Notices) with regard to this matter between the parties, including any Electronic Documents.
- (40) **Rent:** all monies (including lease outgoings) payable by a tenant or occupant under a Lease.
- (41) **Retail Shop Lease:** as defined under Section 5 of the *Retail Shop Leases Act 1994*.
- (42) **Seller:** The Seller named in Item 3, including any additional Sellers listed in an attached annexure.
- (43) **Service Contract:** is a Contract entered into between the Seller and a Service Provider capable of being transferred to the Buyer upon Settlement.
- (44) **Service Provider:** a person or company engaged by the Seller to supply services (other than administrative services) for the benefit of the Property.
- (45) **Settlement:** the conveyance of the Property from the Seller to the Buyer.
- (46) **Settlement Date:** The appointed date specified in Item 12 for Settlement to occur.
- (47) **Settlement Time:** of an e-conveyance, means the time of locking of the Workspace but not later than 4.00pm AEST on the Settlement Date.
- (48) **Tax Invoice:** a document that evidences a purchase/sale including GST and complies with the requirements of subsection 29-70(1) and (if applicable) Section 54-50 of the GST Act.
- (49) **Transfer Documents:** All those documents necessary to transfer title to the Property, as defined, to the Buyer, including Queensland Land Registry Transfer and Form 24.
- (50) **Work Order:** a valid notice or order issued by a court, tribunal or other competent authority or notice served or issued in compliance with an Act or Regulation that requires work to be done, or monies spent, on or in relation to the Property.

## 2. Interpretation

In this Contract, unless the contrary intention appears:

- (1) the singular includes the plural and vice versa;
- (2) 'person' includes a firm or a body corporate together with executors, administrators, successors and assigns;
- (3) an agreement, representation or warranty:
  - (a) in favour of two or more persons is for the benefit of them jointly and severally; and
  - (b) on the part of two or more persons binds them jointly and severally;
- (4) a reference to:
  - (a) an item number is a reference to an Item in the Item Schedule;
  - (b) a document includes any variation to that document; and
  - (c) any law or statute includes all regulations and other instruments made under it and amendments or replacements of any of them; and
- (5) the Item Schedule and any attached addendum pages and annexures shall form part of this Contract.

## 3. Deposit

- 3.1 The Buyer must pay the Deposit to the Deposit Holder as Stakeholder in the amount and at the times required in Item 8 to be retained, subject to the provisions of this Contract.
- 3.2 Time is of the essence when making payment of the Deposit.
- 3.3 Failure to pay any monies on time or by cheque, which is not honoured on presentation, will be an act of default by the Buyer.
- 3.4 The Buyer may secure payment of the Deposit (in whole or in part) by Bank Bond/Guarantee in a form and on terms acceptable to the Seller, in which case on receipt of the Bank Bond/Guarantee the Buyer's obligation to pay the Deposit shall have been satisfied to the extent of the Bank Bond/Guarantee.
- 3.5 The Deposit is payable to the Seller:
  - (1) on Settlement; or
  - (2) in case of the Buyer's Default, on default.
- 3.6 Should this Contract be properly terminated by the Buyer, the Deposit will be refunded to the Buyer in which case the Buyer shall have no further claim under this Contract unless there has been a breach of the provisions of this Contract by the Seller, giving rise to a claim for damages.
- 3.7 Investment of Deposit: (Note: see Section 17 of the *Agents Financial Administration Act 2014*)  
Where the Stakeholder is instructed by the parties to invest the deposit, subject to any legislative requirements, then (except in the case of Bank Bond):
  - (1) the Deposit Holder will invest the Deposit in its name as trustee for the Buyer and Seller in an interest bearing account with a Bank, Building Society or Credit Union until the Settlement Date or as otherwise instructed by the parties;
  - (2) the parties will supply to the Deposit Holder, prior to the investment of the Deposit, their tax file numbers and acknowledge that if the tax file numbers are not provided then they accept that the interest earned on the Deposit may be taxed at the highest rate allowable;
  - (3) the Deposit and the interest are at the risk of the party who is ultimately entitled to the Deposit;
  - (4) subject to subclause 5 hereof, the interest on the Deposit will be paid to the party who becomes, and is, entitled to the Deposit at Settlement and such party will be solely responsible for any tax liability on such monies;
  - (5) If Settlement of the Contract does not occur, the interest earned on the Deposit will be paid to:
    - (a) the Seller, if Settlement did not occur due to breaches of the Contract by the Buyer; or
    - (b) the Buyer, if it was for any other reason;
  - (6) all costs in relation to this investment will be borne by the party referred to in Clause 3.7(3); and
  - (7) a Stakeholder, being a licensed Agent shall not be required to invest the Deposit if the sale is to be completed on a contractually ascertainable day less than 60 days after the Deposit is received.

## 4. Property Inspections

- 4.1 The Contract is subject to and conditional upon the Buyer obtaining, at their own expense, by the Inspection Date (or such extended date as may be agreed) specified in Item 11, a building and/or pest report satisfactory to the Buyer, excluding Acknowledged Defects/Exclusions.
- 4.2 In compliance with this Clause the Buyer will promptly, after the signing of this Contract by the Seller, take all reasonable steps to obtain the building and/or pest report.
- 4.3 Upon receipt of any inspection report, the Buyer must promptly, but no later than 5pm on the Inspection Date, give notice to the Seller:
  - (1) that the Buyer is satisfied with the inspection report/s; or

- (2) that the Buyer is not satisfied with the inspection report/s and terminates the Contract.
- 4.4 The Buyer must at all times act reasonably.
- 4.5 Should the Buyer not give notice to the Seller in accordance with Clause 4.3 by 5.00 p.m. on the Inspection Date the Seller may, by notice, terminate this Contract.
- 4.6 In respect to Clause 4.3(2) and 4.5, this Contract is not terminated until written notice is given and the Buyer may at any time up to termination, by written notice, waive the benefit of Clause 4.3 or give notice in accordance with Clause 4.3(1), where upon this Contract will be in full force and effect.
- 4.7 Where the Buyer has given notice of termination in accordance with Clause 4.3(2) but has failed, when requested by the Seller, to provide a copy of the relevant inspection report/s, the termination will not take effect until such copy has been provided to the Seller.
- 4.8 Should this Contract be terminated in accordance with the provisions of Clause 4, Clause 3.6 will apply.
- 4.9 In respect of white-ants, risk in itself will not constitute a reason for termination of this Contract.
- 4.10 Inspectors who conduct building inspections for the purposes of this Contract must be licensed as Building Inspectors in accordance with the *Queensland Building and Construction Commission Act 1991*.
- 4.11 Clause 4 does not apply where the Property is sold by auction.

**5. Finance**

- This Clause shall not apply unless all details in Item 10 are completed.
- 5.1 This Contract is subject to the Lender approving a loan to the Buyer in the Finance Amount, on terms and conditions satisfactory to the Buyer, for the purchase of the Property by the Finance Date (or such extended date as may be agreed).
- 5.2 In complying with this Clause the Buyer will promptly, after the signing of this Contract by the Seller, make application to the Lender for the Loan and take all reasonable steps to obtain the Finance approval by the Finance Date.
- 5.3 The Buyer must give notice to the Seller immediately upon approval/rejection of Finance in accordance with Clause 48 and in any case, not later than the Finance Date.
- 5.4 If the Buyer, after complying with Clause 5.2, has not obtained the Finance approval by the Finance Date then the Buyer may by giving notice to that effect to the Seller:
- (1) terminate this Contract; or
  - (2) prior to the Seller terminating the Contract waive the benefit of this condition.
- 5.5 Should the Buyer not give notice to the Seller in accordance with Clause 5.4 (1) or (2) by 5.00 p.m. on the Finance Date the Seller may, by notice, terminate this Contract.
- 5.6 The Buyer will, if required by the Seller, provide details of compliance with Clause 5.2 and/or written proof of rejection of the Buyer's application for finance.
- 5.7 This Contract is not terminated until notice is given in accordance with either Clause 5.4 or 5.5.
- 5.8 Should the Buyer not obtain Finance Approval by the Finance Date and not give notice in accordance with Clause 5.4, and then subsequently obtains Finance Approval and notifies the Seller prior to the Seller giving notice to terminate this Contract in accordance with Clause 5.5, then the Buyer will have complied with the requirement to obtain a loan in the Finance Amount and this Contract will be in full force and effect.
- 5.9 All monies paid by way of Deposit will be forthwith refunded to the Buyer once this Contract is terminated in accordance with this Clause.

**6. Adjustments**

- 6.1 The Seller is entitled to the Rents and Income and is liable for and will make payment of all Outgoings on the Property up to and including the Adjustment Date. Thereafter the Buyer shall be entitled to Rents and Income and be liable for all Outgoings.
- 6.2 No apportionment will be made at the Adjustment Date for unpaid Rents or Income.
- 6.3 Bonds, rental or otherwise retained by the Seller shall be an adjustment to the Purchase Price in favour of the Buyer provided the Buyer will indemnify the Seller against any claims in respect of such Bonds made by Tenants subsequent to Settlement.
- 6.4 All Outgoings paid and Rents and Income received under Clause 6.1 must be apportioned based on the Adjustment Date. This excludes water rates charges based on usage. Payment must be made within 14 days of monies being received.
- 6.5 All Rents and Income received by the Seller in relation to periods subsequent to the Adjustment Date shall be apportioned as at the Adjustment Date.
- 6.6 Where Outgoings have not been assessed at the Adjustment Date any apportionment will be based on the sum advised by the relevant authority or where no such information is available, on the latest assessment.
- 6.7 Land tax will be apportioned as if the Land was at midnight on the 30th June preceding the Date of Contract the Seller's only land in Queensland and the Seller is a natural person.
- 6.8 Any amount adjustable under this provision which relates to land other than that included in the Property shall be (where no specific assessment is issued) adjusted proportionately based on the area of the whole of the Land relative to the area of the Land included in the Property.
- 6.9 Should the Office of State Revenue not have issued a Land Tax Clearance Certificate to the Buyer by the Adjustment Date, then in such case the parties agree the Buyer will retain in his Solicitor's Trust Account such sum, from the Settlement monies, as the Office of State Revenue specifies in writing would be prudent to cover any land tax liability outstanding for the period up to and including 30th June immediately preceding the Adjustment Date and upon a Land Tax Clearance Certificate issuing. The Buyer undertakes and agrees to direct the Solicitor to pay from the funds held in the Trust Account so much of those funds as may be necessary to obtain for the Buyer a Land Tax Clearance Certificate. Any balance funds remaining shall be paid to the Seller.
- This obligation is a continuing obligation and does not lapse at Settlement.
- 6.10 Should the Seller be entitled to any discount on Outgoings then, for the purpose of this Clause, the discount shall not be taken into account, unless already received.
- 6.11 Adjustments will be made with respect to water rates when the rates charged are based on the average daily usage using the following formula:  

$$\text{Adjustment} = \text{TC} / \text{RD} \times \text{AD}$$
 Where:  
 TC = Total Usage Charge as at the Adjustment Reading Date  
 RD = Days between the previous reading and Adjustment Reading Date  
 AD = Adjustment Days. The number of days between the Adjustment Reading Date and Settlement Date  
 (ie. Settlement Date minus Adjustment Reading Date. The Adjustment Reading Date is the date the water metre was read for the purpose of the issue of a Local Government water usage assessment)
- 6.12 The Buyer is responsible for:
- (1) obtaining an accurate water meter reading within a reasonable time period prior to Settlement for the purpose of Clause 6.11;



- (2) determining an Adjustment amount to be paid in accordance with Clause 6.11; and
  - (3) disclosing the information in Clause 6.12 (1) and (2) to the Seller not less than 48 hours prior to the Adjustment Date.
- 6.13 The Seller may direct the Buyer to provide on Settlement a cheque payable to the relevant authority for Outgoings assessed but unpaid at the Adjustment Date. It shall be the Buyer's responsibility to forward such cheque to the relevant assessing authority forthwith. This will be an adjustment for the purposes of Clause 6.1.
- 6.14 It shall be the Buyer's responsibility to obtain, at its own cost, details of all Outgoings from relevant government and Local Government authorities.
- 6.15 All Adjustments made will exclude GST.
- 6.16 Monies expended by the Buyer prior to Settlement are not adjustable items unless previously agreed by both parties.
- 6.17 Where information regarding Outgoings, Rents and income details are not otherwise available, the Seller will, upon request, provide details from records in the Seller's possession.

**7. Preparation and Completion of Documents**

- 7.1 The Buyer will deliver to the Seller, at its own expense at a reasonable time before Settlement for execution by the Seller, Transfer Documents for the Land including any declarations and instruments necessary to effect transfer of the Property and the Buyer shall do all acts and things necessary to effect completion of this Contract and effective transfer of the Property.
- 7.2 Upon compliance by the Buyer with the provisions of this Contract and payment, by the Buyer, of the Seller's reasonable expenses the Seller will, upon request, produce the Transfer Documents (prior to Settlement or payment of the Balance Purchase Price) for the purposes of payment of transfer duty.
- 7.3 It is agreed by the parties hereto that the Buyer shall be under no obligation to pay any production fee to the Seller pursuant to Clause 7.1 if the Seller is not represented by a solicitor.
- 7.4 The Seller will, upon request, provide to the Buyer prior to Settlement current, true and correct written records of:
- (1) all Rents, Income and Outgoings in respect to the Property whether discoverable by search or not;
  - (2) all relevant information and documents relating to the Property, in particular those documents relating to Leases and or Service Contracts (if any) licenses, warranties, and any unregistered dealings as required by the Buyer; and
  - (3) photocopies of other relevant documents executed by the Seller,
- should the Seller become aware of any amendment or alterations or additions to such information subsequent to disclosure and prior to Settlement the Seller will provide details thereof to the Buyer.

**8. Settlement**

**8.1 Settlement by Electronic Conveyancing (e-conveyance)**

- (1) Where Item 12.2(a) specifies settlement by e-conveyance this Clause 8.1 will apply and Settlement including lodgment of Transfer Documents and payment of Balance Purchase Price, adjusted as provided in this Contract, will proceed electronically in accordance with the ECNL.
- (2) Where an inconsistency exists between this and other clauses in this Contract this Clause 8.1 will apply.
- (3) Where a party, acting reasonably, is not able to proceed with e-conveyance written notice, including advice regarding the reason for such inability must be given as soon as possible prior to Settlement Date and the provisions of Clause 8.1(10)(b)(ii) will apply with regard to Settlement.

- (4) Each party must:
  - (a) be, or engage a representative who is a Subscriber (as defined in the ECNL) for the purposes of the ECNL; and
  - (b) conduct this transaction in accordance with the ECNL and Participation Rules.
- (5) Once this Contract has become unconditional the party designated in Item 12.2(a) must promptly cause a Workspace to be opened and populated with all necessary information and documents to facilitate Settlement and advise all relevant parties, including relevant financial institutions, and invite them to join the Workspace.
- (6) Upon being invited to join the Workspace the remaining parties together with relevant financial institutions must promptly join the Workspace and cause the Workspace to be populated with all necessary information and documents, to facilitate Settlement.
- (7) A party will not be in default where it is prevented from complying with an obligation under this clause due to failure by the other party or a financial institution to comply with an obligation under this Clause 8.1.
- (8) The parties will confirm through the Workspace a Settlement Time. Neither party may terminate this Contract while the Workspace is locked for Settlement.
- (9) Settlement occurs when the Workspace for the e-conveyance records that:
  - (a) Financial Settlement occurs; or
  - (b) if there is no Financial Settlement, the documents necessary to transfer title have been accepted for electronic lodgment by the Titles Registry Office.
- (10) Each party must do everything reasonably necessary and in a reasonable timeframe to ensure:
  - (a) Settlement (including Financial Settlement) occurs electronically on the Settlement Date; or
  - (b) where the parties have complied with the provisions of Clauses 8.1 and 8.3(10) and Settlement cannot occur by e-conveyance and neither party is in default, Settlement including Financial Settlement will be completed:
    - (i) by e-conveyance on the next Business Day after the Settlement Date; or
    - (ii) if the parties agree, in accordance with Clause 8.2, in which case Settlement must be within 3 Business Days of the Settlement Date,
 and in either case, time remains of the essence.
- (11) Should deposit monies held by the agent be required for settlement purposes the agent is authorised and directed, if instructed by the Seller, to release the deposit monies less any agent's commission to the trust account of the Seller's Solicitor. The Seller's Solicitor is authorised to pay the monies as instructed by the Seller in accordance with the directions of the parties.
- (12) All monies required for e-conveyance Settlement must be cleared funds prior to Settlement Time.
- (13) Where monies have been paid to an incorrect account the parties must take all reasonable steps to recover such monies for payment to the intended recipient.
- (14) Each party will be responsible for their own costs in respect to e-conveyance.
- (15) Where an Outgoing or other financial obligation is to be discharged or paid at Settlement, if such payment cannot be facilitated through the e-conveyance the parties will make suitable arrangements to discharge or pay the Outgoing or other financial obligation by means other than through e-conveyance.

## 8.2 Settlement by a Method other than Electronic Conveyancing (Non e-conveyance)

- (1) Where Item 12.2(b) specifies settlement by non e-conveyance or Clause 8.1(3) applies or the parties agree in accordance with Clause 8.1(10)(b)(ii), this Clause 8.2 will apply.
- (2) Settlement shall take place on the Settlement Date between 10.00am and 4.00pm AEST:
  - (a) at the settlement office of the Seller's mortgagee or solicitor; or
  - (b) as otherwise agreed upon by the parties; or
  - (c) failing agreement, at the nearest office to the nominated place for Settlement at which land title documents may be lodged for registration.
- (3) Notwithstanding the completion of Item 12.2(b) the parties may agree to e-conveyance at any time, at which point the provisions of Clause 8.1 will apply.
- (4) On the Settlement Date:
  - (a) the Buyer must, pay the Balance Purchase Price, adjusted as provided in this Contract, by Bank Cheque/s (as directed by the Seller or its Solicitors in writing); and
  - (b) the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer) Transfer Documents free from Encumbrances, unless detailed in Item 17, executed by the Seller in a form capable of immediate registration (save for stamping) in accordance with the *Land Title Act 1994*.
- (5) The Buyer shall be required to bear the cost of no more than four Bank Cheques in payment of the Balance Purchase Price.

## 8.3 Settlement - Other Provisions

On Settlement in accordance with Clause 8.1(9) or 8.2(4) (whichever is applicable) the Seller must deliver (or cause to be delivered) to the Buyer (or as directed by the Buyer):

- (1) the instrument of title, if any, for the Land necessary to register the transfer of the Land to the Buyer as owner. Where the title applies to more than one lot the cost of any new title will be borne by the Buyer;
- (2) such declarations as may be required under the *Duties Act 2001*; *Land Title Act 1994*; *Land Act 1994*;
- (3) all the Seller's keys and other devices and codes for entry, exit and security unless an alternative time and place for delivery is agreed to in writing;
- (4) the right to and benefit of all records and/or documentation, including transfers (or renewals if required) of Bonds, Guarantees and Bank Guarantees, to give effect to and comply with the provisions of any Lease and/or Service Contract in force which are required for the management of the Property at the time of Settlement;
- (5) assignment to the Buyer effective from the Settlement Date and the benefit of all Leases more particularly set out in Item 20 and Service Contracts more particularly set out in Item 21. The Seller will provide duly executed assignment documentation on the Settlement Date together with appropriate notice to the Tenants regarding assignment;
- (6) Rent and Income unpaid for any period prior to the Settlement Date and not adjusted between the parties at Settlement is not assigned to the Buyer but remains a debt due to the Seller in which case the provisions relating to Rent of Section 117 of the *Property Law Act 1974* are not applicable;
- (7) where the Property is a workplace within the meaning of the *Work Health and Safety Regulation 2011*, over which the Seller has management or control, the Seller must give any Asbestos Register and Management Plan to the Buyer;

- (8) any valid Certificate of Classification applicable to the uses of the Property stated in Item 15 which is required and must be issued prior to use or occupation as outlined under Section 114 of the *Building Act 1975*;
- (9) title to any chattel forming part of the Property including assignable warranties and documentation relating thereto to which the Buyer may be reasonably entitled;
- (10) in compliance with Clause 14, all documentation necessary to effect release of any Encumbrance over the Property, except as detailed in Item 17, including where applicable, property subject to a security interest to which the *Personal Property Securities Act 2009 (CTH)* applies;
- (11) documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular, but not exclusively, those relating to prior transfers, tenancies, licenses, warranties and any unregistered dealings and in so doing assigns to the Buyer the benefit of such tenancies, licenses and warranties;
- (12) any other documents, including construction drawings and plans held by the Seller essential for the ongoing management of the Property; and
- (13) vacant possession of the Land (except if tenanted) and title to all the Property.

## 9. Handover

- 9.1 (1) The Seller must maintain the Property in the condition as at the Date of Contract and must hand over the Property at Settlement without damage or loss to the condition as at the Date of Contract (fair wear and tear excepted).
- (2) The Seller will not be liable for loss or damage to the Property unless caused by the Seller's neglect or fault.
- 9.2 The Seller will, prior to Settlement, remove all chattels and other property not included in the sale, and repair damage, if any, caused by such removal.
- 9.3 Property not removed in accordance with Clause 9.2 shall be deemed abandoned and may be dealt with by the Buyer in any way the Buyer considers appropriate without obligation to account to the Seller.
- 9.4 Where the Seller has not satisfied its obligations under Clauses 9.1 or 9.2 the Buyer may serve a notice on the Seller giving details of the failure to comply and requiring rectification prior to Settlement.
- 9.5 The Buyer, having notified the Seller prior to Settlement, may claim from the Seller the reasonable costs of effecting rectification of any damage or failure to maintain the Property in relation to Clauses 9.1 and 9.2 and costs incurred in dealing with property not removed in accordance with Clause 9.3 as liquidated damages notwithstanding Settlement may have taken place.
- 9.6 With respect to Clauses 9.1 and 9.2, the Buyer must notify the Seller prior to Settlement, of its intention to make a claim. A notice provided in accordance with Clause 9.4 and not complied with will satisfy this obligation.
- 9.7 (1) The Seller will during the term of the Contract comply with its obligations in respect of all Leases relating to the Land and Improvements.
- (2) The Seller will immediately advise the Buyer in the form required under Clause 48 hereof of any breach of Lease or any matters which may adversely affect performance of any Lease in respect of this Contract.
- (3) The Seller shall not enter into any new Leases with respect to Land and Improvements or accept the surrender of any existing Lease or agree to alterations, additions or variations to any existing Lease prior to completion of this Contract without the Buyer's written consent which consent will not, subject to the conditions of the relevant Lease, be unreasonably refused.

## 10. Buyer's Default

- 10.1 If the Buyer does not pay any monies due or is otherwise in default then, providing the Seller is not in default, the Seller may, in addition to and without limiting other remedies, including action for damages and/or specific performance, terminate or affirm this Contract.
- 10.2 Should the Seller terminate this Contract the Seller may, without prejudice to any other rights:
- (1) claim forfeiture of the Deposit or call up any Bank Bond or Bank Guarantee provided in accordance with Clause 3.4; and/or
  - (2) resell the Property and provided such resale is completed within 12 months, any deficiency, including the expense of such resale, shall be recoverable by the Seller from the Buyer as liquidated damages.
  - (3) may retain the Property and sue the Buyer for damages for breach of this Contract.
  - (4) claim any Deposit monies that are in arrears as a liquidated debt.
  - (5) appropriate the profit, if any, on resale.
- 10.3 Should the Seller affirm this Contract the Seller may, without prejudice to any other rights:
- (1) sue the Buyer for specific performance of the Contract and or damages for breach as well as, or in lieu of, specific performance of the Contract; and
  - (2) recover from the Buyer, the Deposit or any part thereof the Buyer has failed to pay as a liquidated debt.
- 10.4 Damages will include professional fees and costs incurred to satisfy the terms of this Contract.

## 11. Seller's Warranties

- 11.1 The Seller warrants, unless otherwise disclosed in this Contract, that at the time of Settlement:
- (1) the Seller will be the Registered Owner in the case of freehold land or the Tenant in the case of Leasehold land;
  - (2) it is the owner of all the Property;
  - (3) the Seller has full authority to enter into this Contract where the Seller is a trustee;
  - (4) there is no impediment to the Seller completing the sale;
  - (5) the Seller is not bankrupt nor has the Seller entered into an arrangement or composition with the Seller's creditors;
  - (6) the Seller being an entity subject to the *Corporations Act 2001 (Cth)* is not insolvent, has not been placed in liquidation or official management, not entered into a compromise or arrangement with creditors and has no knowledge of any action which could cause these afore mentioned events to occur;
  - (7) and except as provided in Clause 11.2, the Seller has no knowledge of any legal actions affecting or which may affect the Property or any part of it;
  - (8) except as disclosed in Item 16(a) and 16(b) there will be no outstanding or unsatisfied applications, judgments, Work Orders, demands or writs with respect to any Act, Regulation or By-Law:
    - (a) required to be complied with by the Seller, which have not been fully complied with; or
    - (b) which may adversely affect the Property or the Seller's ability to complete this Contract; or
    - (c) which may bind the Buyer;
  - (9) in the case of crown Leasehold all requirements of the Lease have been observed and performed;
  - (10) the Seller has complied with all relevant environmental legislation in respect to the Property. The Land is not subject to any notice or order under the *Environmental Protection Act 1994*, nor are particulars of the Land recorded under the Environmental Management Register or Contaminated Land Register;

- (11) any Improvements to the Property not excluded in Item 13 will not have been removed by the Seller; and
  - (12) in the case of vacant Land, the Property has been provided with a separate sewerage connection, unless otherwise disclosed in Item 22 (Special Conditions). This clause shall not apply to Property where other disposal systems are required and permissible by the local authority or council.
- 11.2 The Seller warrants as at the Date of Contract, unless disclosed prior to entering into this Contract in accordance with Section 83 of the NDRA (refer to Item 16(b)), the Land is not subject to or affected by an Application or Order under Chapter 3 of the NDRA.
- 11.3 If a warranty set out in Clause 11.1 is incorrect or is breached by the Seller, the Buyer may:
- (1) where the Buyer is materially prejudiced, by notice to the Seller given not later than 5pm on the Business Day immediately preceding the Settlement Date (except in the case of matters disclosed in Item 16 with relation to Clause 11.1(8) or otherwise disclosed in Item 22), rescind this Contract; or
  - (2) elect to complete the Contract and reserve its rights to claim compensation providing notice to this effect has been given to the Seller in writing at or prior to Settlement.
- 11.4 If the warranty set out in Clause 11.2 is incorrect or is breached by the Seller, the Buyer may terminate the Contract at any time before the Contract settles by giving a signed, dated notice of termination to the Seller or the Seller's Agent stating that the Contract is terminated under Section 86 of the NDRA.
- 11.5 Any notice given to the Seller under Clause 11.3 must set out clearly, details of the incorrect or breached warranty.
- 11.6 It is acknowledged and agreed by the parties hereto that any building approval defect listed as a requisition in the local authority's building records does not constitute a Notice or an Order as contemplated by Clause 11.1(8).

## 12. Foreign Investment Approval

- The Buyer warrants either:
- (1) the purchase is not a notifiable action with respect to the *Foreign Acquisitions and Takeovers Act 1975 (CTH)* (FATA); or
  - (2) where the purchase is a notifiable action under the FATA the Buyer has obtained any and all approvals.

## 13. Consent

- 13.1 If the Seller must obtain consent to transfer the Property, as is the case with Leasehold Property, the Seller shall at the Seller's own cost promptly take every reasonable action to obtain such consent.
- 13.2 The Buyer will, if required, do all things as may reasonably be necessary to assist in obtaining such consent.
- 13.3 If consent is not obtained by the Settlement Date, providing neither party is in default, either party may by written notice to the other party terminate this Contract.

## 14. Encumbrance

The Property is sold free of Encumbrances and Leases except as notified in Items 17 and 20 (But subject to all reservations in favour of the Crown).

## 15. Further Acts

Each party must do whatever is reasonably necessary, at that party's own expense, to carry out its obligations under this Contract.

## 16. Inspection (pre Settlement)

On giving of reasonable notice to the Seller, the Buyer and/or designated representative may, at reasonable times prior to Settlement, inspect the Property for the purposes of:

- (1) inspections in accordance with Clause 4;
- (2) valuation, if required (under Clause 5 or otherwise);
- (3) reading of the water meter;

(4) one pre-settlement inspection in addition to Clauses 16(1) and 16(2); and

(5) survey in accordance with Clause 20.

#### 17. Interest on Unpaid Monies

Any monies payable under this Contract, (or any judgment given in respect of this Contract) not paid when due will attract Interest from the due date, to the date of payment, at the rate prescribed in Item 18 and the party, to whom those monies are owed, when such monies are paid, may recover the interest thereon from the other party as liquidated damages.

#### 18. Possession Prior to Settlement

18.1 Should possession be given before the Settlement Date set out in Item 12 it shall be given solely at the Seller's discretion and then only on terms agreed between the parties in writing.

18.2 Such possession shall not give rise to a tenancy (unless otherwise agreed) but is a licence only.

18.3 The Buyer accepts the Property in the condition it is in at the date of possession.

18.4 The Buyer must maintain and not alter the Property, fair wear and tear accepted.

18.5 The Buyer must not part with possession of the Property.

18.6 Occupation of the Property shall be at the Buyer's risk.

18.7 The Buyer indemnifies the Seller against any loss or damage the Seller may incur arising from the Buyer's occupancy of the Property.

18.8 The Buyer will insure the Property, for risks as specified by the Seller (including property for full replacement value and public liability), in a sum and on terms approved by the Seller, in both the Buyer's and Seller's names.

#### 19. Planning/Building Notices

Should there be outstanding Notices at the Date of Contract under:

- (1) sections 166 (show cause notice) or 167 (enforcement notice) of the *Planning Act 2016*; or
- (2) sections 247 (show cause notice) or 248 (enforcement notice) of the *Building Act 1975*.

The Buyer may terminate the Contract by written notice to the Seller.

#### 20. Property Survey

The Buyer may inspect the Property and in so doing cause a survey to be made of the Land and fixed and permanent structures thereon and should there be an error or misdescription with respect to the dimensions of the Land or an encroachment onto or from the Land the Buyer:

- (1) may in the case of an error, misdescription or encroachment, any one of which is of a material nature, elect (in writing to the Seller) to complete this Contract or terminate before Settlement; or
- (2) in the case of an error, misdescription or encroachment, any one of which is of an immaterial nature, disclosed by survey or otherwise, must complete the purchase in accordance with the terms of this Contract.

Should the Contract be terminated in accordance with Clause 20(1), all monies by way of Deposit shall be refunded to the Buyer.

#### 21. Property Description

In the case of a material or immaterial error or misdescription of the Property, including the Seller's title thereto, the Buyer:

- (1) may in the case of an error or misdescription, either of which are material, elect (in writing to the Seller) to complete this Contract or terminate before Settlement; or

(2) in the case of an error or misdescription, either of which are immaterial, must complete the purchase in accordance with the terms of the Contract.

Should the Contract be terminated in accordance with Clause 21(1), all monies by way of Deposit shall be refunded to the Buyer.

#### 22. Compensation

Where the Buyer elects to complete under Clause 20(1) or 21(1) or must complete under Clause 20(2) or 21(2):

- (1) the Buyer shall only be entitled to claim compensation if notice of such claim is given at or before Settlement and such notice clearly details the error, misdescription or encroachment giving rise to such claim. Any claim for compensation shall be limited to monetary compensation only; and
- (2) any such claim for compensation does not entitle the Buyer to delay Settlement or withhold any of the purchase monies.

#### 23. Property Information

23.1 The Seller must, if requested by the Buyer, at a reasonable time prior to Settlement, provide to the Buyer current copies of all relevant documents in the Seller's possession reasonably required by the Buyer relating to the Property, in particular those relating to tenancies, licenses, warranties, and any unregistered dealings.

- 23.2 (1) The Seller will within 7 days of the Date of this Contract cause to be delivered to the Buyer or as the Buyer may otherwise direct current copies of all Lease and Service Contracts and all documentation ancillary thereto.
- (2) Should the Seller fail to deliver documentation in accordance with Clause 23.2(1) the Buyer may terminate this Contract by written notice given within 14 days of the Date of this Contract.
- (3) If after delivery of the documentation in accordance with Clause 23.2(1) the Buyer, acting reasonably, determines the provisions of such documentation are not satisfactory, the Buyer may terminate this Contract within 14 days of this the Date of this Contract.

23.3 The Seller by this Contract consents to and authorises the Buyer to inspect the records of relevant authorities relating to the Property.

#### 24. Property Use

24.1 The Seller gives no warranty regarding the Present Use of the Property. See Item 15.

24.2 If at the Date of Contract:

- (1) under the Local Authority planning provisions the Present Use is unlawful; or
- (2) access and utilities to the Land are not legally secured; or
- (3) compliance with or application of any proposals, notices or requirements of an authorised authority, statutory or otherwise, (including transport infrastructure and notice of intention to resume) with respect to the Land or adjoining land will materially adversely affect the Property; or
- (4) the Land and Improvements are part of a claims inquiry due to a claim being made under the *Aboriginal Land Act 1991* or relevant Native Title acts relating to Queensland and the Commonwealth; or
- (5) the Land and Improvements are affected by the *Queensland Heritage Act 1992* or included in the WORLD HERITAGE LIST; or
- (6) the Land is classified as a protected area under Section 14 or bound by a conservation agreement under Section 45 of the *Nature Conservation Act 1992* or otherwise affected by the *Nature Conservation Act 1992*; or

(7) the Land or part of it is declared as acquisition land under the *Queensland Reconstruction Authority Act 2011*,

and these matters have not been disclosed in this Contract, the Buyer may by notice to the Seller, given not less than 2 days before Settlement, terminate this Contract. If such notice is not given at all or as required, the Buyer will be deemed to have accepted the Land.

**25. Requisitions**

The Buyer is not entitled to deliver requisitions on title.

**26. Rights After Settlement**

Notwithstanding the sale has settled and registration of the transfer occurred, each party shall retain the benefit of any provisions of this Contract, which may require the other party to do something or take some action.

**27. Risk**

From 5.00pm on the next Business Day after the signing of this Contract the Property shall be at the risk of the Buyer, however, as long as the Seller continues to occupy the Property the Seller shall maintain any current insurance policies and will use and maintain the Property with reasonable care (as provided in Clause 9).

**28. Seller's Delay**

If Settlement does not take place by the Settlement Date in Item 12 due to delay by the Seller, the Buyer may require the Seller to pay, as liquidated damages on Settlement, Interest on the Balance Purchase Price at the rate set out in Item 18.

**29. Special Conditions**

Any Special Conditions to this Contract shall form part of this Contract. Should there be any inconsistency between the Terms and Conditions and the Special Condition, the Special Condition shall apply.

**30. Stamp Duty**

Payment of Stamp Duty on this Contract is the responsibility of the Buyer.

**Note:** The Buyer may incur penalties if Stamp Duty is not paid within 30 days of the conditions of this Contract being satisfied.

**31. Time**

31.1 Time shall be of the essence. Settlement must take place:

- (1) in the case of e-conveyance, at any time on the Settlement Date in accordance with Clause 8.1(8); or
- (2) otherwise at any time between the hours specified in Clause 8.2(2) of this Contract.

31.2 Any event that must occur on or before a specified date, in respect to this Contract, which date does not fall on a Business Day shall be extended to the next Business Day following the specified date.

**32. Work Orders**

32.1 (1) The Seller must, by Settlement, comply with any Work Orders affecting the Property:

- (a) issued on or before the Date of Contract; or
- (b) requiring compliance by Settlement.

(2) Provided however, where, at the date of this Contract, the Land is subject to an Order under Chapter 3 of the NDRA and notice has been given in accordance with Section 83 of the NDRA, the provisions of Clause 32.1(1)(a) will not apply.

32.2 The Seller will promptly provide the Buyer with copies of all Work Orders received after the Date of Contract.

32.3 Should the Buyer direct the Seller not to expend monies or carry out the works required by such Work Orders, the Buyer will indemnify the Seller against any claims in respect thereof.

32.4 Subject to the Seller having complied with Section 83 of the NDRA, the Buyer must comply with any Work Orders affecting the Property issued subsequent to the Date of Contract that require compliance after Settlement.

32.5 Costs incurred by one party in complying with any Work Order which, under Clause 32.1, is the responsibility of the other party shall be, to the extent of such costs, an Adjustment to the Purchase Price in favour of the party who has incurred the costs.

32.6 No contribution will be payable by the Seller with respect to construction or repair of any dividing fences between the Land and any adjoining land unless under the NDRA a Notice to Contribute with respect to a dividing fence has been served on the Seller prior to the date of this Contract in which case compliance with such notice shall be the responsibility of the Seller.

32.7 Where the Seller has not by Settlement complied with Clause 32.1(1) or 32.6 and no adjustment has been made to the Purchase Price to compensate for such noncompliance, the Buyer may recover as a debt from the Seller, the costs incurred by the Buyer in effecting such compliance.

32.8 Should the Contract not settle other than through default of the Buyer, the Seller will reimburse to the Buyer any monies reasonably expended by the Buyer in accordance with matters disclosed in Item 16.

32.9 Where, at the date of this Contract, the Land is subject to an Application or Order under Chapter 3 of the NDRA, and notice has been given in accordance with Section 83 of the NDRA, the Buyer acknowledges, on entering into this Contract:

- (1) the Buyer will be joined as a party to proceedings relating to the Application; and
- (2) on Settlement, will be bound by the Order to the extent the Seller has not carried out the work required under the Order.

**33. Seller's Agent**

If an Agent has been appointed by the Seller as outlined in Item 2 to sell the Property for the Seller, authority vested in the Agent by the Seller shall be deemed to be vested in the Agent's authorised employees.

**34. Seller's Obligations prior to Handover**

From the Date of Contract as per Item 1 until and including the Settlement Date, the Seller shall continue to fulfill all its obligations as owner of the Property including:

- (1) the maintenance of any current insurance policies;
- (2) ensuring the Property is used and maintained with reasonable care;
- (3) exercising authority with the prior consent of the Buyer to enforce and make decisions regarding any/all Lease agreements in force; and
- (4) exercising authority with the prior written consent of the Buyer to serve notices in respect to the NDRA.

**35. Purchase Price includes GST**

By selecting option (a) in Item 19 the Seller states that:

- (1) they are registered for GST;
- (2) GST is included in the Purchase Price stated in Item 7;
- (3) they will pay to the Australian Tax Office the amount of GST owing for this transaction; and
- (4) the Buyer has fulfilled its obligation to pay GST and is therefore released from paying any additional amounts for GST.

**36. Purchase Price excludes GST**

By selecting option (b) in Item 19:

- (1) the Seller states that GST was not included in the Purchase Price stated in Item 7; and
- (2) the Buyer agrees to pay to the Seller, the amount due for GST in addition to the agreed Purchase Price upon Settlement.

### 37. Supply of a Going Concern

37.1 By selecting option (c) in Item 19 the following clauses form part of the terms of this Contract:

- (1) the Seller supplies to the Buyer and the Buyer acquires from the Seller, upon Settlement, the Property and all of the things that are necessary for the continued operation of the Enterprise and agrees to carry on the Enterprise until the day of the supply as per Section 38-325 of the GST Act;
- (2) (a) the Buyer is registered for GST; or  
(b) is required to be registered under Division 23 of the GST Act; or  
(c) is able to be registered under Division 25 of the GST Act; and
- (3) the Seller and the Buyer have agreed in writing that the supply is of a going concern.

37.2 GST is not payable on the Purchase Price under the terms of Clause 37 for the Supply of a Going Concern.

37.3 The Buyer must pay to the Seller the amount of GST payable on the supply of the Property if:

- (1) Clause 37.1(2) is not correct at the time of Settlement subject to 37.1(2)(c); or
- (2) the supply is no longer a Supply of a Going Concern due to circumstances not relating to a breach by either party.

37.4 In the event that the supply is assessed not to be a Supply of a Going Concern, the relevant GST assessed together with any fines, penalties or interest determined by the Commissioner will be payable by that party who failed to perform their obligations under the Going Concern provisions of the GST Act. Such monies to be paid promptly on receipt of the Commissioner's assessment and delivery of a GST compliant invoice.

### 38. Margin Scheme method of GST payment

38.1 By selecting option (d) in Item 19 the Seller confirms that:

- (1) they can apply the Margin Scheme in accordance with Section 75-5 of the GST Act;
- (2) GST is included in the Purchase Price stated in Item 7; and
- (3) the Buyer has fulfilled its obligation to pay GST and is therefore released from paying any additional amounts for GST.

38.2 The Seller is not required to issue a Tax Invoice if the supply of the Property is under the Margin Scheme in accordance with Section 75-30 of the GST Act.

38.3 The Buyer is aware that they are unable to claim an Input Tax Credit which may arise under this Contract pursuant to the Margin Scheme.

### 39. GST not applicable

39.1 By selecting option (e) in Item 19 the Seller states that GST is not included in the Purchase Price stated in Item 7 and warrants that GST is not applicable to the transaction.

39.2 Should the Australian Taxation Office determine that there is a GST liability with respect to the sale, the Seller will pay the GST liability as assessed.

### 40. Tax Invoice

The Seller is required to supply a Tax Invoice to the Buyer at the Buyer's request where the supply of the Property includes a GST component to be paid in accordance with Clauses 35, 36(2), 41.1(2) and 41.2(1) of this Contract.

### 41. Buyer's Right to terminate

41.1 If the Buyer becomes aware that the Seller has not complied with the requirements of Clause 37.1(1) or 38.1(1) (depending on the option chosen by the Seller) of this Contract:

- (1) at the time of Settlement, then the Buyer is permitted to claim compensation from the Seller and/or without limiting other remedies, including action for damages and/or specific performance, terminate this Contract at or before the Settlement Date; or

- (2) after the Settlement Date, then the Buyer must pay to the Seller, once received, the amount the Buyer will be reimbursed as an Input Tax Credit for GST.

41.2 If the Buyer does not exercise its right to terminate this Contract in accordance with Clause 41.1(1):

- (1) when the Supply of a Going Concern option as per Clause 37 is chosen, then the Buyer must pay to the Seller the amount of GST payable on the supply of the Property; or
- (2) when the Seller has chosen a Margin Scheme option, as per Clause 38, then Clause 41.1(2) shall apply.

### 42. Leases

42.1 Subsequent to the signing of this Contract the Seller will not deal with any alterations or amendments to the terms or conditions of any of the Leases nor give consent to any tenant under a Lease without the prior written consent of the Buyer which consent must not be unreasonably withheld. Provided however the Seller shall not be precluded from dealing with such Leases should failure to deal give rise to a breach of the Seller's Obligations under the Lease.

42.2 Where the Seller, acting as Landlord, must deal with matters concerning a Lease the following shall occur:

- (1) the Seller will inform the Buyer in writing and provide a copy of any relevant documentation;
- (2) the parties must work together to achieve a satisfactory outcome;
- (3) in granting or withholding its consent the Buyer must at all times act reasonably;
- (4) consent or refusal must be in writing and in the case of refusal, reasonable grounds must be provided; and
- (5) in any case of default by any Tenant under a Lease the Seller will seek the Buyer's authority to take such action as the Lease may allow. In the case of such default, which authority may be granted by the Buyer subject to such conditions as the Buyer may reasonably require, neither party shall do anything to prejudice the other's or other party's rights under this Contract.

### 43. Seller's warranty

43.1 For Leases existing with respect to the Property at the Date of Contract the Seller warrants that:

- (1) it has informed the Buyer of all current Leases and will forthwith provide to the Buyer, or the Buyer's Solicitor, duplicates of these Leases and any documents ancillary thereto including notices or legal documentation in relation thereto;
- (2) unless otherwise advised in writing all covenants and provisions of these Leases, which are the responsibility of the Seller have been and will be duly performed and observed up to the Settlement Date;
- (3) the Seller has not breached any of these Leases and is not aware of any circumstances which may result in their termination;
- (4) all Lease details provided in Item 20 are valid;
- (5) the Seller has not, unless disclosed in Item 20 at the Date of Contract, received from any tenant written notice requesting the Seller (as Landlord) to renew any existing Lease for a specified period nor are there any negotiations in relation to rent reviews;
- (6) no tenant is in breach of its lease obligations and no rental or other payments are in arrears; and
- (7) the Leases referred to in Clause 43 represent the entire agreement between the Seller and any Lessee.

The Seller states that the above warranties will be true and correct as of the Settlement Date.

43.2 If any Lease under Clause 43.1 is subject to the provisions of the *Retail Shop Leases Act 1994* the Seller warrants, in addition to the warranties in Clause 43.1, that:

- (1) its obligations as Landlord under the *Retail Shop Leases Act 1994* have, in so far as the Seller is aware, been fulfilled; and

- (2) there is no outstanding compensation payable to or claimed by the tenant under Section 43 or any unresolved Retail Tenancy Disputes or other matters under review by the Retail Shop Leases Tribunal under Part 8 of the *Retail Shop Leases Act 1994* that the Seller is aware of.

**44. Seller's warranty - Service Contracts**

For Service Contracts existing with respect to the Property at the Date of Contract the Seller warrants that:

- (1) it has informed the Buyer of all current Service Contracts and will forthwith provide to the Buyer, or the Buyer's Solicitor, duplicates of these Service Contracts and any documents ancillary thereto including notices or legal documentation in relation thereto;
- (2) unless otherwise advised in writing all covenants and provisions of these Service Contracts, which are the responsibility of the Seller have been and will be duly performed and observed up to the Settlement Date;
- (3) the Seller has not breached any Service Contract and is not aware of any circumstances which may result in their termination;
- (4) all Service Contract details provided in Item 21 are valid; and
- (5) Service Contracts not able to be assigned to the Buyer under Clause 8.3(5) shall:
  - (a) be terminated by the Seller prior to Settlement; or
  - (b) the Seller shall remain liable for the continuance thereof for the benefit of and at the direction of the Buyer.

**45. Buyer's Right to terminate**

45.1 The Buyer may, by giving written notice to the Seller, terminate this Contract if:

- (1) any of the Seller's warranties under Clauses 43 and 44 are incorrect; and
- (2) after delivery of the documentation in accordance with Clause 7.4 (2) and (3) the Buyer acting reasonably determines the provisions of such documentation are not satisfactory

45.2 The Buyer's failure to give notice under Clause 45.1 will result in the Buyer, upon Settlement, being bound by and liable under any Lease or Service Contract to the same extent as the Seller acting as the original Landlord and/or contractor of a Service Provider would have been bound.

**46. Applicable Law**

46.1 The laws of Queensland are the laws applicable to this Contract.

46.2 A solicitor appointed by a party shall have full authority to act on behalf of such party with respect to all matters relating to this Contract.

**47. Execution of Contract**

47.1 This Contract may be executed in any number of counterparts. Together all counterparts make up one instrument.

47.2 This Contract may be entered into by and becomes binding on the parties by one party signing the Contract that has been signed by the other (or a copy of that Contract) and transmitting a copy of it to the other or to the other party's Agent or Solicitor.

**48. Related Documents / Notices / Electronic Communication**

48.1 The parties agree and confirm any documents and communications in relation to this Contract may be forwarded electronically and where this Contract has been forwarded electronically (either for signing or otherwise) the party receiving the Contract confirms having consented to the delivery of the Contract (and any other materials) by way of the electronic means of delivery before receiving the documentation.

48.2 A Related Document to be served on any party under this Contract shall be in writing and may be served on that party:

- (1) by delivering it to the party personally; or

- (2) by leaving it for the party at that party's address as stated in this Contract; or
- (3) by posting it to the party by ordinary mail or security mail as a letter addressed to the party at the address as stated in this Contract; or
- (4) by electronic communication to the party at the appropriate electronic address as stated in this Contract; or
- (5) by delivery to the other party's solicitor's office; or
- (6) by delivery to an alternative address, provided in writing by the party, by any of the methods outlined in Clauses 48.2(1) to (5) above.

48.3 A document posted shall be deemed to have been served, unless the contrary is shown, at the time when, by the ordinary course of post, the document would be delivered.

48.4 A document sent by electronic communication will be deemed to have been received in accordance with Section 24 of the *Electronic Transactions (Queensland) Act 2001*.

48.5 Documents given by a party's solicitor will be deemed to have been given by and with the authority of the party.

48.6 Documents must be served before 5pm on a Business Day, failing which, such document will be deemed to have been served on the next Business Day.

48.7 The parties acknowledge and agree an Electronic Document readily accessible via a link within a Related Document is received when the Related Document is served and will be opened when the Related Document is opened.

48.8 The parties agree and consent to execution, by any party, of documents electronically using a method provided by an electronic signing service provider.

48.9 Where a party signs this Contract electronically that party's signature is not required to be witnessed.

**49. Privacy**

49.1 The Agent for either party to this Contract must comply with the provisions of the Australian Privacy Principles (*Privacy Act 1988 (CTH)*) and where required maintain a Privacy Policy.

49.2 The Privacy Policy outlines how Agents collect and use Personal Information provided by you (all parties) as a party to this Contract, or obtained by other means, to provide the services required by you or on your behalf.

49.3 You as a party to this Contract agree the Agents may, subject to the *Privacy Act 1988 (CTH)* (where applicable), collect, use and disclose such information to third parties as may be required by the Agent for the purposes of facilitating electronic conveyancing, marketing, sales promotion and administration relating to the use of the Agent's products and services, but must do so in compliance with legislative and regulatory requirements.

49.4 Without provision of certain information your Agent may not be able to act effectively or at all on your behalf.

49.5 You as party to this Contract have the right to access such Personal Information and may require correction or amendment of any inaccurate, incomplete, out of date or irrelevant information.

49.6 An Agent will provide (where applicable), on request, a copy of its Privacy Policy.

**50. Data Collection**

Upon signing this Contract the parties agree the Agent for either party to this Contract, and the form completion service provider providing this form, may without disclosing Personal Information collect, use and disclose to Data Collection Agencies information contained in this Contract.

**51. Severability**

Should any court or tribunal of competent jurisdiction determine any term, provision or obligation of this Contract to be void, illegal or unenforceable by law, that term, provision or obligation must be read down to the extent possible or removed from the Contract whilst keeping the operation of the remainder of the Contract in effect.

## 52. Materially Adverse Event

52.1 Where a party to this Contract (Relevant Party) is unable to reasonably carry out an Essential Obligation due to a Materially Adverse Event (MAE) then for the Relevant Period of the MAE the parties agree time will cease to be of the essence and a failure by a party to perform its obligations during the Relevant Period will not be a breach of the Contract.

52.2 The Relevant Party must:

- (1) promptly when able notify the other party of the MAE and how it prevents performance of a particular Essential Obligation;
- (2) take reasonable steps to mitigate the effect of the MAE with respect to its obligations; and
- (3) as soon as possible, give notice advising when it is no longer prevented from carrying out the Essential Obligation. Such notice may also include the matters detailed in Clause 52.3.

52.3 At the end of the Relevant Period, or where a notice served in accordance with Clause 52.2(3) does not contain the matters set out in paragraphs (1) to (4) of this sub-clause, either party may serve notice on the other party:

- (1) advising that the Relevant Period/MAE is over;
- (2) requiring performance of or compliance with the Essential Obligation;
- (3) giving a specific time and date for the performance or compliance being not less than 7 days and not more than 14 days from the date of delivery of the notice; and
- (4) advising that, on delivery of the notice, time is again of the essence,

such notice will be a settlement notice where the particular Essential Obligation notified in accordance with Clause 52.2(1) relates to settlement.

52.4 The times and dates for compliance with other contractual obligations where time is of the essence shall be extended to correspond with the extension of time to the Essential Obligation originally notified.

52.5 For the purposes of this Clause 52:

- (1) *Essential Obligation* means any one of the obligations set out in clauses 3.1, 4.1, 4.3, 4.5, 5, 7.1, 8.1, 8.2, 8.3, 9.2 and 20;
- (2) *Materially Adverse Event* or *MAE* means:
  - (a) an event as defined in section 16(1)(a) of the *Disaster Management Act 2003 (QLD)*; or
  - (b) an order or lawful direction of a Government authority, Federal, State or Local;
- (3) *Relevant Party* means a party to this Contract prevented from carrying out an Essential Obligation as the direct result of a Materially Adverse Event for the Relevant Period; and
- (4) *Relevant Period* means the time during which a Relevant Party is unable to carry out an Essential Obligation as a consequence of a Materially Adverse Event.

## 53. Withholding - Capital Gains

53.1 The parties acknowledge (subject to Clause 53.2) where the Purchase Price of the Property is seven hundred and fifty thousand dollars (\$750,000) or more, the Buyer will on or before Settlement, in compliance with the foreign resident capital gains withholding payments provisions of Schedule 1 of the *Taxation Administration Act 1953 (Cth)* (Schedule 1) be required to:

- (1) withhold from the purchase monies a sum equal to 12.5% of the Purchase Price or such lesser sum as determined in a notice of variation provided in accordance with section 14-235 of Schedule 1;
- (2) pay the withheld monies to the Australian Taxation Office (ATO) in accordance with Schedule 1 and, in addition;

(3) promptly provide evidence of payment made in accordance with Clause 53.1(2) to the Seller.

53.2 Where the Seller has, not less than 3 Business Days (or such shorter time as the parties may agree) prior to Settlement, provided a clearance certificate from the ATO in accordance with Schedule 1, valid at the time of Settlement, the Buyer's obligation under Clause 53.1 will not apply.

53.3 Payment made in accordance with Clause 53.1 will, for Settlement:

- (1) using e-conveyance, be treated as a financial obligation in respect of Clause 8.1(15); and
- (2) for non-e-conveyance treated as an adjustment (Clause 8.2(4)(a)).