

**From:** Tim Boman

**Sent:** Thursday, 3 December 2015 7:39 AM

**To:** Committee, Corporations (SEN)

**Subject:** Re: Parliamentary Joint Committee on Corporations and Financial Services - Hansard transcript

Dear Michael,

I have also attached the documents that have been requested:

1. the put and call option from

*We had an offer to purchase the property from an external party under an option contract for \$36 million. The day before the option was to be exercised—and I showed this to Bankwest—they appointed a receiver. The day before.*

*Senator WILLIAMS: Who was this external party that offered \$36 million for this asset valued at \$31 million?*

*Mr Boman: It was a consortium headed by Gerard Batt, a solicitor here in Brisbane.*

*Senator WILLIAMS: It was a genuine offer?*

*Mr Boman: A genuine offer, yes. Absolutely.*

*Senator O'NEILL: Do you have any documentation around that, Mr Boman?*

*Mr Boman: Absolutely, yes.*

2. the letter not allowing you to access the 2M overdraft.

*It would be interesting for us to see a copy of the letter where they denied you the possibility of accessing that, because if you had been able to draw down on that you would have been able to meet the next couple of months.*

*I have also included a copy of the request for a valuation made by Bankwest, the result of the valuation was never disclosed.*

*regards,*

*Tim Boman*

From: @bankwest.com.au  
Sent: Wednesday, 25 February 2009 2:36 AM  
To: Tim Boman

Subject: Extension of facilities.

Tim

As discussed today given the existence of CFAL caveats we have had to amend our proposal to extend your facilities.

We propose extending to 30 April 2009 and provide funds net of rents to clear excesses out until that date.

We request that in the mean time you seek confirmation from that he intends to go ahead with the purchase of Jindalee if you can convert the remaining two leases.

If this confirmation is not received by Friday 6 March 2009 we request that the properties are put onto the market for sale with a marketing plan provided to the bank confirming the sales program.

Any extension past 30 April 2009 will be dependant on (but not limited to) our satisfaction with the above.

Regards

| Director - Property Finance | BankWest

**From:** @ Brisbane  
**Sent:** Friday, 27 February 2009 11:12 PM  
**To:** Tim Boman

**Cc:**

**Subject:** FW: BankWest Valuation Instructions

Hi Tim,

I will be assisting with the valuations of the Jindalee and Durack properties. Can you please advise when we are likely to receive the required information. We were hoping to make a start early next week if possible.

Regards,

| Assistant Valuer

CB Richard Ellis (C) Pty Ltd | Valuation and Advisory Services

Level 33, Waterfront Place, 1 Eagle Street, Brisbane, QLD 4000

| [www.cbre.com.au](http://www.cbre.com.au)

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**From:** @ Brisbane  
**Sent:** Friday, 27 February 2009 1:03 PM  
**To:** @ Brisbane  
**Subject:** FW: BankWest Valuation Instructions

fyi

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**From:** @ Brisbane  
**Sent:** Tuesday, 24 February 2009 1:41 PM  
**To:** 't.boman@  
**Cc:**  
**Subject:** BankWest Valuation Instructions

Tim

We have been instructed by BankWest to complete valuations of the Jindalee properties and the Durack property.

I have indicated completion within 15 working days which is contingent upon receipt of all the necessary property information as follows:

Tenancy Schedules

Property Outgoings Schedules

Rental Arrears Schedules

Copies of any new leases since previous valuations.

Copies of any proposed development plans

Copies of any approvals held

It would assist us to meet our timelines to receive this information prior to inspection and of assistance if we were able to discuss with you the properties and any relevant issues.

Regards,

| Director  
CB Richard Ellis (C) Pty Ltd | Valuations & Advisory Services  
Level 33, Waterfront Place | 1 Eagle Street | Brisbane, QLD 4000

| [www.cbre.com.au](http://www.cbre.com.au)

Please consider the environment before printing this e-mail.



Queensland Government

Department of Justice and Attorney-General

ABN: 13 846 673 994

## PAMD Form 30c

Property Agents and Motor Dealers Act 2000

This form is effective from 4 February 2008. The Contract attached to this warning is subject to a 5 day cooling-off period.

**Notice to agent:** This Warning Statement must be:

- Attached to the **FRONT** of a contract for sale of residential property (vacant land or land and already existing house) and;
- Signed by the buyer **BEFORE** the attached contract is signed.

If this is not done, the buyer may terminate the contract.

# WARNING

**Do NOT sign the attached contract without reading and understanding this warning. Do not sign if you feel pressured.**

**You should obtain:**

- **Independent legal advice and**
- **An independent valuation of the property**

Before signing or during the 5 day cooling-off period the Office of Fair Trading strongly recommends you:

- Contact the Queensland Law Society on (07) 3842 5842 or [www.qls.com.au](http://www.qls.com.au) for advice on finding a solicitor.
- Contact the Australian Property Institute on (07) 3832 3139 or [www.propertyinstitute.com.au](http://www.propertyinstitute.com.au) or the Valuers Registration Board on (07) 3221 3892 or [www.valuersboard.qld.gov.au](http://www.valuersboard.qld.gov.au) to find a suitable valuer.
- Arrange a search for the property's sales history from your local Department of Natural Resources and Mines on (07) 3227 6626, or for a map of latest sales [www.nrm.qld.gov.au](http://www.nrm.qld.gov.au).

**House and land package buyers:** Is the building contract fairly valued? Seek quotes from several different builders (see note on page 2)

**STOP!!** Before signing this form or the contract have you read and understood the information about your rights?



**Buyer(s):**

I/we have read this warning statement and the important information over the page.

Name(s): CLIPSE PTY LTD ACN 1

157 AS TRUSTEE FOR THE JINDALEE UNIT TRUST

Signature

Date: 25/5/08



**Important information you should read before you sign this warning statement and the attached contract**

**Independent legal advice**

Do you fully understand the legal consequences of signing this contract? Are you sure the advice you've been given is totally independent? Before signing the contract, the Office of Fair Trading strongly recommends you seek independent legal advice and clarify any queries or concerns you have about buying the property. Exercise extreme caution in accepting the advice of anyone referred to you by the seller or his/her agent. If you engage any lawyer in relation to purchasing the property, they must give you a certificate about their independence from the seller or anyone else included in the sale, and about benefits the lawyer expects to receive from the sale.

**Valuation of property**

Are you sure the purchase price is fair? Before the cooling-off period expires seek independent advice from a registered valuer. Ask the valuer if they have Professional Indemnity Insurance, have a relationship with any person involved with the property you're buying, and about the valuation cost.

Further information on how to deal with valuers is available on [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) (search "valuations").

**Building contracts**

For building contracts associated with the purchase of residential property.

- Domestic building contracts have a cooling-off period (Section 72 of the Domestic Building Contracts Act 2000. Please refer to the Building Services Authority of Queensland for further information on building contracts). Ensure that if you exercise your cooling-off right under the residential property contract that you also give written notice to terminate the building contract.
- Ensure that the building contract price is not over valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

**What is a cooling-off period?**

You can change your mind about purchasing a property during a 5 day cooling-off period. Use this time to seek independent legal advice and an independent valuation of the property.

**When does the cooling-off period start?**

It begins on the day you are bound by the attached contract.

Both the buyer and the seller are bound by the contract as soon as the buyer or their agent, lawyer or personal representative receives a copy of the signed contract.

In any dispute concerning the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the contract.

**Note:** If the buyer is bound by the contract on a day other than a business day, the cooling-off period commences on the first business day after the day the buyer is bound by the contract.

**When does the cooling-off period end?**

It ends at 5:00 pm on the fifth business day after the cooling-off period started.

**What is a business day?**

It is a day other than a Saturday, Sunday or a public holiday.

**Can I waive or shorten the cooling-off period?**

You may, but only by obtaining a lawyer's certificate from your solicitor. If you waive the cooling-off period you will be bound by the contract from that time, subject to the terms of the contract.

**How do I terminate the contract during the cooling-off period?**

At any time before the end of the 5 day cooling-off period give a signed and dated notice to the seller or the seller's agent indicating that you wish to terminate the contract.

**Will I lose my deposit if I terminate the contract during the cooling-off period?**

The seller must refund your deposit within 14 days of termination of the contract but may deduct a termination penalty equal to 0.25% of the purchase price.

**What happens after the cooling-off period ends?**

You are legally bound to buy the property, subject to the terms in the contract. Make sure you're happy with all of the terms in the contract before you sign it and before the cooling-off period ends.

**Claim fund**

A Claim Fund exists which, in some cases, enables a buyer who suffers financial loss as a result of dealing with a real estate agent to make a claim. Strict guidelines apply. If you suffer financial loss because of buying an investment property or buying residential property directly from a Property Developer you CANNOT make a claim for compensation against the Fund. There are restrictions on claims made due to property marketeering.

**How do I know if I'm dealing with a licensed real estate agent or property developer?**

The Office of Fair Trading can help you to identify if the person you are dealing with is a licensed real estate agent, property developer or a registered salesperson of one.

Ask the person you are dealing with for proof of their licence or registration.

**Further information:**

Contact [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or your nearest Office of Fair Trading on 13 13 04.

DEED dated

25 May, 2008

BETWEEN

The person persons or company described in the Schedule as the Grantor (the "Grantor")

AND

CLIPSE PTY LTD ACN 130 619 457 AS TRUSTEE FOR THE JINDALEE UNIT TRUST (the "Grantee")

## RECITALS

- A. The Grantor is the registered proprietor of the property described in the Schedule as "the Property" (the "Property").
- B. The Grantor agrees to grant to the Grantee an Option to purchase the Property on the terms specified in this Deed.
- C. The Grantee agrees to grant to the Grantor an Option to require the Grantee to purchase the Property on the terms specified in this Deed.

## OPERATIVE

### 1. GRANT OF OPTION

- 1.1 In consideration of the sum referred to in the Schedule as "Option Fee" paid by the Grantee to the Grantor, the Grantor **HEREBY GRANTS** to the Grantee an Option to purchase the property at the price specified in the Schedule as "Contract Price".
- 1.2 The Grantee may nominate an alternate purchaser and the Option may be exercised by the Grantee or its nominee.

### 2. EXERCISE

- 2.1 This Option may be exercised at any time between 9.00am and 5.00p.m. on the date specified as "Date for Exercise of Option" as follows:
  - (a) By delivery of a Notice of Exercise of Option to the Grantor at the place specified in the Schedule as "Address for Service of Notice".
  - (b) Any notice may be given or delivered in the manner prescribed by section 347 of the *Property Law Act 1974* as amended. For the purposes of this Deed any notice given by the Grantee's Solicitors shall be deemed to be given with authority of the Grantee.

### 3. FEE

- 3.1 The Option Fee is to be paid at the times and in the manner set out in the Schedule. In addition to the Option Fee the Grantee must pay to the Grantor the Security Deposit by four instalments at the times and in the manner set out in the Schedule. Subject to satisfaction of the conditions in Clauses 3.2 and 7.2 the Option Fee and the Security Deposit remain the property of the Grantor whether or not the Option is exercised. In the event of exercise of the Option, the Option Fee and the Security Deposit shall form the deposit under the Contract
- 3.2 Payment of each instalment of the Security Deposit is conditional upon the following events:

- (a) First instalment upon execution of the Option by the Grantor and the Grantee;
- (b) Second instalment upon completion of the Grantee's property enquiries as provided in clause 6;
- (c) Third instalment upon confirmation that the Grantor has secured a relocation and termination right with each retail tenant of the Property as provided in clause 7.2;
- (d) Fourth instalment upon confirmation by the Grantee of a pre-lodgement meeting with the Local Authority at which the Local Authority indicates in principle support for the Grantee's proposed works

This clause has been inserted for the benefit of the Grantee and may be waived by it at any time.

#### **4. CONTRACT**

- 4.1 On delivery of the Notice of Exercise of Option pursuant to clause 2 the parties hereto become immediately bound as Vendor and as Purchaser respectively under the Contracts for Sale in accordance with the terms in the annexed Contracts and marked "A" and "B".
- 4.2 If either of the parties requires the execution of a formal Contract, that party shall prepare and execute a form of Contract in duplicate and forward it for execution to the other party. The parties (on behalf of themselves and their legal personal representatives and assigns) covenant to execute a formal Contract submitted and to return it to the other party promptly **PROVIDED ALWAYS** that the execution of a formal Contract shall not affect the substances of the parties' respective obligations under the Contract created pursuant to clause 4.1 hereof and the parties agree that the obligations hereby created shall not extinguish upon exercise of the Option hereby granted but shall continue until completion of the Contract

#### **5. PUT OPTION**

- 5.1 In consideration of the Grantor entering into this Deed, the Grantee **HEREBY GRANTS** to the Grantor an Option to require the Grantee to purchase the Property at the price specified in the Schedule as "Contract Price" (the "Put Option").
- 5.2 This Put Option may be exercised at any time during the Timetable for Exercise of the Put Option contained in the Schedule by written notice from the Grantor to the Grantee.
- 5.3 The provision of clauses 3 and 4 apply in the event of exercise of the Put Option.

#### **6. PROPERTY ENQUIRY**

##### **6.1 Conducting Enquiries**

The Grantee shall at its own cost and expense be entitled to make such enquiries and to carry out such investigations as are necessary to satisfy the Grantee in relation to all and any aspects of the suitability of the Property, including, but not limited to:

- (a) The title to the Property;
- (b) The correct description and particulars of the Property, including the boundaries and area of the Property;
- (c) A contamination study of the Property;



- (d) Geo-technical testing of the Property;
- (e) Enquiries as to Council's requirements regarding the development of the Property;
- (f) The structure of any building on the Property;
- (g) Enquiries relating to the leases including their terms and conditions and market value.

## **6.2 Grantor's Authority**

- (a) The Grantor authorises the Grantee, its solicitor and consultants pending exercise of the Option to inspect all records relating to the Property held by the Grantor, the Council or body maintaining such records and will, if required by the Grantee, sign an appropriate authority to Council or other body for the purposes of this condition.
- (b) The Grantor will deliver to the Grantee within seven (7) days of the Option Date a copy of all leases, incentive deeds, fitout arrangements, service contracts and other documents relating to the use and occupation of the Property together with all valuations, feasibilities, consultant's reports and like documents relating to the development or future development of the Property.
- (c) The Grantor will deliver to the Grantee within seven (7) days of the Option Date an Asbestos Report as required by Section 69E of the *Workplace Health and Safety Regulation 1997*.

## **6.3 The Grantor warrants as at the date of this Option that:**

- (a) the Leases and any written guarantees thereof constitute the whole of the agreement with each of the respective lessees who are parties to the Leases and each of the guarantors who are parties to the guarantees and that there are no other oral or collateral agreements of any kind affecting the Leases or the Land;
- (b) except as disclosed in writing by the Grantor to the Grantee prior to the Date Hereof and the Date for Exercise of Option there are no outstanding breaches by any lessee or guarantor under any of the Leases or guarantees which have not been disclosed to the Grantee;
- (c) the Grantor has not committed any breach of any of the Leases;
- (d) the particulars of the Leases, including rental and turnover rental, set forth in the Contract Schedule and the copies thereof provided under clause 6.2(b) are true and correct;
- (e) the Grantor has not forfeited any of the Leases or waived any breach thereof or consented to any amendment or surrender of any of the Leases;
- (f) except as disclosed in writing by the Grantor to the Grantee prior to the date hereof no consents, permissions or approvals materially affecting the rights of the lessor have been given by the Grantor as lessor to any of the lessees or guarantors in relation to any matter or thing which, under the terms of the Leases or guarantees require the lessor's consent;
- (g) there are no other rights or occupancy granted to any person in respect of any part of the Land or building other than those shown in the Schedule;

- (h) the Leases are valid and enforceable as at the date of this Option and there are no outstanding disputes or differences and no proceedings (including arbitration and other forms of dispute resolution) with any lessee;
- (i) the Grantor has not granted any consent to any mortgaging, charging or other dealing with the Lease;
- (j) the uses to which the building is being put by the various lessees are lawful in all respects;
- (k) each Lease contains a right to relocate or terminate the tenant.

**6.4** Between the date of this Option and the date of exercise of Option the Grantor shall carry out the functions of lessor in a proper manner in relation to the building and its lessees including without limitation repairs, maintenance and continuance of all insurances. The Grantor shall not without the prior written consent of the Grantee (which consent shall not be unreasonably refused or withheld) at any time prior the date of exercise of this option:

- (a) take proceedings to secure payment of any outstanding moneys or to enforce any covenant on the part of any lessee or guarantor under any Lease;
- (b) negotiate rentals where rentals are subject to review;
- (c) consent to the assignment by any lessee of any of the Leases;
- (d) consent to the granting of any sub-lease by any of the lessees of any of the Leases;
- (e) forfeit any of the Leases or take proceedings to obtain vacant possession of any of the Leases or accept surrenders thereof;
- (f) vary the terms of any of the Leases or accept surrenders thereof;
- (g) grant a new lease of any premises;
- (h) negotiate any new or variation of any existing service contract relating to the Property.

**6.5** Where the Grantor is in breach of the warranties in clause 6.3 or the agreements in clause 6.4 and as a result the Grantee may suffer material loss or damage upon exercise of this Option, then either:

- (a) the Grantee may by notice in writing to the Grantor given no later than seven (7) days prior to the Date for Exercise of Option, terminate this Option and in which event the Option fee shall be refunded to the Grantee and neither party shall have further claim on the other; or
- (b) the Grantee may reduce the Contract Price by the amount of loss or damage in a sum agreed between the parties but failing agreement in the sum assessed by a retail shop leases valuer of not less than five (5) years standing agreed between the parties but failing agreement as nominated by the President for the time being of the Property Institute of Australia (Queensland Branch) whose decision will be final and binding on the parties.

**6.6** (a) Where the Grantor relocates or determines or has given notice or intends to give notice of intention to relocate or determine a tenancy, either pursuant to Division 9 of

the *Retail Shop Leases Act*, the lease or otherwise and the tenant is entitled or is likely to become entitled to compensation then the Contract Price is adjusted by the quantum of any sum which the Grantee is or may become liable to pay upon exercise of the Option.

- (b) Where compensation has not been calculated or is not capable of calculation at least thirty (30) days prior to the Date of Exercise of Option, the parties must seek to agree on a sum and failing which the calculation must be referred to a retail shop lease valuer of at least five (5) years experience agreed upon between the parties and failing agreement, as nominated by the President for the time being of the Property Institute of Australia (Queensland Branch) whose decision will be final and binding on the parties.

**6.7** Pending the Date of Exercise of Option, the Grantee may at its own risk cost and expense make application to the local authority for development approval of the Land on terms and conditions entirely satisfactory in all respects to the Grantee.

**6.8** The Grantor authorises the Grantee during working hours to enter upon the Property with its surveyors, engineers, architects or other consultants for the purposes of making reasonable inspection, surveys and investigations of the Land and for the purpose of carrying all works that are necessary in relation to its proposed development application including carrying out of soil tests by way of drilling or otherwise and further the Grantor grants to the Grantee the right to erect any sign or signs and advertisements necessary to enable the Grantee to pursue its applications or to make its property enquiries. Any such right of entry shall be exercised at the risk of the Grantee provided that nothing in this clause shall permit or authorise any interruption of the tenant's quiet enjoyment of the Property. The Grantee must make good any damage to the Property caused by any persons entering pursuant to this clause.

**6.9** The Grantor must sign all forms required of the registered owner of the Property to assist the Grantee in making its applications and enquiries.

**6.10** Pending the Date for Exercise of Option the Grantor must provide quarterly written reports to the Grantee in respect to :

- (a) Payment of rental & outgoings
- (b) Breaches of any lease & notices to tenants
- (c) Insurance claims and renewals
- (d) Repair and maintenance of the Property

## **7. RELOCATION NOTICE**

**7.1** If prior to the Date for Exercise of Option, the Grantee wishes to give a notice of relocation or of termination to any tenant then the following provisions will apply:

- (a) The Grantee must give notice to the Grantor of its desire to issue a relocation or termination notice and the purpose that such notice is intended to achieve.
- (b) The Grantor may refuse to give such notice if the same relates to a period prior to the date for completion of any contract arising upon exercise of this Option.

- (c) Where the relocation notice relates to a lease of premises of which the Grantor or any related entity of the Grantor, its directors or shareholders has an interest, then the Grantor agrees that any compensation arising from the giving of a relocation notice whether at the request of the Grantee or otherwise is waived or will form part of the adjustment of contract price contemplated by clause 6.6.
- (d) Where the Grantor has prior to the date of this Option given a relocation notice or notice of termination to any tenant of the Property pursuant to a lease, the Grantor will, if so requested by the Grantee, withdraw such notice and issue an alternative notice in the form and on the terms required by the Grantee.
- (e) The provisions relating to adjustment of contract price and compensation as set out in clause 6.6 apply to any alternate notice.

**7.2** This Option is subject to and conditional upon the Grantor, as landlord, negotiating the inclusion of a relocation and termination clause in each of the following leases for the Property by 30 May 2008, in the event that such lease does not currently make provision for the same:

- (a) Shop<sup>1</sup> 3,6,10A,14,17B,18,20,21,22,23 of the Shopping Village
- (b) Shop 1 & 2 of the Health Club & Swimming Centre

## **8. COSTS**

**8.1** Each party will pay their respective legal costs in respect of the preparation of this Deed.

**8.2** All stamp duty and other outgoings on this Deed and any contract arising from it shall, as between Grantor and the Grantee be payable by the Grantee.

## **9. GST**

**9.1** The parties acknowledge that the amounts payable under this Deed were negotiated exclusive of any Goods and Services Tax (GST) or other like tax and:

- (a) The Grantee agrees to pay to the Grantor an amount equal to the consideration payable for any supply multiplied by the prevailing GST rate if the Grantor reasonably decides that the Grantor is liable to pay GST on a supply made or in connection with this Deed; and
- (b) The Grantor must give the Grantee an invoice containing the Grantor's Australian Business Number (ABN) and which otherwise complies with the GST legislation and regulations;
- (c) GST for the purposes of this Deed has the meaning contained in *A New Tax System (Goods and Services Tax) Act 1999* as promulgated by Federal Government Act and regulations.

## **10. ADJOINING LAND**

**10.1** Where the Grantor has a right to acquire land adjacent or adjoining the Property, then:

- (a) the Grantor must provide details of the land and the terms of the right to acquire within seven (7) days of the date of this Option or seven (7) days of the entry into any right to acquire, whichever is later;

- (b) the Grantee must give notice within thirty (30) days of satisfaction of clause 10.1(a) as to whether it desires to acquire the land the subject of such notice. In the event that it so desires to acquire the land then:
- (i) if the terms of the right to acquire allow, then the Grantee may require assignment of such right and agrees to indemnify and keep the Grantor indemnified from any loss, claim, cost or demand arising as a result of such assignment; or
  - (ii) the Grantee may elect to acquire the land and this Option is deemed to include the land the subject of such right at a sum equal to the cost (including stamp duty) incurred by the Grantor in acquiring the land.

## **11. CAVEAT**

- 11.1** The Grantee may at its election lodge a caveat to protect its interest in the Property. The Grantor must, if so requested by the Grantee, execute a consent to such caveat within seven (7) days of the Grantee providing the form of consent for execution. The Grantor must disclose this Option to any mortgagee of the Land and obtain their written consent to the Option such consent to be obtained within thirty (30) days of the Date Hereof.

**THE SCHEDULE HEREINBEFORE REFERRED TO**

|                                              |                                                                                                                                                                                                                                                                                                                                                                                                              |
|----------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Date Hereof:</b>                          | The       day of                      20                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Grantor:</b>                              | <b>BOMAN PROPERTIES PTY LTD ACN 010 068 818 AS TRUSTEE</b>                                                                                                                                                                                                                                                                                                                                                   |
| <b>Option Fee:</b>                           | \$10,000.00 on execution of Option                                                                                                                                                                                                                                                                                                                                                                           |
| <b>Security Deposit</b>                      | First Instalment \$490,000.00 on execution of the option<br>Second Instalment \$1,000,000.00 on 30 May 2008<br>Third Instalment \$1,000,000.00 on 30 June 2008<br>Fourth Instalment \$1,000,000.00 on 30 July 2008                                                                                                                                                                                           |
| <b>Contract Price:</b>                       | \$36,000,000 subject to clauses 6.5 and 6.6                                                                                                                                                                                                                                                                                                                                                                  |
| <b>Date for Exercise of Option:</b>          | Not less than 90 days from the Date Hereof and not more than 365 days from the date of satisfaction of clause 7.2                                                                                                                                                                                                                                                                                            |
| <b>Timetable for Exercise of Put Option:</b> | The period commencing on the Date for Exercise of Option and expiring seven (7) days thereafter.                                                                                                                                                                                                                                                                                                             |
| <b>Address for Service of Notice:</b>        | Boman Properties Pty Ltd<br><br>GOLD COAST MAIL CENTRE QLD 9726                                                                                                                                                                                                                                                                                                                                              |
| <b>The Property:</b>                         | Address: 213, 225 and 241 Sinnamon Road, Jindalee and 19, 25, 27, 29, 31 and 33 Koorringal Drive, Jindalee Qld 4074<br>Certificate of Title Reference:<br>County: Stanley<br>Parish:<br>Description: Lot 7 on RP 843729<br>Lot 86 on RP 101132<br>Lot 85 on RP 101132<br>Lot 84 on RP 101132<br>Lot 83 on RP 101132<br>Lot 82 on RP 101132<br>Lot 9 on SP 119619<br>Lot 6 on RP 800033<br>Lot 1 on RP 121449 |



The Real Estate Institute  
of Queensland  
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# Contract

## For Commercial Land and Buildings

Second Edition GST reprint



Adopted by The Real Estate Institute of Queensland Limited and approved by the Queensland Law Society Incorporated for conveyances of Torrens Title and Crown Leasehold Title of Commercial Land and Buildings.

**This contract is made between the vendor and the purchaser. The vendor agrees to sell and the purchaser agrees to buy the property, subject to the conditions of this contract, for the purchase price.**

This Contract comprises the following parts:

- (a) Items Schedule;
- (b) Lease Schedule;
- (c) Service Contract Schedule;
- (d) Standard Commercial Conditions; and
- (e) any Special Conditions.

Where there is any discrepancy or inconsistency between a part of this Contract and any other part, the following descending order of precedence of the parts shall apply to resolve the discrepancy or inconsistency:

- (a) any Special Conditions;
- (b) Items Schedule;
- (c) Lease Schedule;
- (d) Service Contract Schedule;
- (e) Standard Commercial Conditions.

Unless inconsistent with the context or subject matter:

- (a) "Items Schedule" means the schedule called Items Schedule in this Contract;
- (b) "Lease Schedule" means the schedule called Lease Schedule in this Contract;
- (c) "Service Contract Schedule" means the schedule called Service Contract Schedule in this Contract;
- (d) "Special Conditions" means any written conditions endorsed on or annexed to this form;
- (e) "Standard Commercial Conditions" means the Standard Commercial Conditions of Sale – Commercial Land and Buildings (Second Edition GST Reprint) adopted by The Real Estate Institute of Queensland Limited and approved by the Queensland Law Society Incorporated.

The Vendor and the Purchaser each acknowledge having received a copy of the Standard Commercial Conditions at the time of signing this Contract.

|                                   |                                                                                                                                                                                                                                                                                                        |                                                                                              |
|-----------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------------------------|
| <b>NOTE 1</b>                     | <b>Contract Date:</b>                                                                                                                                                                                                                                                                                  | _____                                                                                        |
|                                   | <b>Vendor's Agent:</b>                                                                                                                                                                                                                                                                                 | _____                                                                                        |
|                                   | <b>Address:</b>                                                                                                                                                                                                                                                                                        | _____                                                                                        |
|                                   | <b>Licence No:</b>                                                                                                                                                                                                                                                                                     | _____                                                                                        |
|                                   | <b>ABN</b>                                                                                                                                                                                                                                                                                             | _____                                                                                        |
|                                   |                                                                                                                                                                                                                                                                                                        | <b>Facsimile</b> _____ <b>Phone</b> _____                                                    |
|                                   |                                                                                                                                                                                                                                                                                                        | <b>Email Address</b> _____                                                                   |
|                                   | <b>Vendor/s:</b>                                                                                                                                                                                                                                                                                       | <b>BOMAN PROPERTIES PTY LTD ACN 010 088 816 AS TRUSTEE</b>                                   |
|                                   | <b>Address:</b>                                                                                                                                                                                                                                                                                        | _____                                                                                        |
|                                   | <b>ABN</b>                                                                                                                                                                                                                                                                                             | _____                                                                                        |
|                                   |                                                                                                                                                                                                                                                                                                        | <b>Facsimile</b> _____ <b>Phone</b> _____                                                    |
|                                   |                                                                                                                                                                                                                                                                                                        | <b>Email Address</b> _____                                                                   |
|                                   | <b>Vendor's Solicitor:</b>                                                                                                                                                                                                                                                                             | <b>Johnsons</b>                                                                              |
|                                   | <b>Address:</b>                                                                                                                                                                                                                                                                                        | _____                                                                                        |
|                                   | <b>ABN</b>                                                                                                                                                                                                                                                                                             | _____                                                                                        |
|                                   |                                                                                                                                                                                                                                                                                                        | <b>Facsimile</b> _____ <b>Phone</b> _____                                                    |
|                                   |                                                                                                                                                                                                                                                                                                        | <b>Email Address</b> _____                                                                   |
|                                   | <b>Purchaser/s:</b>                                                                                                                                                                                                                                                                                    | <b>CLIPSE PTY LTD ACN 140 619 467 AS TRUSTEE FOR THE JINDALEE UNIT TRUST</b>                 |
|                                   | <b>Address:</b>                                                                                                                                                                                                                                                                                        | _____                                                                                        |
|                                   | <b>ABN</b>                                                                                                                                                                                                                                                                                             | _____                                                                                        |
|                                   |                                                                                                                                                                                                                                                                                                        | <b>Facsimile</b> _____ <b>Phone</b> _____                                                    |
|                                   |                                                                                                                                                                                                                                                                                                        | <b>Email Address</b> _____                                                                   |
|                                   | <b>Purchaser's Solicitor:</b>                                                                                                                                                                                                                                                                          | _____                                                                                        |
|                                   | <b>Address:</b>                                                                                                                                                                                                                                                                                        | _____                                                                                        |
|                                   | <b>ABN</b>                                                                                                                                                                                                                                                                                             | _____                                                                                        |
| <b>CLAUSE 1.3</b>                 | <b>Stakeholder:</b>                                                                                                                                                                                                                                                                                    | _____                                                                                        |
|                                   |                                                                                                                                                                                                                                                                                                        | <b>Facsimile</b> _____ <b>Phone</b> _____                                                    |
|                                   | <b>PARTICULARS OF LAND SOLD:</b>                                                                                                                                                                                                                                                                       |                                                                                              |
|                                   | <b>Address:</b>                                                                                                                                                                                                                                                                                        | <b>213, 226 and 241 Sinnamon Road and 19 Koorlingal Drive, Jindalee 4074</b>                 |
| <b>NOTE 2<br/>SEE WARNING</b>     | <b>Present Use (if any)</b>                                                                                                                                                                                                                                                                            | <b>Retail shops and commercial</b>                                                           |
|                                   | <b>Description:</b>                                                                                                                                                                                                                                                                                    | <b>See Annexure "A"</b>                                                                      |
|                                   | <b>County</b>                                                                                                                                                                                                                                                                                          | _____ <b>Parish:</b> _____                                                                   |
|                                   | <b>Title Reference</b>                                                                                                                                                                                                                                                                                 | _____                                                                                        |
|                                   | <b>Area:</b>                                                                                                                                                                                                                                                                                           | _____ (more or less)                                                                         |
| <b>NOTE 3</b>                     | <b>Type of Holding:</b>                                                                                                                                                                                                                                                                                | _____ <b>Lease No:</b> _____                                                                 |
|                                   | <b>Local Government:</b>                                                                                                                                                                                                                                                                               | <b>Brisbane City Council</b>                                                                 |
|                                   | <b>IMPROVEMENTS INCLUDED IN SALE:</b>                                                                                                                                                                                                                                                                  |                                                                                              |
| <b>NOTE 4</b>                     | <b>Nature of Buildings:</b>                                                                                                                                                                                                                                                                            | <b>Retail and Commercial</b>                                                                 |
|                                   | 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 televisions or satellite antennae or dishes in-ground shrubs and all fixtures as inspected by the Purchaser. |                                                                                              |
|                                   | <b>Exclusions:</b>                                                                                                                                                                                                                                                                                     | <b>Tenants' fixtures and fittings</b>                                                        |
|                                   | <b>OTHER CHATTELS INCLUDED IN SALE:</b>                                                                                                                                                                                                                                                                | _____                                                                                        |
|                                   | (Attach Inventory if insufficient space)                                                                                                                                                                                                                                                               |                                                                                              |
|                                   | <b>THE LAND IS SOLD AS:</b>                                                                                                                                                                                                                                                                            | <b>Freehold (subject to the reservations exceptions and conditions in the deed of grant)</b> |
|                                   | (Cross out that which does not apply)                                                                                                                                                                                                                                                                  | <b>Leasehold (subject to the conditions of the Crown leasehold title)</b>                    |
|                                   | <b>ENCUMBRANCES: (If the Property is sold free from Encumbrances, insert "Nil". If the Property is sold subject to Encumbrances they must be specifically described in this Item.) See Annexure "A" - Leases and Easements</b>                                                                         |                                                                                              |
|                                   | _____                                                                                                                                                                                                                                                                                                  |                                                                                              |
| <b>NOTE 5</b>                     | <b>LEASES AND SERVICE CONTRACTS: See Lease Schedule and Service Contract Schedule</b>                                                                                                                                                                                                                  |                                                                                              |
|                                   | <b>PURCHASE PRICE:</b>                                                                                                                                                                                                                                                                                 | <b>\$ 33,500,000.00</b>                                                                      |
| <b>CLAUSE 3</b>                   | <b>DEPOSIT:</b>                                                                                                                                                                                                                                                                                        | <b>\$ 3,500,000.00 paid as Option fee</b>                                                    |
| <b>CLAUSE 11<br/>&amp; NOTE 6</b> | <b>DEFAULT INTEREST:</b>                                                                                                                                                                                                                                                                               | _____ % simple interest per annum                                                            |
| <b>CLAUSE 20.1</b>                | <b>DATE FOR COMPLETION:</b>                                                                                                                                                                                                                                                                            | <b>14 days from the Contract Date</b>                                                        |
| <b>CLAUSE 20.1.2</b>              | <b>CITY OR TOWN FOR COMPLETION:</b>                                                                                                                                                                                                                                                                    | <b>Brisbane</b>                                                                              |



## Finance

NOTE 7  
CLAUSE 31**SUBJECT TO FINANCE:**

IF THIS CONTRACT IS TO BE SUBJECT TO FINANCE THEN ITEMS S, T AND U MUST BE COMPLETED IN EVERY RESPECT AND ITEM V MUST BE DELETED AND INITIALLED.

**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.

LENDER OR CLASS OF LENDER: \_\_\_\_\_

THE APPROVAL DATE: \_\_\_\_\_

AMOUNT OF LOAN: \$ \_\_\_\_\_

THIS CONTRACT IS NOT TO BE SUBJECT TO FINANCE AND CLAUSE 31 OF THE STANDARD COMMERCIAL CONDITIONS DOES NOT APPLY.

## GST Table

GST1

**Going Concern:**

If 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.

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:**

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

Mark 1 box only

Yes ☐

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

No ☐

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

Does the Purchase Price include GST?

If neither box is marked or if both boxes are marked, clause 11.4 (Purchase Price Includes GST) applies.

|                |                                                 |                                                                                                                                                                                                                                                        |          |         |       |       |          |      |       |       |          |      |       |       |
|----------------|-------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------|---------|-------|-------|----------|------|-------|-------|----------|------|-------|-------|
| <b>LEASE 1</b> | <b>Name of Tenant:</b>                          | <u>See Annexure "B"</u>                                                                                                                                                                                                                                |          |         |       |       |          |      |       |       |          |      |       |       |
|                | <b>Use:</b>                                     | _____                                                                                                                                                                                                                                                  |          |         |       |       |          |      |       |       |          |      |       |       |
|                | <b>Location/Tenancy No.:</b>                    | _____                                                                                                                                                                                                                                                  |          |         |       |       |          |      |       |       |          |      |       |       |
|                | <b>Area of Tenancy (m<sup>2</sup> approx.):</b> | _____                                                                                                                                                                                                                                                  |          |         |       |       |          |      |       |       |          |      |       |       |
|                | <b>Current Rental per Annum:</b>                | \$ _____                                                                                                                                                                                                                                               |          |         |       |       |          |      |       |       |          |      |       |       |
|                | <b>Current Lease Commencement Date:</b>         | _____                                                                                                                                                                                                                                                  |          |         |       |       |          |      |       |       |          |      |       |       |
|                | <b>Current Lease Term:</b>                      | _____                                                                                                                                                                                                                                                  |          |         |       |       |          |      |       |       |          |      |       |       |
|                | <b>Remaining Options:</b>                       | <table border="0"> <tr> <td>Option 1</td> <td>Term</td> <td>_____</td> <td>years</td> </tr> <tr> <td>Option 2</td> <td>Term</td> <td>_____</td> <td>years</td> </tr> <tr> <td>Option 3</td> <td>Term</td> <td>_____</td> <td>years</td> </tr> </table> | Option 1 | Term    | _____ | years | Option 2 | Term | _____ | years | Option 3 | Term | _____ | years |
| Option 1       | Term                                            | _____                                                                                                                                                                                                                                                  | years    |         |       |       |          |      |       |       |          |      |       |       |
| Option 2       | Term                                            | _____                                                                                                                                                                                                                                                  | years    |         |       |       |          |      |       |       |          |      |       |       |
| Option 3       | Term                                            | _____                                                                                                                                                                                                                                                  | years    |         |       |       |          |      |       |       |          |      |       |       |
|                | <b>Tenant Car Park:</b>                         | <table border="0"> <tr> <td>No.</td> <td>Rate \$</td> <td>_____</td> <td>per</td> </tr> </table>                                                                                                                                                       | No.      | Rate \$ | _____ | per   |          |      |       |       |          |      |       |       |
| No.            | Rate \$                                         | _____                                                                                                                                                                                                                                                  | per      |         |       |       |          |      |       |       |          |      |       |       |

**LEASE 2**

Name of Tenant: \_\_\_\_\_

Use: \_\_\_\_\_

Location/Tenancy No.: \_\_\_\_\_

Area of Tenancy (m<sup>2</sup> approx.): \_\_\_\_\_

Current Rental per Annum: \$ \_\_\_\_\_

Current Lease Commencement Date: \_\_\_\_\_

Current Lease Term: \_\_\_\_\_

Remaining Options:

|          |      |       |       |
|----------|------|-------|-------|
| Option 1 | Term | _____ | years |
| Option 2 | Term | _____ | years |
| Option 3 | Term | _____ | years |

Tenant Car Park:

|     |      |          |     |
|-----|------|----------|-----|
| No. | Rate | \$ _____ | per |
|-----|------|----------|-----|

**See Clause 32 of Standard Commercial Conditions**

|                   |                     |                    |
|-------------------|---------------------|--------------------|
| <b>CONTRACT 1</b> | Service Contractor: | See Annexure "C"   |
|                   | Service Performed:  |                    |
|                   | Cost:               | \$ _____ per _____ |
| <b>CONTRACT 2</b> | Service Contractor: |                    |
|                   | Service Performed:  |                    |
|                   | Cost:               | \$ _____ per _____ |
| <b>CONTRACT 3</b> | Service Contractor: |                    |
|                   | Service Performed:  |                    |
|                   | Cost:               | \$ _____ per _____ |
| <b>CONTRACT 4</b> | Service Contractor: |                    |
|                   | Service Performed:  |                    |
|                   | Cost:               | \$ _____ per _____ |
| <b>CONTRACT 5</b> | Service Contractor: |                    |
|                   | Service Performed:  |                    |
|                   | Cost:               | \$ _____ per _____ |

**Second Edition (GST reprint)**

**SPECIAL CONDITIONS**

See Annexure "D"

The approval of the Queensland Law Society Incorporated and the adoption by The Real Estate Institute of Queensland Limited does not extend to any alterations to the printed text of the Standard Commercial Conditions or to any Special Conditions of this Contract. The Standard Commercial Conditions 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 Conditions is altered, or Special Conditions are included, it is recommended that the Vendor and the Purchaser consult their respective legal advisers prior to signing this Contract.

|         |           |
|---------|-----------|
| Witness | Vendor    |
| Witness | Purchaser |

**STAKEHOLDER'S ACKNOWLEDGMENT**

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

|             |
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| Stakeholder |
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This form was adopted by The Real Estate Institute of Queensland Limited  
April 2001

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| Licence No. |
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This form was approved by the Queensland Law Society Incorporated April 2001

**ANNEXURE "A"**

| <b>Street Address</b> | <b>Lot and Plan Description</b> | <b>Title Reference</b> | <b>Property Classification</b>                                             | <b>Title Encumbrances</b>                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------|---------------------------------|------------------------|----------------------------------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 19 Koorinal Drive     | Lot 7 on RP843729               | 18357013               | "Multi-Purposes Centre MP4 – Convenience Centre" (Brisbane City Plan 2000) | <ul style="list-style-type: none"> <li>- Easement in Gross No. 601488665 (19 Jan 1971) burdening the Land to the Brisbane City Council over Easement A on RP126866</li> <li>- Easement No. 601488666 (18 Feb 1992) burdening the Land to Lot 6 on RP800033 over Easement C on RP843729</li> <li>- Easement in Gross No. 601541538 (18 Feb 1992) burdening the Land to the Brisbane City Council over Easement C on RP843729</li> </ul> |
| 213 Sinnamon Road     | Lot 9 on SP119619               | 50291239               | "Sports and Recreation Area" (Brisbane City Plan 2000)                     | Leases, Transfer of easements and Mortgage only;                                                                                                                                                                                                                                                                                                                                                                                       |
| 225 Sinnamon Road     | Lot 6 on RP800033               | 18087138               | "Sports and Recreation Area" (Brisbane City Plan 2000)                     | <ul style="list-style-type: none"> <li>- Easement in Gross No. 6014886656 burdening the Land to Brisbane City Council over Easement A on RP126866</li> <li>- Easement No. 6014 8866 (18 February 1992) benefiting the Land to Brisbane City Council over Easement B on RP843729</li> <li>- Easement in Gross No. 601488667 (18 February 1992) burdening the Land to Brisbane City Council over Easement B on RP843729</li> </ul>       |
| 241 Sinnamon Road     | Lot 1 on RP121449               | 14582009               | "Multi-Purposes Centre MP4 – Convenience Centre" (Brisbane City Plan 2000) | <ul style="list-style-type: none"> <li>- Easement in Gross No. 601488665 (19 January 1971) burdening the Land to Brisbane City Council over Easement A on RP121449</li> </ul>                                                                                                                                                                                                                                                          |

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[illegible]B

Amble Health Club and Senior Center 225 Shawan Rd - Teeny Records

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Note: The net payable by/for/under "Members' Savings" is based on 20% of the amount annual turnover. The figure listed herein is calculated on the projected per annum average compared to previous years.

Model Site 241 Stranmon Rd - Terney School's



|      |          |          |        |         |   |     |    |            |    |           |    |            |         |     |
|------|----------|----------|--------|---------|---|-----|----|------------|----|-----------|----|------------|---------|-----|
| 2370 | \$ 66.42 | \$ 10.08 | 1-4-08 | 25-5-08 | 1 | Net | \$ | 166,000.00 | \$ | 23,898.09 | \$ | 141,091.91 | 25-5-08 | Net |
|------|----------|----------|--------|---------|---|-----|----|------------|----|-----------|----|------------|---------|-----|

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## **ANNEXURE "D"**

**THIS IS ANNEXURE "D" TO A CONTRACT OF SALE MADE BETWEEN BOMAN PROPERTIES PTY LTD ACN 010 068 818 AS TRUSTEE AS VENDOR AND CLIPSE PTY LTD ACN 140 619 457 AS TRUSTEE FOR THE JINDALEE UNIT TRUST AS PURCHASER DATED THE                      DAY OF                      , 20**

---

1. The Vendor shall on completion deliver to the Purchaser all of its records necessary for the future administration of the Property and buildings on the Property. In particular, the Vendor must provide a copy of:
    - (a) its insurance cover for the building and any landlord's fixtures, fittings and equipment;
    - (b) a copy of any tenants' policies which name the landlord either as joint owner or as an interested party;
    - (c) a notice to each insurer of the tenant's policy confirming the assignment of the landlord's interest in those policies;
    - (d) details of any claims on a policy which may adversely impact upon the Purchaser's interests.
  2. Standard Condition 32.3 is deleted and does not apply to this contract.
  3. Standard Condition 17.1 is deleted and in lieu the following applies:

"The Property shall remain at the risk of the Vendor until completion of the Contract. The Vendor while continuing in possession will use the Property with reasonable care."
  4. **REGISTRATION OF TRANSFERS AND ASSIGNMENTS**
    - 4.1 Where any Lease has been the subject of a transfer, amendment or has expired, then prior to Settlement the Vendor must cause such transfer, amendment or request to remove expired lease to be lodged and registered with the Department of Natural Resources and Water. Where at the date of Settlement such registration remains outstanding, either as a result of not having been lodged or having been lodged but not registered, then the Purchaser may at its election delay completion until registration has been effected. This Special Condition does not apply to Leases of three years or less which the Tenant has elected not to be registered and notice of which has been given to the Purchaser.
  5. **INDEMNITY**
    - 5.1 The Vendor warrants that as the Date of Completion there is no outstanding litigation with a Tenant or Landlord's breach or alleged breach of the *Retail Shop Leases Act*. The
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Vendor

Purchaser

Vendor indemnifies and agrees to keep the Purchaser indemnified for any claim, loss, cost or demand which may arise as a result of a breach of this warranty.

## **6. ADJUSTMENTS ON LEASE PAYMENTS**

**6.1** Lease Payments are to be adjusted between the Vendor and the Purchaser on Completion on the basis set out in this Special Condition 6:

- (a) the Vendor is entitled to all rent and outgoings ("Lease Payments") referable to the period up to and including the Date for Completion and the Purchaser is entitled to all Lease Payments referable to the period commencing the day after the Date for Completion;
- (b) Lease Payments must be calculated and adjusted on a daily basis for the relevant period;
- (c) the Vendor must pay to the Purchaser on Completion the Purchaser's share of all prepaid Lease Payments referable to the period commencing the day after the Date for Completion;
- (d) the Purchaser is not entitled to adjust against the Vendor for any Lease Payments payable but unpaid for any period after the Date for Completion;
- (e) for the avoidance of doubt the parties confirm that subject only to Special Condition 6.1(d), a Lease Payment is referable to a period regardless of when it is actually paid or received if:
  - (i) in the case of Rent, it is a payment in respect of rent or a licence or occupation fee for that period; and
  - (ii) in the case of an outgoings contribution, it is a payment in respect of Outgoings which accrue or have accrued during that period (and for the purposes of this Contract, outgoings are taken to accrue from day to day irrespective of the actual period to which they relate); and
- (f) the Vendor is entitled to apply any moneys received from a Tenant prior to Completion as follows:
  - (i) firstly, in satisfaction of any arrears of any Lease Payment for periods prior to the Date for Completion; and
  - (ii) secondly, in payment of any Lease Payment payable under the relevant Lease for a period after Completion (subject to the balance of the Purchase Price being adjusted accordingly).

**6.2** If a Tenant has not made a Lease Payment for a period preceding or current at the Date for Completion, then:

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Vendor

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Purchaser

- (a) the parties intend that this Special Condition 6.2 applies despite Section 117 of the *Property Law Act 1974*;
- (b) no adjustment is to be made on Completion in respect of the outstanding amounts;
- (c) the Purchaser assigns to the Vendor the right after Completion to recover all amounts due from any Tenant up to and including the Date for Completion and the Vendor is entitled to recover such amounts from any such Tenant;
- (d) the right to recover those amounts does not pass to the Purchaser;
- (e) after the Date for Completion, if the Vendor considers it necessary or desirable the Vendor may in the Vendor's own name bring, make or take any claim, demand, proceeding or action against any Tenant or former tenant or guarantor for recovery of any moneys referred to in this Special Condition 6.2, and any moneys so recovered will be the sole property of the Vendor;
- (f) if the Vendor asks for the Purchaser to do so and pays the Purchaser's reasonable expenses the Purchaser must do everything reasonably necessary to help the Vendor recover those amounts;
- (g) the Purchaser undertakes to pay promptly to the Vendor any amount paid to it by the Tenant referable to the period up to and including the Date for Completion; and
- (h) the Vendor undertakes to pay promptly to the Purchaser any amount paid to it by the Tenant referable to the period from but excluding the Date for Completion.

**6.3** The parties agree to co-operate, act promptly and reasonably and to provide such financial and other information possessed by each of them to the other as is necessary to enable Lease Payments to be reassessed and apportioned after Completion as and when the case requires.

**6.4** Despite the preceding parts of this Special Condition 6, if the parties agree Lease Payments and Outgoings may be apportioned on Completion on the basis of reasonable estimates of such amounts by the Vendor or any managing agent of the Vendor, in which case no further adjustment is to be made between the Vendor and the Purchaser following Completion.

## **7. BANK GUARANTEES AND SECURITY DEPOSITS**

**7.1** The Vendor must, at Completion, deliver to the Purchaser any Bank Guarantees held by the Vendor except any which:

- (a) relate to a Lease which expires or is terminated on or before Completion; or
- (b) which has been called upon by the Vendor prior to Completion.

- 7.2** Nothing in this Contract prevents the Vendor from making a demand on a Bank Guarantee before Completion if it is entitled or required to do so under the provisions of the relevant Lease.
- 7.3** If any Lease Guarantee is in a form other than cash (the "Security Deposit") then if:
- (a) the Lease Guarantee is assignable, the Vendor assigns from Completion all its rights and interest in the Lease Guarantee to the Purchaser;
  - (b) the Lease Guarantee is not assignable, the Vendor will (at the reasonable cost of the Purchaser) hold the Lease Guarantee on trust for the Purchaser and will comply with any reasonable direction until a new Lease Guarantee has been issued in favour of the Purchaser. The Purchaser will, from Completion, use its best endeavours to have the Tenant provide a new Lease Guarantee issued in favour of the Purchaser.
- 7.4** Where a Lessee has provided a Lease Guarantee in the form of a Security Deposit, the Vendor will on Completion release the Security Deposit to the Purchaser. The Purchaser agrees to hold such Security Deposits in accordance with the terms of the relevant Lease. Alternatively, the Vendor may elect to deduct from the balance of the Purchase Price payable at Completion, an amount equal to the aggregate of all the Security Deposits held by the Vendor.
- 7.5** Prior to Completion the Vendor may, after giving notice to the Purchaser, deduct, appropriate, refund, apply or release any Lease Guarantee if it becomes entitled or required to do so under the provisions of the Lease.
- 7.6** For the purposes of clauses 7.1(a) and 7.1(b), where the Vendor has made a claim on the whole or part of a Bank Guarantee or Security deposit at any time up to and including Completion the Vendor shall only be obliged to assign such part of the Bank Guarantee it has not made claim for or release such part of the Security Deposit that the Vendor then holds as security.
- 7.7** From Completion, the Purchaser must hold each Security Deposit in accordance with the relevant terms of each Lease.
- 7.8** The Purchaser indemnifies the Vendor from and against any claims, actions or demands made by any person in respect of any amount held, deducted, appropriated or applied by the Purchaser or any successor in title or assign from any Bank Guarantee or Security Deposit.
- 8. SERVICE CONTRACTS**
- 8.1** With effect from Completion, the Vendor assigns to the Purchaser, for its benefit absolutely, any assignable Service Contracts which are current at Completion.
- 8.2** The Purchaser acknowledges that some of the Service Contracts are casual or periodic arrangements only and that the Vendor may terminate any Service Contract before Completion.

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Vendor

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Purchaser

- 8.3** If the consent of any person under a Service Contract cannot be obtained for any reason, the Vendor must hold the benefit of each such Service Contract on behalf of the Purchaser for the balance of its duration (subject to the payment by the Purchaser of any money owing under the Service Contract after Completion).
- 8.4** The Purchaser must indemnify the Vendor from and against all claims, actions or demands which the Vendor may suffer or incur as a direct or indirect consequence of the Purchaser or any successor in title, assignee, transferee, employee, officer or other person authorised by it not complying with the provisions of the Service Contracts.
- 8.5** The Vendor will pay all moneys due under all such Service Contracts up to and including Completion. The Purchaser shall pay all moneys due under all such Service Contracts (except those that may be terminated by the Vendor) as from Completion and moneys due under Service Contracts shall if necessary be apportioned between the Vendor and the Purchaser on Completion.

## **9. RELOCATION NOTICE**

- 9.1** Where the Vendor or any related entity to the Vendor, its directors and shareholders is a tenant of the Property and the Purchaser gives a notice to relocate or terminate the Lease pursuant to Division 9 of the *Retail Shop Leases Act*, the Lease or otherwise, the Vendor covenants to cause the tenant to waive any right, claim or entitlement to compensation for such relocation or termination or in the alternative reduce the Purchase Price by the quantum of any sum to which the tenant would become entitled.
- 9.2** Where compensation has not been calculated or is not capable of calculation at least seven (7) days prior to the Settlement Date, the parties must seek to agree on a sum or failing which the calculation must be referred to a retail shop lease valuer of at least five (5) years experience agreed upon between the parties and failing agreement as nominated by the President for the time being of the Property Institute of Australia (Queensland Branch) whose decision will be final and binding on the parties. The sum of compensation agreed between the parties or as assessed by the valuer shall be deducted from the Purchase Price and paid to the tenant.
- 9.3** The provisions of this clause do not merge on Completion and remain binding upon each of the Vendor and Purchaser.

## **10. CONTEMPORANEOUS CONTRACT**

- 10.1** Completion of this Contract is subject to and conditional upon settlement of a Contract between the parties for the sale and purchase of properties at 25, 27, 29, 31 and 33 Kooringal Drive, Jindalee.

Standard Commercial  
Conditions

For Commercial Land and Buildings

**1 Interpretation****1.1** In this Contract, unless inconsistent with the context or subject matter:

- (a) "Agent" includes auctioneer;
- (b) "Bond" includes any security for payment of Rent or performance of any obligation pursuant to any Lease;
- (c) "Business Day" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in the city or town named in Item R;
- (d) "Contract Rate" means the rate of interest fixed from time to time by the Queensland Law Society Incorporated (by resolution of its Council) for the purposes of clause 11;
- (e) "Date for Completion" means the date stated in Item or such other date as may be agreed in writing by the parties or fixed pursuant to the conditions of this Contract;
- (f) "Deposit" means the sum stated in Item O;
- (g) "Encumbrances" includes but is not limited to encumbrances which are not registered and an encumbrance created or arising under or by virtue of a statute;
- (h) "Enterprise" means the enterprise (as the term is defined in the GST Act) carried on using the Property;
- (i) "Financial Institution" means bank, building society credit union;
- (j) "GST" means the goods and services tax under the GST Act;
- (k) "GST Act" means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
- (l) "Guarantee" means a guarantee or an undertaking in relation to any tenant or occupier under a Lease;
- (m) "ITAA" means the *Income Tax Assessment Act 1936* and the *Income Tax Assessment Act 1997*;
- (n) "Item" means an item of particulars in the Items Schedule;
- (o) "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 or combinations necessary for the purposes of fastening or unfastening any such lock;
- (p) "Land" means the land described in Item H;
- (q) "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;
- (r) "Local Government" means the relevant local government (and includes the Brisbane City Council);
- (s) "Property" means the property listed in Items H, I and J and includes any part of the Property;
- (t) "Purchase Price" means the sum stated in Item N;
- (u) "Purchaser" means the party named in Item E;
- (v) "Rent" means base rent, turnover rent, percentage rent, contributions to outgoings and any money payable by a tenant to the Vendor;

(w) "Service Contract" for the purposes of clause 32 of this Contract means any contract between the Vendor 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 Contract Schedule and "Service Contractor" means any party performing those services;

(x) "Solicitor" means a solicitor currently entitled to practice in Australia whether acting as principal or agent;

(y) "Stakeholder" means the person named in Item G or, where no person is named in Item G, the Vendor's Agent;

(z) "Vendor" means the party named in Item C; and

(aa) "Vendor's Agent" means the person named in Item B.

**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.

**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, bylaws 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 Items Schedule are references to clauses or notes, as the case may be, in the Standard Commercial Conditions.

**1.7** This Contract shall be governed by the laws of Queensland.

**2 Headings and Notes**

Headings and notes have been included for ease of reference and guidance and this Contract shall be construed without reference to them.

**3 Deposit**

**3.1** The Deposit shall be paid by the Purchaser to the Stakeholder immediately upon the formation of this Contract.

**3.2** If the Purchaser:

(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 Purchaser shall be in substantial breach of this Contract and the Vendor 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 Vendor may have at law or in equity.

**3.4** The Deposit shall be retained by the Stakeholder until completion or earlier termination of this Contract whereupon the Stakeholder 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, 31.1, 31.5, 32.2 or 32.3(2), the Deposit and other moneys paid under this Contract shall be refunded to the Purchaser by the Vendor or the Stakeholder as the case may be but without interest, costs or damages and the same shall be accepted by the Purchaser in full and final satisfaction of all claims.

#### 4 Completion and Possession

The balance of the Purchase Price shall be paid on the Date for Completion in exchange for:

- (a) possession of the Property (such possession to be vacant except for any Lease);
- NOTES**
- (b) a properly executed transfer for the Land in favour of the Purchaser 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 *Stamp Act* 1894, 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 Vendor 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 16.4;
- (g) all other instruments (which shall be duly stamped) in the possession or control of the Vendor 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 Vendor evidencing estates and interests affecting the Property but which are not exclusive to the Property;
- (i) the Certificate of Classification pursuant to the *Standard Building Regulation* 1993 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 Vendor; and
- (k) all documents in the possession or control of the Vendor which the Purchaser would reasonably require to enable the Purchaser to manage the Property and to prepare returns under the ITAA.

#### 5 Keys

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

- (a) to the Purchaser, if the Purchaser is present personally at completion;
- (b) to the Purchaser's solicitor at completion, if the Purchaser is not present personally;
- (c) to the Vendor's Agent at the address shown in Item B, if neither the Purchaser nor any solicitor acting for the Purchaser is present personally at completion;
- (d) to and left 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 completion, the Vendor 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 Stakeholder to invest the Deposit then (where the Stakeholder is lawfully able) the Stakeholder shall invest the Deposit with any Financial Institution permitted by law for the investment of trust monies until the Date for Completion.

6.2 If this Contract is completed all interest accruing on the investment of the Deposit shall be shared equally between the Vendor and the Purchaser. 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 Stakeholder 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 Stakeholder within 4 Business Days following the date of this Contract.

6.5 The parties authorised the Stakeholder 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 Stakeholder against any taxation assessed in respect of such interest.

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

#### 7 Vendor's Statement

7.1 The Purchaser is not entitled to deliver to the Vendor requisitions or enquiries on or to the Vendor's title to the Property.

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

- (a) the Vendor has free and unqualified capacity and power to contract and to complete this Contract;
- (b) the Vendor is not under any legal disability which affects the Vendor's capacity to contract and to complete this Contract; and
- (c) if the Vendor is a trustee, the Vendor 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 completion of this Contract.

7.3 The Vendor states that, except as disclosed in this Contract, each of the following statements will be accurate at the Date for Completion:

- (a) there is no current litigation by any person claiming an estate or interest in the Property;
- (b) there is no unsatisfied judgment, order or writ of execution which affects 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 Vendor 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 Vendor 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 Vendor is a natural person, the Vendor is not a bankrupt nor has the Vendor signed any authority under section 188 of the *Bankruptcy Act* 1966;
- (h) if the Vendor is a corporation within the meaning of the *Corporations Law* or any similar legislation applicable in the Vendor's place of incorporation:
  - (i) the Vendor is not in liquidation;

- (ii) no action has been taken by or against the Vendor which could lead to the winding up of the Vendor;
  - (iii) the Vendor is not under official management;
  - (iv) an administrator, controller or managing controller has not been appointed to the Vendor or in respect of the whole or any part of the Property; and
  - (v) a compromise or arrangement has not been proposed between the Vendor and its members or creditors nor agreed to by the members or creditors nor sanctioned by a Court; and
  - (i) the Vendor 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 Purchaser may terminate this Contract by notice in writing to the Vendor.
- 7.5** If this Contract is terminated pursuant to clause 7.4, the Deposit and other moneys paid under this Contract shall be refunded to the Purchaser by the Vendor or the Stakeholder as the case may be and the Vendor shall be liable by way of damages as compensation for the loss suffered by the Purchaser 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 Vendor warrants that, except as disclosed in this Contract or a notice given by the Vendor to the Purchaser under the *Environmental Protection Act 1994* ("EPA"), at the date of this Contract:
- (a) there is no outstanding obligation on the Vendor to give notice to the administering authority under BPA of a notifiable activity being conducted on the Land; and
  - (b) the Vendor 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 Vendor breaches a warranty in clause 7.6(1), the Purchaser may:
- (a) terminate this Contract by notice in writing to the Vendor given 14 days after the date of this Contract; or
  - (b) complete this Contract and claim compensation, but only if the Purchaser claims it in writing before completion of this Contract.
- 7.7** If requested by the Purchaser, the Vendor within 14 days of such request shall:
- (a) produce to the Purchaser all unregistered documents relating to the Property and full and proper particulars of all unregistered dealings that so relate; and
  - (b) deliver to the Purchaser photocopies of such documents or dealings (if the dealings are in writing) certified by the Vendor or the Vendor's solicitor as being true copies.
- 8 Errors and Misdemeanors**
- 8.1** If there is any immaterial mistake or error in the description or particulars of the Property or as to title, the Purchaser shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Date for Completion) as the case may require. The Purchaser shall not be entitled to delay completion 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 Purchaser does not exercise any right which the Purchaser has at law to terminate this Contract, the Purchaser shall be entitled to such compensation (if demanded in writing on or before the Date for Completion) as the case may require. The Purchaser shall not

be entitled to delay completion or to withhold any part of the Purchase Price by reason of any such claim for compensation.

## 9 Survey and Inspection

- 9.1** The Purchaser 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 Purchaser shall not be entitled to terminate this Contract but shall be entitled to such compensation (if demanded in writing on or before the Date for Completion) as the case may require. The Purchaser shall not be entitled to delay completion 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 Purchaser shall be entitled to elect by notice in writing to the Vendor given on or before the Date for Completion either:
- (a) to terminate this Contract; or
  - (b) to complete this Contract with compensation, in which event the Purchaser shall be entitled to such compensation as the case may require and shall not be entitled to delay completion 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 Purchaser with the Purchaser's obligations under or by virtue of this Contract the Vendor shall as required do all acts and execute all documents necessary for the purpose of completing the sale and ensuring that the Purchaser obtains a good and valid title to the Property but all transfer documents, any declaration required pursuant to clause 4(c), and all instruments or declarations required pursuant to clause 4(d) shall be prepared by and at the expense of the Purchaser and delivered to the Vendor within a reasonable time prior to the Date for Completion.
- 10.2** If so requested by the Purchaser, the Vendor shall deliver to the Purchaser, prior to the Date for Completion, photocopies of the documents executed by the Vendor.
- 10.3** After execution of the transfer, if so requested by the Purchaser and upon payment of the usual production fee by the Purchaser, the Vendor shall cause the transfer to be tendered to the Office of State Revenue for stamping, together with any declaration referred to in clause 4(c) and thereupon the Vendor shall be deemed to have complied with the Vendor's obligations under clause 4(c).
- 10.4** 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 Vendor shall not be obliged to deliver it to the Purchaser but shall enter into such reasonable covenants with the Purchaser as the Purchaser may require for production of the instrument of title.
- 10.5** If the instrument of title is partially cancelled the Vendor shall not be obliged to produce a separate instrument of title on completion.
- 10.6** Where either clause 10.4 or 10.5 apply, the Purchaser shall bear the cost of any new instrument of title relating to the Land.
- 11 Interest on Late Payments**
- 11.1** Without derogating from the strict effect of clauses 3, 13 and 26 if any money (including the Deposit) payable under or by virtue of this Contract is not paid when payable such money shall bear interest from the due date for payment to the date of payment, both inclusive, at the rate stated in Item P and if no other rate is so stated at the Contract Rate (at the date the money became payable) per annum simple interest which interest shall be paid contemporaneously with the balance of the Purchase Price.



11.2 Any judgment for any such money shall likewise bear interest from the date of judgment to the date of payment, both inclusive.

## 12 Dividing Fences

12.1 Despite anything in the *Dividing Fences Act 1953* to the contrary, the Vendor shall not be bound to contribute to the construction of any dividing fence between the Land and any adjoining land owned by the Vendor.

12.2 The Vendor states that at the date of this Contract there are no outstanding notices, orders or agreements with respect to the construction or repair of a dividing fence between the Land and any adjoining land under the *Dividing Fences Act 1953* or otherwise.

12.3 Any notice, order or agreement with respect to the construction or repair of a dividing fence between the Land and any adjoining land received given or made after the date of this Contract shall be fully complied with by the Purchaser.

12.4 Immediately upon receipt of a notice or order or the making of an agreement in accordance with clause 12.3, the Vendor shall give to the Purchaser a copy of the notice, order or agreement.

12.5 After the date of this Contract, the Vendor shall not without the prior written consent of the Purchaser give, seek or make any notice, order or agreement with respect to the construction or repair of any dividing fence between the Land and any adjoining land under the *Dividing Fences Act 1953* or otherwise.

## 13 Purchaser's Default

13.1 If the Purchaser:

- (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 Vendor may:

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

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

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

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

- (a) declare the Deposit (or so much of it as shall have been paid) forfeited and/or sue the Purchaser 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 Vendor from the Purchaser as liquidated damages; and in either case the Vendor may recover from the Purchaser as a liquidated debt the Deposit or any part of it which has not been paid by the Purchaser.

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

## 14 Particulars of Adjustable Items

14.1 Within a reasonable time after written request by the Purchaser prior to the Date for Completion, the Vendor shall deliver to the Purchaser:

- (a) a written statement of all rates, taxes, outgoing, 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 Vendor becomes aware of any information at any time between the date of delivering any such statement and completion the effect of which is or may be to render such statement untrue in a material respect the Vendor shall immediately disclose that information to the Purchaser by notice in writing.

14.3 The Vendor warrants that every such statement shall be true at the Date for Completion.

## 15 Adjustments

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

15.2 The Purchaser shall pay or discharge all rates, taxes (including land tax) and other outgoing 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 outgoing shall be apportioned:

- (a) in the case of those paid by the Vendor, 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 Purchaser, at the expense of the Purchaser, 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 Vendor 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 ("the likely assessment");
- (d) the likely assessment shall then be apportioned.

- 15.5** Land tax shall be apportioned on the basis that, as at midnight on the previous 30th June, the Vendor owned no land other than the Vendor's interest in the Land and was a natural person resident in Queensland.
- 15.6** If at the date of possession there is not a separate unimproved value of the Land in effect under the *Valuation of Land Act* 1944, then land tax shall be apportioned on a deemed unimproved value which shall equal  $(A \times B) \div C$ , where *A* is the unimproved value in effect under the *Valuation of Land Act* 1944 for the parcel of which the Land forms part, *B* is the area of the Land and *C* is the area of that parcel.
- 15.7** Without derogating from the provisions of clause 15.1, if the Vendor is unable to obtain a certificate stating that the Land is not liable for land tax for the year current at the date of possession or any year or years up to and including 30th June immediately preceding the date of possession and the Commissioner of Land Tax specifies, in writing, to the Purchaser or the Purchaser's solicitor that (or anything to the effect that) it would be prudent to hold an amount of money until a certificate of clearance issues for those years, then, on or before the date of possession, the Vendor shall pay the amount ("retention amount") to a solicitor to be held as security for the payment of land tax for those years and shall procure and deliver to the Purchaser, on the date of possession, a written undertaking, addressed to the Purchaser by that solicitor, in or to the effect of the following form:
1. I/We acknowledge that the amount of \$..... (retention amount) has been paid to me/us under clause 15.7 of a Contract dated the ..... day of ..... 20.... between ..... as Vendor and you as the Purchaser for the sale of property situate at .....
  2. On instructions from the Vendor, I/we undertake to hold the retention amount, as solicitor/s for the Vendor, in my/our trust account either:
    - (a) to pay land tax up to and including the year 20.... under clause 15 of the Contract; or
    - (b) until such land tax has otherwise been paid by or on behalf of the Vendor.
  3. Except where I/we have made a payment pursuant to paragraph 2(a), I/we undertake to notify the Commissioner of Land Tax, immediately, that the retention amount has been paid to me/us for the purposes mentioned above.
  4. If the Commissioner of Land Tax requires me/us to pay the retention amount or any part of it to him I/we undertake to make the payment immediately.
  5. If:
    - (a) I/we do not pay land tax under paragraph 2(a);
    - (b) I/we are not required to make the payment referred to in paragraph 4;
    - (c) the Vendor does not otherwise pay or cause land tax to be paid up to and including the year referred to; and
    - (d) the land tax or some part of it is paid by you under some lawful requirement;
 I/we undertake to indemnify you out of the retention amount (up to but not exceeding the amount held by me/us for the time being upon this undertaking) for any land tax so paid by you (less any sum which you are liable to pay under clause 15.2).
- 15.8** The Vendor instructs any solicitor acting for the Vendor in the conveyance to give the undertaking referred to in clause 15.7 and agrees that the Vendor shall be bound, personally, by the terms of the undertaking and will not require the payment to the Vendor of the retention amount or any part of it until land tax has been paid up to and including the year referred to.

## 16 Rents and Profits Guarantees and Bonds

- 16.1** The rents and profits with respect to the Property shall benefit the Vendor up to and including the date of possession and thereafter shall benefit the Purchaser 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 completion but shall be recoverable by the Vendor 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 completion;
  - (c) all rents and profits payable in respect of any period current at the date of possession which have not been paid at the Date for Completion shall be apportioned when received by either party.
- 16.2** If on completion a deduction is made in respect of any Bond, the Purchaser shall following completion keep the Vendor indemnified in that respect.
- 16.3** The Vendor assigns to the Purchaser, subject to the completion of this Contract and with effect from the Date for Completion, 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 Vendor or any predecessors in title of the Vendor together with the benefit of all terms and conditions contained in the Service Contracts (subject to the consent of the Service Contractor) and the benefit of all Guarantees or Bonds capable of assignment held by the Vendor in respect of the Leases provided that all unpaid rents and profits in respect of any period terminating on or prior to the date of possession not apportioned upon completion shall not be assigned to the Purchaser but be recoverable by the Vendor and to that extent section 117 of the *Property Law Act* 1974 shall not apply. The Purchaser 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 Vendor to recover any unpaid rents and profits.
- 16.4** The Vendor shall prepare and execute appropriate notices to give effect to the assignments in clause 16.3.
- 17 Liability of Purchaser**
- 17.1** The Property shall be at the risk of the Vendor until 5:00pm on the next Business Day after the date of this Contract and then the risk shall pass to the Purchaser. The Vendor whilst continuing in possession will use the Property with reasonable care.
- 17.2** From the date of this Contract until completion, the Vendor shall use best endeavours to administer the Property and properly enforce the Leases in accordance with the usual practice of the Vendor. Should any matter or circumstance arise which may materially affect the proper performance of the terms of any Lease by any party, the Vendor shall immediately notify the Purchaser in writing.
- 17.3** In addition to the obligations contained in clause 17.2, the Vendor shall not without the prior written consent of the Purchaser 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 completion;
  - (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 Vendor shall permit the Purchaser or any person authorised by the Purchaser to enter the Property on the Date for Completion 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 Vendor shall permit any person authorised by the Purchaser 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 Date for Completion 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 Vendor or some other person a notice in writing pursuant to sections 21 and 22 of the *Building Act 1975* in respect of any building or structure on the Land and the notice is current at the Date for Completion the Purchaser may by notice in writing to the Vendor given on the Date for Completion terminate this Contract.

20.2 Except for any notice referred to in clause 20.1, 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 Vendor in a proper and workmanlike manner on or before the Date for Completion; or
- (b) if issued on or after the date of this Contract shall be fully complied with by the Purchaser who shall indemnify the Vendor in respect of the compliance with the notice or order.

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

## 21 Property Adversely Affected

21.1 If it is established that at the date of this Contract:

- (a) the use of the Property as described in Item H was not lawful under any town planning scheme;
- (b) the access to the Land is other than by way of an adjoining road dedicated for public use as a road or by way of a registered easement to a road dedicated for public use;
- (c) the Land was affected by a proposal of any competent authority for the re-alignment, widening, resiting or altering of the then level or direction of any road or railway abutting the Land;
- (d) any electricity, telephone, water supply, sewerage or drainage service to the Land which passes through other land is not protected by a registered easement or by statutory authority;

- (e) there is current in respect of the whole or part of the Land, a notice to treat or notice of intention to resume issued by a competent authority;
- (f) the Property is dedicated as a protected area of any class mentioned in section 14 of the *Nature Conservation Act 1992* or is affected by a conservation agreement or conservation plan pursuant to that Act;
- (g) there exists any claim for an interest in the Property by any Australian Aboriginal people pursuant to the *Aboriginal Land Act 1991*, the *Native Title Act 1993* (Cth) or the *Native Title (Queensland) Act 1993*; or
- (h) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List; and any such facts are not disclosed in this Contract the Purchaser may by notice in writing to the Vendor given on or before the Date for Completion terminate this Contract.

21.2 The Vendor authorises the Purchaser or the Purchaser's solicitor to inspect all records relating to the Property held by the Local Government or other body maintaining any such records and will if requested by the Purchaser sign an appropriate authority to the Local Government or other body for the purposes of this clause 21.

## 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 Vendor to the Purchaser shall be paid by the Purchaser and if not paid by the Purchaser may be paid by the Vendor and recovered from the Purchaser as a liquidated debt.

## 24 Merger

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

## 25 Time and Place for Completion

25.1 Completion shall be effected at such time and place as may be agreed upon by the parties. The time for completion shall be between the hours of 9:00am and 5:00pm on the Date for Completion. Despite any agreement by the parties as to a specific time for completion the provisions of clause 26 do not apply in respect of that time. In the absence of agreement as to place, completion shall be effected at:

- (a) the office of the solicitor for the Vendor in the city or town named in Item R; or
- (b) if the Vendor has no solicitor in that city or town the office of the solicitor for the Purchaser in the city or town named in Item R; or
- (c) in any case not provided for in clause 25.1(a) or clause 25.1(b) the appropriate office provided for by section 61(2)(c) of the *Property Law Act 1974*.

25.2 Despite clause 25.1 if a mortgage is to be discharged on completion the Vendor may by notice in writing to the Purchaser given not less than 2 Business Days prior to the Date for Completion require completion to take place at the office of the Vendor'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.

**25.3** If the Date for Completion falls on a Saturday, a Sunday or a public holiday in the place for completion then unless Item Q expressly designates such date a Saturday or Sunday or by the name of the public holiday, completion shall be effected:

- (a) on such other day as may be agreed by the parties; or
- (b) in default of agreement then on the Business Day next following the Date for Completion.

**26 Time of the Essence**

Except as otherwise provided in this Contract, time shall be deemed to be of the essence of the Contract.

**27 Notices, Communications, Authority, Directions, etc.**

**27.1** Any document and any notice in writing or other written communication required or desired to be given by one party to the other under or pursuant to this Contract or concerning this Contract may be:

- (a) given by the solicitor for the party intending to give it;
  - (b) given to the other party's solicitor;
- any such notice, if to the Vendor pursuant to clause 31 may be given to the Vendor's Agent as if the Vendor's Agent was a party and in the manner provided in this clause 27 for the giving of written notice by one party to the other party.

**27.2** Any such notice or other communication may be signed by the solicitor for the party on whose behalf it is to be given.

**27.3** Any such document, notice or other communication shall be deemed to have been given by one party to the other if:

- (a) delivered to the other party or the other party's solicitor personally;
- (b) left for the other party at that party's address for notices;
- (c) posted to the other party by pre-paid mail in an envelope addressed to that party at that party's address for notices;
- (d) left for the other party's solicitor at the usual or last known place of business of that solicitor;
- (e) posted to the other party's solicitor by prepaid mail in an envelope addressed to that solicitor at the usual or last known place of business of that solicitor.

**27.4** For the purposes of this clause 27, a party's address for notices shall in the case of the Vendor be the address specified in Item C and in the case of the Purchaser shall be the address specified in Item E.

**27.5** Any such document, notice or other communication so sent by post shall be deemed to have been given at the time when by the ordinary course of post it would have been delivered.

**27.6** Any copy of a document, notice in writing or other communication required or desired to be given by one party to the other party under or pursuant to this Contract or concerning this Contract may be given by transmitting a facsimile copy thereof via the telephone network to the address for notices of the other party or to the usual or last known place of business of that party's solicitor and shall be deemed to have been given (unless the contrary is shown) upon the date and at the time contained in any transmission confirmation report which contains the identification code of the person to whom it was intended to be transmitted and which indicates that the transmission was received without error.

**27.7** If a document or a copy of a document or a notice in writing or other written communication is given after 5:00pm on any Business Day and before 9:00am on the next following Business Day by one party or one party's solicitor to the other party or the other party's solicitor and its receipt is not acknowledged by the other party or the other party's solicitor during that period, it shall be deemed to have been given at 9:00am on that next following Business Day.

**27.8** As between the parties, a document or a copy of a document and a notice in writing or other written communication given by one party's solicitor to the other party or to the other party's solicitor shall be deemed to be given with the authority of the party whose solicitor gives it and, without limiting the generality of the foregoing, any such notice or other written communication of an agreement to vary the Date for Completion or the approval date stated in Item T shall be deemed to be given with the authority of the party whose solicitor gives it.

**27.9** Any money payable by the Purchaser or the Stakeholder to the Vendor shall be paid to the Vendor or as the Vendor's solicitor shall direct in writing.

**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 Vendor shall at the Vendor'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 Vendor fails to do so the Purchaser may do so and recover the costs of so doing from the Vendor as a liquidated debt.

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

**28.4** Any costs incurred by the Purchaser in removing that property or in making good any damage done to the improvements in such removal may be recovered by the Purchaser from the Vendor and the Vendor shall indemnify and hold indemnified the Purchaser from and against all claims, demands, actions, costs, judgments and expenses which the Purchaser 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 completion.

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

**30 Appointment of Agent**

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

**31 Finance Clause**

**31.1** If Items S, T and U are not deleted, this Contract is subject to the Purchaser obtaining from the lender or class of lender specified in Item S on or before the approval date specified in Item T approval of a loan not being less than the amount of loan specified in Item U on terms and conditions satisfactory to the Purchaser and if the Purchaser does not obtain such approval for any reason not being attributable to the Purchaser's own default, the Purchaser may terminate this Contract by notice in writing given to the Vendor.

- 31.2** The Purchaser shall take all steps reasonably necessary to obtain such approval, and the onus of establishing this shall be upon the Purchaser.
- 31.3** The Purchaser may waive the benefit of the condition contained in clause 31.1 by giving notice in writing to the Vendor within 2 Business Days from the approval date.
- 31.4** If the Purchaser obtains such approval the Purchaser shall give notice in writing of such approval to the Vendor promptly and in any event within 2 Business Days from the approval date.
- 31.5** If the Purchaser:
- neither terminates this Contract pursuant to clause 31.1 nor waives pursuant to clause 31.3 the benefit of the condition contained in clause 31.1; and
  - does not give notice pursuant to clause 31.4 that the Purchaser has obtained such approval;
- within 2 Business Days from the approval date then, instead of any other remedy available to the Vendor by reason of the failure of the Purchaser to fulfil the Purchaser's obligations under this clause 31 and despite any continuing right which the Purchaser may have to terminate this Contract under clause 31.1, the Vendor may at the Vendor's option, by notice in writing to the Purchaser (which notice shall specify that it is given pursuant to this clause 31.5) terminate this Contract.

## **32 Property Sold Subject to Leases and Service Contracts**

### **32.1 Vendor's Statement**

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

- the particulars in the Lease Schedule and the Service Contract Schedule are true and correct;
- that no circumstances exist as far as the Vendor is aware that would render any Lease liable to forfeiture nor has the Vendor agreed to a surrender of any Lease;
- that all Leases and Service Contracts have been disclosed to the Purchaser prior to execution of this Contract;
- the Vendor is not aware of any breach by the Vendor of any Lease or Service Contract;
- where any of the Leases are "existing retail shop leases" or "retail shop leases" within the meaning of section 5 of the *Retail Shop Leases Act 1994* ("Act"), the following further statements by the Vendor apply:
  - as far as the Vendor is aware the Vendor has in all respects complied with the Act in relation to the Leases;
  - no Lease is subject to an existing or renewed retail tenancy dispute within the meaning of the Act;
  - there are no mediation agreements, Retail Shop Leases Tribunal proceedings or Orders in existence in respect of any Lease;
  - no tenant has notified the Vendor requesting the right to renew any Leases for a further period;
  - no tenant has made a claim upon the Vendor to pay compensation for loss or damage suffered by the tenant by virtue of section 43 of the Act nor are there any circumstances existing to the Vendor'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 Purchaser may terminate this Contract by notice in writing to the Vendor.

## **32.3 Acceptance of Lease and Service Contract Terms**

- Within 7 days of the date of this Contract, the Vendor will deliver to the Purchaser or the Purchaser'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.
- If:
  - the Vendor does not deliver to the Purchaser or the Purchaser's solicitor true copies of all Leases and Service Contracts pursuant to clause 32.3(1); or
  - true copies of all Leases and Service Contracts have been delivered pursuant to clause 32.3(1) and the Purchaser is not satisfied with any of the terms and conditions of any Lease or Service Contract, then in the case of clause 32.3(2)(a) the Purchaser shall be entitled to terminate this Contract by notice in writing to the Vendor or in the case of clause 32.3(2)(b) the Purchaser shall be entitled to terminate this Contract by written notice to the Vendor within 7 days from the date upon which all Leases and Service Contracts have been delivered.
- If the Purchaser does not give written notice to the Vendor pursuant to clause 32.3(2)(a) or clause 32.3(2)(b), the Purchaser agrees to be bound by the terms and conditions of each Lease and Service Contract disclosed by the Vendor in the Lease Schedule and Service Contract Schedule from the Date for Completion as if the Purchaser were named as lessor in such Lease or as a contracting party in such Service Contract in substitution for the Vendor.
- With respect to Service Contracts, clause 32.3(3) will apply subject to the consent of the Service Contractor.
- The amounts paid or payable in respect of the Service Contracts shall be outgoing for the purposes of clause 15 and shall be apportioned accordingly.

## **33 Foreign Interests**

The Purchaser warrants that:

**Section 26A**

- the Purchaser is not a "foreign person" within the meaning of section 21A of the *Foreign Acquisitions and Takeovers Act 1975* as the meaning of that expression is extended by the operation of section 4(6) of that Act; and
- the Purchaser is not a "person to whom this section applies" within the meaning of that expression in section 26A of the *Foreign Acquisitions and Takeovers Act 1975* as that section is affected by section 5A of that Act.

## **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 Items Schedule and Notes**

The Items 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 Taxable Supply; or
- 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 Vendor's liability for GST on the Supply of the Property. The Purchaser is not obliged to pay any additional amount to the Vendor 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 Vendor's liability for GST on the Supply of the Property. The Purchaser must on the Date for Completion pay to the Vendor in addition to the Purchase Price an amount equivalent to the amount payable by the Vendor as GST on the Supply of the Property.

**34.6 Margin Scheme**

**Warning** The Vendor is warranting that the Margin Scheme can apply. If in doubt about using the Margin Scheme you should seek professional advice.

If this clause 34.6 applies:

- (a) the Purchase Price includes the Vendor's liability for GST on the Supply of the Property. The Purchaser is not obliged to pay any additional amount to the Vendor on account of GST on the Supply of the Property;
- (b) the Vendor:
  - (i) must apply the Margin Scheme to the Supply of the Property; and
  - (ii) warrants that the Margin Scheme is able to be applied;
- (c) if the Vendor breaches clause 34.6(b)(i) or its warranty under clause 34.6(b)(ii) then:
  - (i) the Purchaser may terminate this Contract if it becomes aware of the breach prior to the Date for Completion;
  - (ii) if the Purchaser does not terminate this Contract under clause 34.6(c)(i) or does not become aware of the breach until after the Date for Completion, it must pay to the Vendor an amount equal to the Input Tax Credit which the Purchaser will receive for GST payable for the Supply of the Property. Payment must be made when the Purchaser receives the benefit of the Input Tax Credit;
  - (iii) the Purchaser is entitled to compensation from the Vendor if there is a breach of clause 34.6(b).

**34.7 If the Supply is a Going Concern**

**Warning** The parties are providing certain warranties under this clause. If there is doubt about whether there is a Supply of a Going Concern you should seek professional advice.

If this clause 34.7 applies:

- (a) the Purchase Price does not include any amount for GST;
- (b) the parties agree the Supply of the Property is a Supply (or part of a Supply) of a Going Concern;
- (c) the Vendor warrants that:
  - (i) between the date of this Contract and the Date for Completion the Vendor will carry on the Enterprise; and
  - (ii) the Property (together with any other things that must be provided by the Vendor to the Purchaser at the Date for Completion under a related agreement for the same Supply) is all of the things necessary for the continued operation of the Enterprise;

- (d) the Purchaser warrants that at the Date for Completion it is Registered or Required to be Registered under the GST Act;
- (e) if either of the warranties in clause 34.7(c) is breached:
  - (i) the Purchaser may terminate this Contract if it becomes aware of the breach prior to the Date for Completion;
  - (ii) if the Purchaser does not terminate this Contract then, at the Date for Completion, the Purchaser must pay to the Vendor the amount payable by the Vendor as GST on the Supply of the Property;
  - (iii) if the Purchaser does not become aware of the breach until after the Date for Completion, it must pay to the Vendor an amount equal to the Input Tax Credit which the Purchaser will receive for GST payable in respect of the Supply of the Property. Payment must be made when the Purchaser receives the benefit of the Input Tax Credit;
  - (iv) the Purchaser is entitled to compensation from the Vendor if there is a breach of the warranty;
- (f) if the warranty in clause 34.7(d) is not correct the Purchaser must pay to the Vendor an amount equal to the GST payable in respect of the Supply of the Property. Payment must be made at the Date for Completion or, if completion has occurred, immediately on demand;
- (g) if for any reason other than a breach of a warranty by the Vendor or the Purchaser this transaction is not a Supply of a Going Concern, the Purchaser must pay to the Vendor the amount payable by the Vendor as GST on the Supply of the Property. Payment must be made at the Date for Completion or, if completion has occurred, immediately on demand.

**34.8 Adjustments**

Where this Contract requires an adjustment or apportionment of outgoings or rent and profits of the Property, that adjustment or apportionment must be made on the amount of the outgoing, rent or profit exclusive of GST.

**34.9 Tax Invoice**

Where GST is payable on the Supply of the Property, the Vendor must give to the Purchaser a Tax Invoice at the Date for Completion.

**34.10 No Merger**

To avoid doubt, the clauses in this clause 34 do not merge on completion.

**34.11 Remedies**

The remedies provided in clauses 34.6(c), 34.7(e) and 34.7(f) are in addition to any other remedies available to the aggrieved party.

## Notes and Warnings

**NB.** where any specific items are not required delete and initial

This form was adopted by The Real Estate Institute of Queensland Limited, April 2001

This form was approved by Queensland Law Society Incorporated, April 2001

**NOTE 1** Insert, in Item A, the date of signing by the last party to sign.

**NOTE 2** Describe, in Item H, the actual use presently being made of the Land and/or the improvements, e.g. commercial etc.

**WARNING** Refer to clause 21.1(a). Before this Contract is signed the Vendor should ensure that the present use described in Item H is a lawful use. For example, if a business is being carried on at a dwelling house in a residential zone, that use may be unlawful unless town planning consent exists. This warning applies whether the Purchaser intends to continue the use stated in Item H or not. If the use is not lawful or if there is a doubt about the use, this should be drawn to the Purchaser's attention and, if the Purchaser agrees, a special condition should be inserted in this Contract so as to modify or avoid the operation of clause 21.1(a).

**NOTE 3** If freehold, do not complete "Type of Holding" or "Lease No".

**NOTE 4** Describe in general terms, e.g. factory, warehouse etc.

**NOTE 5** Particulars should be inserted in the Lease Schedule and the Service Contract Schedule.

**NOTE 6** The Contract Rate is published each month in *Proctor*.

**NOTE 7** If this Contract is to be subject to finance then Items S, T and U must be completed in every respect and Item V must be deleted and initialled. If this Contract is not to be subject to finance Items S, T and U must be deleted and initialled and Item V shall apply. If known, state name of lender in Item S. If not known, state class (e.g. trading bank, savings bank, building society, insurance company, credit union, or other class of lending institution). Do not insert the words "finance company" but insert the specific name (or names) of a finance company. The date in Item T should be at least 14 days prior to the Date for Completion. The dollar amount of the loan being sought must be inserted in Item U. Do not insert the words "sufficient to complete this purchase" or words of a similar effect.

**NOTE 8** The Stakeholder should sign with his or her personal signature. If the Stakeholder is a partnership, a member of the partnership should sign in the partnership name. If the Stakeholder is a company, the acknowledgement should be sealed by use of the common seal in accordance with the company's articles of association. It would be sufficient in the latter case if it is signed by a director or other person who holds general authorization to execute acknowledgements of the Stakeholder on behalf of the company.

**NOTE 9** A Vendor which is a corporation should note that to ensure the Property is free from Encumbrances it may be necessary to provide evidence at completion that the Property has been released from or is not subject to a fixed charge given by the Vendor.

**NOTE 10** If this Contract is to be made subject to the approval of the Commonwealth Treasurer being obtained, a special condition should be inserted in this Contract so as to modify or avoid the operation of clause 33.



Notice to agent: This Warning Statement must be:

- Attached to the FRONT of a contract for sale of residential property (vacant land or land and already existing house) and;
- Signed by the buyer BEFORE the attached contract is signed.

If this is not done, the buyer may terminate the contract.

# WARNING

Do NOT sign the attached contract without reading and understanding this warning. Do not sign if you feel pressured.

You should obtain:

- Independent legal advice and
- An independent valuation of the property

Before signing or during the 5 day cooling-off period the Office of Fair Trading strongly recommends you:

- Contact the Queensland Law Society on (07) 3842 5842 or [www.qls.com.au](http://www.qls.com.au) for advice on finding a solicitor.
- Contact the Australian Property Institute on (07) 3832 3139 or [www.propertyinstitute.com.au](http://www.propertyinstitute.com.au) or the Valuers Registration Board on (07) 3221 3892 or [www.valuersboard.qld.gov.au](http://www.valuersboard.qld.gov.au) to find a suitable valuer.
- Arrange a search for the property's sales history from your local Department of Natural Resources and Mines on (07) 3227 6626, or for a map of latest sales [www.nrm.qld.gov.au](http://www.nrm.qld.gov.au).

House and land package buyers: Is the building contract fairly valued? Seek quotes from several different builders (see note on page 2)

**STOP!!** Before signing this form or the contract have you read and understood the information about your rights?



Buyer(s):

I/we have read this warning statement and the important information over the page.



Name(s): CLIPSE PTY LTD ACN 140 619 457 AS TRUSTEE FOR THE JINDALEE UNIT TRUST

Signature: .....

Date: .....



**Important information you should read before you sign this warning statement and the attached contract**

**Independent legal advice**

Do you fully understand the legal consequences of signing this contract? Are you sure the advice you've been given is totally independent? Before signing the contract, the Office of Fair Trading strongly recommends you seek independent legal advice and clarify any queries or concerns you have about buying the property. Exercise extreme caution in accepting the advice of anyone referred to you by the seller or his/her agent.

If you engage any lawyer in relation to purchasing the property, they must give you a certificate about their independence from the seller or anyone else included in the sale, and about benefits the lawyer expects to receive from the sale.

**Valuation of property**

Are you sure the purchase price is fair? Before the cooling-off period expires seek independent advice from a registered valuer. Ask the valuer if they have Professional Indemnity Insurance, have a relationship with any person involved with the property you're buying, and about the valuation cost.

Further information on how to deal with valuers is available on [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) (search "valuations").

**Building contracts**

For building contracts associated with the purchase of residential property.

- Domestic building contracts have a cooling-off period (Section 72 of the Domestic Building Contracts Act 2000. Please refer to the Building Services Authority of Queensland for further information on building contracts). Ensure that if you exercise your cooling-off right under the residential property contract that you also give written notice to terminate the building contract.
- Ensure that the building contract price is not over valued or inflated. Get a valuation or compare homes of similar value advertised or displayed by other home builders.

**What is a cooling-off period?**

You can change your mind about purchasing a property during a 5 day cooling-off period. Use this time to seek independent legal advice and an independent valuation of the property.

**When does the cooling-off period start?**

It begins on the day you are bound by the attached contract.

Both the buyer and the seller are bound by the contract as soon as the buyer or their agent, lawyer or personal representative receives a copy of the signed contract.

In any dispute concerning the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the contract.

**Note:** If the buyer is bound by the contract on a day other than a business day, the cooling-off period commences on the first business day after the day the buyer is bound by the contract.

**When does the cooling-off period end?**

It ends at 5:00 pm on the fifth business day after the cooling-off period started.

**What is a business day?**

It is a day other than a Saturday, Sunday or a public holiday.

**Can I waive or shorten the cooling-off period?**

You may, but only by obtaining a lawyer's certificate from your solicitor. If you waive the cooling-off period you will be bound by the contract from that time, subject to the terms of the contract.

**How do I terminate the contract during the cooling-off period?**

At any time before the end of the 5 day cooling-off period give a signed and dated notice to the seller or the seller's agent indicating that you wish to terminate the contract.

**Will I lose my deposit if I terminate the contract during the cooling-off period?**

The seller must refund your deposit within 14 days of termination of the contract but may deduct a termination penalty equal to 0.25% of the purchase price.

**What happens after the cooling-off period ends?**

You are legally bound to buy the property, subject to the terms in the contract. Make sure you're happy with all of the terms in the contract before you sign it and before the cooling-off period ends.

**Claim fund**

A Claim Fund exists which, in some cases, enables a buyer who suffers financial loss as a result of dealing with a real estate agent to make a claim. Strict guidelines apply. If you suffer financial loss because of buying an investment property or buying residential property directly from a Property Developer you CANNOT make a claim for compensation against the Fund. There are restrictions on claims made due to property marketeering.

**How do I know if I'm dealing with a licensed real estate agent or property developer?**

The Office of Fair Trading can help you to identify if the person you are dealing with is a licensed real estate agent, property developer or a registered salesperson of one.

Ask the person you are dealing with for proof of their licence or registration.

**Further information:**

Contact [www.fairtrading.qld.gov.au](http://www.fairtrading.qld.gov.au) or your nearest Office of Fair Trading on 13 13 04.

# Contract

## For Houses and Residential Land

Sixth 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 houses and residential land in Queensland except for new residential property in which case the issue of GST liability must be dealt with by special condition.

**The Seller and Buyer agree to sell and buy the Property under this contract**

### Reference Schedule

**Contract Date:** \_\_\_\_\_

**Agent:** \_\_\_\_\_

**ABN:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Licence Number:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**Mobile:** \_\_\_\_\_

### **Parties**

**Seller:**

**BOMAN PROPERTIES PTY LTD ACN 010 088 818 AS TRUSTEE**

**ABN:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**Mobile:** \_\_\_\_\_

**Seller's Solicitor:**

**Johnsons**

[or any other solicitor notified to the Buyer]

**ABN:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Ref:** \_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**Mobile:** \_\_\_\_\_

**Buyer:**

**CLIPSE PTY LTD ACN 140 619 457 AS TRUSTEE FOR THE JINDALEE UNIT TRUST**

**ABN:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

**Facsimile:** \_\_\_\_\_

**Mobile:** \_\_\_\_\_

**Buyer's Solicitor:**

**ABN:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Telephone:** \_\_\_\_\_

**Email Address:** \_\_\_\_\_

### **Property**

**Land**

**Address:** **25, 27, 29, 31 and 33 Koorngal Drive, Jindalee Qld 4074**

**\*Vacant/Built on** [Delete one]

**Description:**

**See Annexure "A"**

**County:**

**Parish:**

**Title Reference:**

**Area:**

[more or less]

**Land sold as** \*Freehold/Leasehold [Delete one. If neither is deleted, the land is treated as being Freehold]

**Present Use:**

**Residential**

**Local Government:**

**Brisbane City Council**

**Excluded Fixtures:**

**Included Chattels:**

**Matters  
Affecting  
Property**

**Title Encumbrances:** Nil

[If the Property is sold free from  
Title Encumbrances insert "Nil"]  
[If the Property is sold subject to  
Title Encumbrances, they must be  
described]

**Tenancies:**

Tenant's Name: See Annexure "B"

Term and Options: \_\_\_\_\_

Starting Date of Term: \_\_\_\_\_

Ending Date of Term: \_\_\_\_\_

Rent: \_\_\_\_\_

Bond: \_\_\_\_\_

**Managing Agent:**

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Mobile: \_\_\_\_\_

Email Address: \_\_\_\_\_

**Price**

**Deposit Holder:** \_\_\_\_\_

**Purchase Price:** \$ 2,500,000.00

[Unless otherwise specified in this  
contract, the Purchase Price  
includes any GST payable on the  
supply of the Property to the  
Buyer]

**Deposit:** \$ Nil Initial Deposit payable when Buyer signs this contract

\$ \_\_\_\_\_ Balance Deposit (if any) payable on: \_\_\_\_\_

**Default Interest Rate:** \_\_\_\_\_ % [If no figure is inserted, the Contract Rate published by the Queensland Law Society Inc will apply]

**Finance**

**Finance Amount:** \$ \_\_\_\_\_

**Financier:** \_\_\_\_\_

**Finance Date:** \_\_\_\_\_

[Unless all of "Finance Amount",  
"Financier" and "Finance Date"  
are completed, this contract is not  
subject to finance and clause 3  
does not apply]

**Building  
and/or Pest  
Inspection**

**Inspection Date:** \_\_\_\_\_

**Building Inspector:** \_\_\_\_\_

**Pest Inspector:** \_\_\_\_\_

[If not completed, the contract is  
not subject to an inspection report  
and clause 4 does not apply]

[WARNING: If the Buyer does not  
give notice under clause 4 by the  
Inspection Date it will be taken to  
be satisfied with the reports  
obtained]

[If required under the Queensland  
Building Services Authority Act  
1991, the Inspector must hold a  
current licence under that Act]

**Electrical  
Safety  
Switch and  
Smoke  
Alarm**

*This section must be completed unless the Land is vacant.*

The Seller gives notice to the Buyer that an Approved Safety Switch for the General Purpose  
Socket Outlets is:

☒ \*Installed in the residence

☐ \*not installed in the residence

*\*Mark whichever is applicable*

The Seller gives notice to the Buyer that a Compliant Smoke Alarm(s) is/are:

☒ \*Installed in the residence

☐ \*not installed in the residence

*\*Mark whichever is applicable*

[WARNING: By giving false or  
misleading information in this  
section, the Seller may incur a  
penalty. The Seller should seek  
expert and qualified advice about  
completing this section and not  
rely on the Seller's Agent to  
complete this section.]

[WARNING: Failure to install a  
Compliant Smoke Alarm is an  
offence under the Fire and  
Rescue Service Act 1990.]



# ANNEXURE "A"

| Street Address      | Lot and Plan Description | Title Reference | Property Classification                                       | Title Encumbrances |
|---------------------|--------------------------|-----------------|---------------------------------------------------------------|--------------------|
| 25 Koorringal Drive | Lot 86 on RP101132       | 13739097        | "Low Density Residential Area – LR" (Brisbane City Plan 2000) | Nil                |
| 27 Koorringal Drive | Lot 85 on RP101132       | 13776249        | "Low Density Residential Area – LR" (Brisbane City Plan 2000) | Nil                |
| 29 Koorringal Drive | Lot 84 on RP101132       | 13792060        | "Low Density Residential Area – LR" (Brisbane City Plan 2000) | Nil                |
| 31 Koorringal Drive | Lot 83 on RP101132       | 13776250        | "Low Density Residential Area – LR" (Brisbane City Plan 2000) | Nil                |
| 33 Koorringal Drive | Lot 82 on RP101132       | 13631052        | "Low Density Residential Area – LR" (Brisbane City Plan 2000) | Nil                |

|    |  |
|----|--|
| 21 |  |
| 22 |  |
| 23 |  |
| 24 |  |
| 25 |  |

|     |          |          |           |           |           |       |    |           |    |          |    |           |
|-----|----------|----------|-----------|-----------|-----------|-------|----|-----------|----|----------|----|-----------|
| 230 | \$ 54.35 | \$ 28.68 | 1-Sep-07  | 31-Aug-08 | 12 Months | Gross | \$ | 13,581.08 | \$ | 7,218.94 | \$ | 20,800.00 |
|     |          |          |           |           |           | Gross | \$ | 12,572.97 | \$ | 7,127.13 | \$ | 18,500.00 |
| 196 | \$ 82.48 | \$ 36.00 | 9-Mar-08  | 9-Mar-09  | 12 Months | Gross | \$ | 4,227.08  | \$ | 7,218.94 | \$ | 11,440.00 |
| 312 |          | \$ 23.14 | 14-Mar-08 | 13-Sep-08 | 5 Months  | Gross | \$ | 9,421.08  | \$ | 6,718.94 | \$ | 16,640.00 |
| 196 | \$ 69.77 | \$ 40.48 | 29-Jun-08 | 25-Jul-09 | 8 Months  | Gross | \$ |           | \$ | 5,718.94 | \$ |           |
|     |          |          |           |           |           | Gross | \$ |           | \$ | 5,718.94 | \$ |           |

B

# Terms of Contract

## For Houses and Residential Land

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### 1. Definitions

#### 1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule have the meanings shown opposite them; and
- (2) unless the context otherwise indicates:
  - (a) **"Approved Safety Switch"** means a residual current device as defined in the *Electrical Safety Regulation 2002*;
  - (b) **"Balance Purchase Price"** means the Purchase Price, less the Deposit, adjusted under clauses 2.6(2) and 2.6(11);
  - (c) **"Bank"** means:
    - (i) a bank as defined by section 5 of the *Banking Act 1959* of the Commonwealth; or
    - (ii) a bank constituted under a law of a state;
  - (d) **"Bond"** means a bond under the Residential Tenancies Act 1994;
  - (e) **"Business Day"** means a week day other than a public holiday in the Place for Settlement;
  - (f) **"Compliant Smoke Alarm"** means a smoke alarm complying with sections 104RB (2) or (4) of the *Fire and Rescue Service Act 1990*;
  - (g) **"Contract Date"** or **"Date of Contract"** means the date inserted in the Reference Schedule;
  - (h) **"Encumbrances"** includes unregistered and statutory encumbrances;
  - (i) **"Financial Institution"** means a Bank, building society or credit union;
  - (j) **"General Purpose Socket Outlet"** means an electrical socket outlet as defined in the *Electrical Safety Regulations 2002*;
  - (k) **"GST"** means the goods and services tax under the *GST Act*;
  - (l) **"GST Act"** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
  - (m) **"Improvements"** means fixed structures on the Land and includes all items fixed to them (such as stoves, hot water systems, fixed carpets, curtains, blinds and their fittings, clothes lines, fixed satellite dishes and television antennae, in-ground plants) but does not include the Reserved Items;
  - (n) **"Keys"** means keys, codes or devices in the Seller's possession for all locks or security systems on the Property;
  - (o) **"Outgoings"** means:
    - (i) rates or charges on the Land by any competent authority (for example, council rates, water rates, fire service levies); and
    - (ii) land tax;
  - (p) **"Property"** means:
    - (i) the Land;
    - (ii) the Improvements; and
    - (iii) the Included Chattels;
  - (q) **"Rent"** means any periodic amount payable under the Tenancies;
  - (r) **"Reserved Items"** means the Excluded Fixtures and all chattels on the Land other than the Included Chattels;
  - (s) **"Transfer Documents"** means:
    - (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Land to the Buyer; and

- (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer; and
- (t) **"Transport Infrastructure"** has the meaning defined in the *Transport Infrastructure Act 1994*.

### 2. Purchase Price

#### 2.1 GST

Unless otherwise specified in this contract, the Purchase Price includes any GST payable on the supply of the Property to the Buyer.

#### 2.2 Deposit

- (1) The Buyer must pay the Deposit to the Deposit Holder at the times shown in the Reference Schedule. The Deposit Holder will hold the Deposit until a party becomes entitled to it.
- (2) The Buyer will be in default if it:
  - (a) does not pay the Deposit when required;
  - (b) pays the Deposit by a post-dated cheque; or
  - (c) pays the Deposit by cheque which is dishonoured on presentation.

#### 2.3 Investment of Deposit

- If:
- (1) the Deposit Holder is instructed by either the Seller or the Buyer; and
  - (2) it is lawful to do so;
- the Deposit Holder must:
- (3) invest as much of the Deposit as has been paid with any Financial Institution in an interest-bearing account in the names of the parties; and
  - (4) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).

#### 2.4 Entitlement to Deposit and Interest

- (1) The party entitled to receive the Deposit is:
  - (a) if this contract settles, the Seller;
  - (b) if this contract is terminated without default by the Buyer, the Buyer; and
  - (c) if this contract is terminated owing to the Buyer's default, the Seller.
- (2) The interest on the Deposit must be paid to the person who is entitled to the Deposit.
- (3) If this contract is terminated, the Buyer has no further claim once it receives the Deposit and interest, unless the termination is due to the Seller's default or breach of warranty.
- (4) The Deposit is invested at the risk of the party who is ultimately entitled to it.

#### 2.5 Payment of Balance Purchase Price

- (1) On the Settlement Date, the Buyer must pay the Balance Purchase Price by Bank cheque as the Seller directs.
- (2) Despite any other provision of this contract, a reference to a "Bank cheque" in clause 2.5(1):
  - (a) includes a cheque drawn by a building society or credit union on itself;
  - (b) does not include a cheque drawn by a building society or credit union on a Bank;
 and the Seller is not obliged to accept a cheque referred to in clause 2.5(2)(b) on the Settlement Date.

#### 2.6 Adjustments to Balance Purchase Price

- (1) The Seller is liable for Outgoings and is entitled to Rent up to and including the Settlement Date. The Buyer is liable for Outgoings and is entitled to Rent after the Settlement Date.



- (2) Subject to clauses 2.6(3), 2.6(4), 2.6(5) and 2.6(6), Outgoings for periods including the Settlement Date must be adjusted:
- for those paid, on the amount paid;
  - for those assessed but unpaid, on the amount payable (excluding any discount); and
  - for those not assessed:
    - on the amount the relevant authority advises will be assessed (excluding any discount); or
    - if no advice on the assessment to be made is available, on the amount of the latest assessment (excluding any discount).
- (3) If there is no separate assessment of rates for the Land at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
- the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the area of the Land to the area of the parcel in the assessment; and
  - if an assessment of rates includes charges imposed on a "per lot" basis, then the portion of those charges to be adjusted is the amount assessed divided by the number of lots in that assessment.
- (4) Land tax must be adjusted:
- 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
  - based on the assumptions in clause 2.6(4)(a), if there is no separate unimproved value for the Land, on a notional unimproved value equal to:

|                                                                                                            |   |                                       |
|------------------------------------------------------------------------------------------------------------|---|---------------------------------------|
| Unimproved value of<br>the parcel that<br>includes the Land<br>under <i>Valuation of<br/>Land Act 1944</i> | x | Area of Land<br>Area of the<br>parcel |
|------------------------------------------------------------------------------------------------------------|---|---------------------------------------|

- (5) 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 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 2.6(2).
- (6) Any Outgoings assessable on the amount of water used must be adjusted on the charges that would be assessed on the total water usage for the assessment period, determined by assuming that the actual rate of usage shown by the meter reading made before settlement continues throughout the assessment period. The Buyer must obtain and pay for the meter reading.
- (7) If any Outgoings are assessed but unpaid at the Settlement Date, then the Buyer may deduct the amount payable from the Balance Purchase Price at settlement and pay it promptly to the relevant authority. If an amount is deducted under this clause, the relevant Outgoing will be treated as paid at the Settlement Date for the purposes of clause 2.6(2).
- (8) Arrears of Rent for any rental period ending on or before the Settlement Date belong to the Seller and are not adjusted at settlement.
- (9) Unpaid Rent for the rental period including both the Settlement Date and the following day ("Current Period") is not adjusted until it is paid.
- (10) Rent already paid for the Current Period or beyond must be adjusted at settlement.

- (11) The cost of Bank cheques payable at settlement:
- to the Seller or its mortgagee are the responsibility of the Buyer; and
  - to parties other than the Seller or its mortgagee are the responsibility of the Seller.

### 3. Finance

- 3.1 This contract is conditional on the Buyer obtaining approval of a loan for the Finance Amount from the Financier by the Finance Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain approval.
- 3.2 The Buyer must give notice to the Seller that:
- approval has not been obtained by the Finance Date and the contract is terminated; or
  - the finance condition has been either satisfied or waived by the Buyer.
- 3.3 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 3.2 by 5pm on the Finance Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- 3.4 The Seller's right under clause 3.3 is subject to the Buyer's continuing right to terminate this contract under clause 3.2(1) or waive the benefit of this clause 3 by giving written notice to the Seller of the waiver.

### 4. Building and Pest Inspection Reports

- 4.1 This contract is conditional upon the Buyer obtaining a written building report from the Building Inspector and a written pest report from the Pest Inspector (which may be a single report) on the Property by the Inspection Date on terms satisfactory to the Buyer. The Buyer must take all reasonable steps to obtain the reports (subject to the right of the Buyer to elect to obtain only one of the reports).
- 4.2 The Buyer may terminate this contract by notice to the Seller at any time before 5pm on the Inspection Date if an Inspector's report is unsatisfactory to the Buyer. The Buyer must act reasonably.
- 4.3 If the Buyer terminates this contract and the Seller asks the Buyer for a copy of the building and pest reports, the Buyer must give a copy of each report to the Seller without delay.
- 4.4 If the Buyer does not terminate this contract by 5pm on the Inspection Date, it will be treated as being satisfied with the building and pest reports it has obtained.
- 4.5 If required under the *Queensland Building Services Authority Act 1991*, the Inspector must hold a current licence under that Act.

### 5. Settlement

#### 5.1 Time and Date

- Settlement must occur between 9am and 5pm on the Settlement Date.
- If the parties do not agree on where settlement is to occur, it must take place in the Place for Settlement at the office of a solicitor or Financial Institution nominated by the Seller, or, if the Seller does not make a nomination, at the land registry office in or nearest to the Place for Settlement.

#### 5.2 Transfer Documents

- The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- If the Buyer pays the Seller's reasonable expenses, it may require the Seller to produce the Transfer Documents at the Office of State Revenue nearest the Place for Settlement for stamping before settlement.

#### 5.3 Documents and Keys at Settlement

- In exchange for payment of the Balance Purchase Price, the Seller must deliver to the Buyer at settlement:





- (a) any instrument of title for the Land required to register the transfer to the Buyer;
- (b) unstamped Transfer Documents capable of immediate registration after stamping; and
- (c) if requested, the Keys in the Seller's or the Seller's Agent's possession or control for all locks and security systems on the Property; and
- (d) if there are Tenancies:
  - (i) the Seller's copy of any Tenancy agreements;
  - (ii) a notice to each tenant advising of the sale in the form required by law; and
  - (iii) any notice required by law to transfer to the Buyer the Seller's interest in any Bond.
- (2) If the instrument of title for the Land also relates to other land, the Seller need not deliver it to the Buyer, but the Seller must make arrangements satisfactory to the Buyer to produce it for registration of the transfer.
- (3) If the Keys are not delivered at Settlement under clause 5.3(1)(c), the Seller must deliver the Keys to the Buyer. The Seller may discharge its obligation under this provision by authorising the Seller's Agent to release the Keys to the Buyer.

#### 5.4 Assignment of Covenants and Warranties

At settlement, the Seller assigns to the Buyer the benefit of all:

- (1) covenants by the tenants under the Tenancies;
  - (2) guarantees and Bonds (subject to the requirements of the *Residential Tenancies Act 1994*) supporting the Tenancies;
  - (3) manufacturers' warranties regarding the Included Chattels; and
  - (4) builders' warranties on the Improvements;
- to the extent they are assignable. However, the right to recover arrears of Rent is not assigned to the Buyer and section 117 of the *Property Law Act 1974* does not apply.

#### 5.5 Possession of Property and Title to Included Chattels

On the Settlement Date, in exchange for the Balance Purchase Price, the Seller must give the Buyer vacant possession of the Land and the Improvements except for the Tenancies. Title to the Included Chattels passes at settlement.

#### 5.6 Reservations

- (1) The Seller must remove the Reserved Items from the Property before the Settlement Date.
- (2) The Seller must repair at its expense any damage done to the Property in removing the Reserved Items. If the Seller fails to do so, the Buyer may repair that damage.
- (3) Any Reserved Items not removed before settlement will be considered abandoned and the Buyer may, without limiting its other rights, complete this contract and appropriate those Reserved Items or dispose of them in any way.
- (4) The Seller indemnifies the Buyer against any damages and expenses resulting from the Buyer's actions under clauses 5.6(2) or 5.6(3).

#### 5.7 Consent to Transfer

- (1) If the Land sold is leasehold, this contract is subject to any necessary consent to the transfer of the lease to the Buyer being obtained by the Settlement Date.
- (2) The Seller must apply for the consent required as soon as possible.
- (3) The Buyer must do everything reasonably required to help obtain this consent.

### 6. Time

- 6.1 Time is of the essence of this contract, except regarding any agreement between the parties on a time of day for settlement.

### 7. Matters Affecting the Property

#### 7.1 Title

The Land is sold subject to:

- (1) any reservations or conditions on the title or the original Deed of Grant (if freehold); or
- (2) the Conditions of the Crown Lease (if leasehold).

#### 7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances and Tenancies.

#### 7.3 Requisitions

The Buyer may not deliver any requisitions or enquiries on title.

#### 7.4 Seller's Warranties

- (1) The Seller warrants that at settlement:
  - (a) if the Land is freehold: it will be the registered owner of an estate in fee simple in the Land and will own the rest of the Property;
  - (b) if the Land is leasehold: it will be the registered lessee, the lease is not liable to forfeiture because of default under the lease, and it will own the rest of the Property;
  - (c) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
  - (d) there will be no unsatisfied judgment, order or writ affecting the Property.
- (2) The Seller warrants that at the Contract Date and at settlement there are no current or threatened claims, notices or proceedings that may lead to a judgment, order or writ affecting the Property.
- (3) (a) 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 Contract Date:
  - (i) there is no outstanding obligation on the Seller to give notice to the administering authority under EPA of notifiable activity being conducted on the Land; and
  - (ii) 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.
- (b) If the Seller breaches a warranty in clause 7.4(3), the Buyer may:
  - (i) terminate this contract by notice in writing to the Seller given within 2 Business Days before the Settlement Date; or
  - (ii) complete this contract and claim compensation, but only if the Buyer claims it in writing before the Settlement Date.
- (4) If a warranty in clause 7.4(1) or clause 7.4(2) is not correct, the Buyer may terminate this contract by notice to the Seller.
- (5) The Seller does not warrant that the Present Use is lawful.

#### 7.5 Survey and Mistake

- (1) The Buyer may survey the Land.
- (2) If there is:
  - (a) an error in the boundaries or area of the Land;
  - (b) an encroachment by structures onto or from the Land; or
  - (c) a mistake or omission in describing the Property or the Seller's title to it;
 which is:
  - (d) immaterial; or
  - (e) material, but the Buyer elects to complete this contract;
 the Buyer's only remedy against the Seller is for compensation, but only if claimed by the Buyer in writing on or before settlement.



- (3) The Buyer may not delay settlement or withhold any part of the Balance Purchase Price because of any compensation claim under clause 7.5(2).

- (4) If there is a material error, encroachment or mistake, the Buyer may terminate this contract before settlement.

#### 7.6 Requirements of Authorities

- (1) Any valid notice or order by any competent authority or court requiring work to be done or money spent in relation to the Property ("Work or Expenditure") must be fully complied with:
- (a) if issued before the Contract Date, by the Seller before the Settlement Date;
  - (b) if issued on or after the Contract Date, by the Buyer.
- (2) Any Work or Expenditure that is the Buyer's responsibility under clause 7.6(1)(b), which is required to be done before the Settlement Date, must be done by the Seller unless the Buyer directs the Seller not to and indemnifies the Seller against any liability for not carrying out the work. If the Seller does the work, or spends the money, the reasonable cost of that Work or Expenditure must be added to the Balance Purchase Price.
- (3) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under sections 247 or 248 of the *Building Act 1975* or sections 4.3.9 or 4.3.11 of the *Integrated Planning Act 1997* that affects the Property.

#### 7.7 Property Adversely Affected

- (1) If at the Contract Date:
- (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; or
  - (e) the Property is affected by the *Queensland Heritage Act 1992* or is included in the World Heritage List;
- and that has not been disclosed in this contract, the Buyer may terminate this contract by notice to the Seller given no later than 2 Business Days before the Settlement Date.
- (2) If no notice is given under clause 7.7(1), the Buyer will be treated as having accepted the Property subject to all of the matters referred to in that clause.
- (3) The Seller authorises the Buyer to inspect records held by any authority relating to the Property.

#### 7.8 Dividing Fences

The Seller need not contribute to the cost of building any dividing fence between the Land and any adjoining land owned by it. The Buyer waives any right to claim contribution from the Seller.

### 8. Rights Until Settlement

#### 8.1 Risk

The Property is at the Buyer's risk from 5pm on the first Business Day after the Contract Date.

#### 8.2 Access

After reasonable notice to the Seller, the Buyer and its consultants may enter the Property:

- (1) once to read any meter;
- (2) for inspections under clause 4;
- (3) once to inspect the Property before settlement; and
- (4) once to value the Property before settlement.

#### 8.3 Seller's Use of Property

The Seller must use the Property reasonably until settlement. The Seller must not do anything regarding the Property or Tenancies that may significantly alter them or result in later expense for the Buyer.

#### 8.4 Information Regarding the Property

Before settlement, the Seller must give the Buyer:

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Tenancies to allow the Buyer to properly manage the Property after settlement; and
- (3) further copies or details if those previously given cease to be complete and accurate.

#### 8.5 Possession Before Settlement

If possession is given before settlement:

- (1) the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- (2) entry into possession is under a licence personal to the Buyer revocable at any time and does not:
  - (a) create a relationship of landlord and tenant; or
  - (b) waive the Buyer's rights under this contract;
- (3) the Buyer must insure the Property to the Seller's satisfaction; and
- (4) the Buyer indemnifies the Seller against any expense or damages incurred by the Seller as a result of the Buyer's possession of the Property.

### 9. Buyer's Default

#### 9.1 Seller May Affirm or Terminate

If the Buyer fails to comply with any provision of this contract, the Seller may affirm or terminate this contract.

#### 9.2 If Seller Affirms

If the Seller affirms this contract under clause 9.1, it may sue the Buyer for:

- (1) damages;
- (2) specific performance; or
- (3) damages and specific performance.

#### 9.3 If Seller Terminates

If the Seller terminates this contract under clause 9.1, it may do all or any of the following:

- (1) resume possession of the Property;
- (2) forfeit the Deposit and interest earned on its investment;
- (3) sue the Buyer for damages;
- (4) resell the Property.

#### 9.4 Resale

- (1) The Seller may recover from the Buyer as liquidated damages:
  - (a) any deficiency in price on a resale; and
  - (b) its expenses connected with this contract, any repossession, any failed attempt to resell, and the resale; provided the resale occurs within 2 years of termination of this contract.
- (2) Any profit on a resale belongs to the Seller.

#### 9.5 Seller's Damages

The Seller may claim damages for any loss it suffers as a result of the Buyer's default, including its legal costs on a solicitor and own client basis and the cost of any Work or Expenditure under clause 7.6(2).

#### 9.6 Interest on Late Payments

- (1) Without affecting the Seller's other rights, if any money payable by the Buyer under this contract is not paid when due, the Buyer must pay the Seller at settlement interest on that money calculated at the Default Interest Rate from the due date for payment until payment is made.
- (2) The Seller may recover that interest from the Buyer as liquidated damages.



- (3) Any judgment for money payable under this contract will bear interest from the date of judgment to the date of payment and the provisions of this clause 9.6 apply to calculation of that interest.

## 10. General

### 10.1 Agent

The Agent is appointed as the Seller's agent to introduce a buyer.

### 10.2 Foreign Investment Review Board

The Buyer warrants that either:

- (1) the Treasurer has consented under the *Foreign Acquisitions and Takeovers Act* to the Buyer's purchase of the Property; or
- (2) the Treasurer's consent is not required to the Buyer's purchase of the Property.

### 10.3 Duty

The Buyer must pay all duty on this contract.

### 10.4 Notices

- (1) Notices under this contract must be in writing and may be given by a party's solicitor.
- (2) Notices are effectively given if:
  - (a) delivered or posted to the other party or its solicitor; or
  - (b) sent to the facsimile number of the other party or its solicitor.
- (3) Posted notices will be treated as given 2 Business Days after posting.
- (4) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (5) Notices given after 5pm will be treated as given on the next Business Day.
- (6) 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.

### 10.5 Business Days

- (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.
- (2) If the Finance Date or Inspection Date fall on a day that is not a Business Day, then it falls on the next Business Day.

### 10.6 Rights After Settlement

Despite settlement and registration of the transfer, any term of this contract that can take effect after settlement or registration remains in force.

### 10.7 Further Acts

If requested by the other party, each party must, at its own expense, do everything reasonably necessary to give effect to this contract.

### 10.8 Interpretation

#### (1) Plurals and Genders

Reference to:

- (a) the singular includes the plural and the plural includes the singular;
- (b) one gender includes each other gender;
- (c) a person includes a body corporate; and
- (d) a party includes the party's executors, administrators, successors and permitted assigns.

#### (2) Parties

- (a) If a party consists of more than one person, this contract binds them jointly and each of them individually.
- (b) A party that is a trustee is bound both personally and in its capacity as a trustee.

#### (3) Statutes and Regulations

Reference to statutes includes all statutes amending, consolidating or replacing them.

#### (4) Inconsistencies

If there is any inconsistency between any provision added to this contract and the printed provisions, the added provision prevails.

#### (5) Headings

Headings are for convenience only and do not form part of this contract or affect its interpretation.

**EXECUTED as a Deed**

**EXECUTED by BOMAN PROPERTIES  
PTY LTD ACN 010 068 818 AS TRUSTEE**  
in accordance with its Constitution and  
pursuant to the provisions of Section 127(1) of  
the Corporations Act 2001 in the presence of:

)  
)  
)  
)  
)

(Signature of Director)

(Name of Director in Full)

.....  
(Signature of Secretary/Director)

.....  
(Name of Secretary/Director in Full)

**EXECUTED by CLIPSE PTY LTD ACN  
130 619 457 AS TRUSTEE FOR THE  
JINDALEE UNIT TRUST** in accordance  
with its Constitution and pursuant to the  
provisions of Secti                      of the  
Corporations Act 2                      presence of:

)  
)  
)  
)  
)

.....  
(Signature of Director)

.....  
(Name of Director in Full)

.....  
(Signature of Secretary/Director)

.....  
(Name of Secretary/Director in Full)

# **PUT AND CALL OPTION**

**Date:**

**BOMAN PROPERTIES PTY LTD ACN 010 068 818 AS TRUSTEE**

**The Grantor**

**CLIPSE PTY LTD ACN 130 619 457 AS TRUSTEE FOR THE JINDALEE UNIT TRUST**

**The Grantee**