

Warning statement

Property Agents and Motor Dealers Act 2000 - Chapter 11

This form is effective from 1 October 2010.

Department of **Employment, Economic
Development and Innovation**

Instructions

This form is to be attached to a proposed relevant contract of sale for residential property to be read and signed by a proposed buyer **BEFORE** the proposed buyer signs the proposed relevant contract.

The seller or seller's agent must give the proposed buyer a clear statement directing the buyer's attention to the proposed relevant contract and to this warning statement before the proposed buyer signs the proposed relevant contract. Failure to give the proposed buyer a clear statement may give the buyer a right to terminate the contract under section 370 within 90 days of receiving a copy of the relevant contract unless settlement occurs earlier.

Property address

Note: If no street address is applicable, use lot and plan information to identify the property

Street name and number

Suburb State Postcode

WARNING

DO NOT sign the proposed relevant contract for the above property until you have read and understood ALL SECTIONS of this form. DO NOT sign if you feel pressured.

The relevant contract is subject to a five (5) business day cooling-off period. You may terminate this contract during the cooling-off period. However, the seller may deduct a termination penalty of up to 0.25% of the purchase price from the deposit.

You should obtain independent:

- **legal advice** See note 1
- **valuation** See note 2

Cooling-off period

What is the cooling-off period?

The cooling-off period is five (5) business days, during which you can change your mind about purchasing this property. Use this time to seek independent legal advice and an independent valuation of the property.

When does the cooling-off period start?

Your cooling-off period starts on the day you receive a copy of the completed relevant contract from the seller or seller's agent. The proposed contract becomes a relevant contract when both parties have signed. In any dispute about the commencement of the cooling-off period, it will be up to the seller to prove the buyer received a copy of the relevant contract. If you receive a copy of the relevant contract on a day other than a business day, the cooling-off period commences on the first business day after you receive a copy of the relevant contract.

When does the cooling-off period end?

Your cooling-off period ends at 5.00pm on the fifth business day after the cooling-off period started. A business day is a day other than a Saturday, Sunday or public holiday.

Can I waive or shorten the cooling-off period?

Yes, but only if you engage an independent lawyer who must give you a lawyer's certificate explaining the purpose and nature of the certificate. You should seek advice from your lawyer about the effect of waiving or shortening your cooling-off period. If you are waiving the cooling-off period, the lawyer's certificate must be given to the seller or seller's agent before you and the seller enter into the relevant contract.

Information sheet (body corporate information)*Body Corporate and Community Management Act 1997*

This form is effective from 1 October 2010

Department of **Employment, Economic
Development and Innovation**

WARNING

Notice to Agent: The *Property Agents and Motor Dealers Act 2000* and *Body Corporate and Community Management Act 1997* (the Act) include strict requirements for presentation of prescribed warning statements and information sheets. Failure to comply may result in cancellation of the contract.

**By law the seller or the seller's agent must attach this information sheet to the contract.
Do NOT sign the contract of sale without reading this information sheet.**

In addition to the contract, you should have before you

- A separate warning statement, if the lot is a residential property, provided by the seller under the *Property Agents and Motor Dealers Act 2000*.
- A disclosure statement provided by the seller, containing essential information about the body corporate that you will become a member of through purchasing this property (eg. the amount of annual contributions currently set by the body corporate and payable by the lot owner).

Community titles schemes

This contract warning contains important information you should read and understand before signing a contract to buy a lot in a community titles scheme. A community title scheme includes duplexes, residential unit blocks, high rise apartment complexes, town house complexes and some commercial premises. They contain individually owned units and common property such as lawns and access roadways.

Some new unit owners do not realise owning a lot in a community titles scheme brings with it certain obligations. You should carefully consider if living or investing in a community titles scheme suits your lifestyle and financial needs.

When a community titles scheme is established, a body corporate is created to administer the scheme. Each lot owner is automatically a member of their body corporate and enjoys certain rights and responsibilities.

Owners are not able to decline to be a member of their body corporate. Normally, an elected committee carries out day to day functions on behalf of the body corporate. Bodies corporate may also engage service providers such as body corporate managers and on-site managers, caretakers and letting agents.

Common obligations of a body corporate include:

- administering the common property and any body corporate assets
- enforcing the by-laws for the scheme, such as noise levels, the keeping of pets, car parking and a range of other matters
- arranging compulsory body corporate insurance
- conducting general meetings of owners, adopting budgets, and levying contributions to fund the operation of the body corporate
- maintaining bank accounts, keeping records, and preparing financial statements.

Common obligations of individual lot owners include:

- making financial contributions toward the body corporate administrative costs
- complying with by-laws
- maintaining their lot in good condition

Suggested searches and matters to investigate

There are significant differences between owning a lot in a community titles scheme and owning other types of property (such as a detached house). In addition to carrying out conveyancing searches, it is also recommended you investigate a number of special body corporate matters through the following sources:

1. Department of Environment and Resource Management

Obtain a copy of the community management statement for the scheme from the nearest Land Registry Service Centre of the Department of Environment and Resource Management. The community management statement provides important details about the particular community titles scheme including details of any proposed future development of the scheme, the lot entitlements, by-laws and the regulation module applying to the scheme. Further information is available from the Brisbane Land Registry Office Service Centre by phoning 07 3227 6626 or via the Department website: www.derm.qld.gov.au

2. Department of Justice and Attorney-General, Office of the Commissioner for Body Corporate and Community Management

Conduct a search at the Office of the Commissioner for Body Corporate and Community Management for any Adjudicator's Orders (a decision regarding the outcome of a dispute) made concerning the scheme.

General information is also provided about body corporate rules and regulations. For more information, phone 1800 060 119 or visit www.justice.qld.gov.au/bccm

3. Body Corporate Secretary

Obtain a **Body Corporate Information Certificate** from the body corporate secretary, or body corporate manager, whose name and address is supplied in the disclosure statement. Compare the disclosure statement with the information certificate, as inaccurate information in the disclosure statement may give you grounds to cancel the contract (Sections 209 or 217 of the Act).

A search of the **body corporate records** can provide other important information, such as whether any improvements to the lot you are purchasing (balcony enclosure, air conditioning) were approved, whether any conditions apply, and who is responsible for their maintenance and insurance.

Also, check for any **agreements** the body corporate may have entered into, for example, caretaking, letting, body corporate management or lift maintenance.

Checklist

- By purchasing this property, do you know you will be part of a body corporate?
- Are you aware of any contracts the body corporate is a party to?
- Have you read and understood the body corporate by-laws?
- Do you understand your likely financial contributions to the body corporate?
- Do you understand your maintenance responsibilities?
- Do you understand the role of the body corporate manager and on-site manager (if appointed)?

You are strongly advised to obtain independent legal advice regarding any questions or concerns you have about purchasing the property or your prospective rights and obligations as a member of a body corporate.

Buyer's acknowledgment

I/we have read all sections of this information sheet and I/we have acknowledged and signed the information sheet BEFORE I/we signed the attached contract.

If the lot is residential property, I/we acknowledge that by signing this information sheet, my/our attention has been directed to this information sheet and the attached proposed relevant contract by a clear statement and that signing this information sheet negates any termination right I/we may have had under section 206A or 213A of the *Body Corporate and Community Management Act 1997*.

Name
Name
Signature Signature
Date / / Date / /
D D M M Y Y Y Y D D M M Y Y Y Y



The Real Estate Institute of Queensland

Accredited Agency

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Contract

For Residential Lots in a Community Titles Scheme

Fourth 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 Residential Lots in a Community Titles Scheme 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: PETER WALLMER ATF WALLMER FAMILY TRUST IN CONJ WITH SOLONE PTY TY LTD T/AS RE/MAX UNITED VISION .

ABN: Licence Number: 3060223

Address:

Telephone: 07 38431355 Facsimile: 07 3843 1351 Mobile: 0411 334 646

Email: unitedvisionqld @remax.com.au

Parties

Seller:

ABN: Email:

Address:

Telephone: Facsimile: Mobile:

Seller's Solicitor : [or any other solicitor notified to the Buyer]

ABN: Ref:

Address:

Telephone: Facsimile: Mobile:

Email:

Buyer:

ABN: Email:

Address:

Telephone: Facsimile: Mobile:

Buyer's Solicitor : [or any other solicitor notified to the Seller]

ABN: Ref:

Address:

Telephone: Facsimile: Mobile:

Email:

Property

Lot: Address:

Description: Lot: on :
Scheme: Community Titles Scheme:

County: Stanley Parish:

Title Reference:

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:
Term and Options:
Starting Date of Term:
Ending Date of Term:
Rent:

Bond:

Managing Agent :

Address:
Telephone:
Email:

Facsimile:

Mobile:

Price

Deposit Holder : RE/MAX UNITED VISION TRUST ACCOUNT

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

Purchase Price : \$

Deposit : \$ Initial Deposit payable when Buyer signs this contract
\$ Balance Deposit (if any) payable on: **ACCEPTANCE BY SELLER**

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

Finance

Finance Amount : \$

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

Financier :

Finance Date :

Building and/or Pest Inspection Date

Inspection Date :

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

Pool Safety for non-shared pools on the Lot

Complete the following questions if there is a non-shared pool on the Lot.

[WARNING TO SELLER: Failure to comply with the Pool Safety Requirements is an offence with substantial penalties.]

Q1. Is there a non-shared pool on the Lot?

Yes

No Clause 4.7 of this contract does not apply

[WARNING TO BUYER: If the Buyer does not receive a Pool Safety Certificate at settlement, the Buyer becomes responsible at its cost to obtain a Pool Safety Certificate within 90 days after settlement. The Buyer can also become liable to pay any costs of rectification necessary to comply with the Pool Safety Requirements to obtain a pool safety certificate. The Buyer commits an offence and can be liable to substantial penalties if the Buyer fails to comply with this requirement.]

Q2. If the answer to Q1 is Yes, is there a Pool Safety Certificate for the non-shared pool at the time of contract?

Yes Clause 5.3(1)(e) applies

No Clause 4.7 applies (except where this contract is formed on a sale by auction)

If there is a pool on the Lot and Q 2 is not completed then clause 4.7 applies.

Q3. If the answer to Q2 is No, has a Notice of no pool safety certificate been given prior to contract?

Yes

No

Note: this is an obligation of the Seller under Section 16 of the Building Regulation 2006

Pool Safety Inspection Date :

[Clause 4.7(2) applies except where this contract is formed on a sale by auction]

**Electrical
Safety
Switch and
Smoke
Alarm**

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

*installed in the Lot

*not installed in the Lot

**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]

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

*installed in the Lot

*not installed in the Lot

**Mark whichever is applicable*

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

**Additional
Body
Corporate
Information**

Interest Schedule Lot Entitlement of Lot:

Aggregate Interest Schedule Lot Entitlement:

Contribution Schedule Lot Entitlement of Lot:

Aggregate Contribution Schedule Lot Entitlement:

**Insurance
Policies**

Insurer:

Policy No:

Building:

Public Liability:

Other:

**Pool
Safety for
shared
pools only**

Complete the following questions if there is a shared pool on the Land.

A. Is there a shared pool on the Land or on adjacent land used in association with the Land?

Yes

No

B. If the answer to A is Yes, is there a Pool Safety Certificate for the shared pool at the time of contract?

Yes

No

C. If the answer to B is No, has a Notice of no pool safety certificate been given prior to contract?

Yes

No

Note: This is an obligation of the Seller under Section 16 of the Building Regulation 2006.

Special Conditions

Settlement

Settlement Date : 30 DAYS FROM CONTRACT DATE

[or the next Business Day if that is not a Business Day in the Place for Settlement]

Place for Settlement : Brisbane

[If Brisbane is inserted this is a reference to Brisbane CBD]

Signing

.....
Seller

.....
Witness

.....
Buyer

.....
Witness

.....
Deposit Holder [Who acknowledges having received the Initial Deposit and agrees to hold that amount and any Balance Deposit when received as Deposit Holder for the parties as provided in the Contract]

Seller's Disclosure

[WARNING : The Seller is taken to have knowledge of significant Body Corporate matters that may affect the Buyer, where the Seller ought reasonably to be aware of those matters.

Section 223(4) Body Corporate and Community Management Act 1997]

Latent or Patent Defects in Common Property or Body Corporate Assets

[Sections 223(2)(a) and 223(2)(b) Body Corporate and Community Management Act 1997]

[Annex details of disclosure made by the Seller (if any)]

Actual or Contingent or Expected Liabilities of Body Corporate

[Sections 223(2)(c) and 223(2)(d) Body Corporate and Community Management Act 1997]

[Annex details of disclosure made by the Seller (if any)]

Circumstances in Relation to Affairs of the Body Corporate

[Section 223(3) Body Corporate and Community Management Act 1997]

[Annex details of disclosure made by the Seller (if any)]

Exceptions to Statements in Clause 7.4(3)

[Annex details of disclosure made by the Seller (if any)]

Terms of Contract

For Residential Lots in a Community Titles Scheme

1. Definitions

1.1 In this contract:

- (1) terms in **bold** in the Reference Schedule and the Disclosure Statement have the meanings shown opposite them unless the context requires otherwise; and
- (2) (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 clause 2.6;
- (c) **“Bank”** means:
 - (i) an entity carrying on banking business 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) **“Body Corporate”** means the body corporate of the Scheme;
- (e) **“Bond”** means a bond under the *Residential Tenancies and Rooming Accommodation Act 2008*;
- (f) **“Building”** means any building that forms part of the Lot or in which the Lot is situated;
- (g) **“Business Day”** means a week day other than a public holiday in the Place for Settlement;
- (h) **“Compliant Smoke Alarm”** means a smoke alarm complying with sections 104RB (2) or (4) of the *Fire and Rescue Service Act 1990*;
- (i) **“Contract Date”** or **“Date of Contract”** means the date inserted in the Reference Schedule;
- (j) **“Court”** includes any tribunal established under statute;
- (k) **“Disclosure Statement”** means the statement under section 206 (existing lot) or section 213 (proposed lot) of the *Body Corporate and Community Management Act 1997*;
- (l) **“Encumbrances”** includes unregistered and statutory encumbrances;
- (m) **“Essential Term”** includes, in the case of breach by:
 - (i) the Buyer: clauses 2.2, 2.5(1), 5.1 and 6.1; and
 - (ii) the Seller: clauses 5.1, 5.3(1)(a) – (c), 5.3(1)(d)(ii) & (iii), 5.3(1)(e), 5.5 and 6.1;
 but nothing in this definition precludes a Court from finding other terms to be essential;
- (n) **“Financial Institution”** means a Bank, building society or credit union;
- (o) **“General Purpose Socket Outlet”** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2002*;
- (p) **“GST”** means the goods and services tax under the *GST Act*;
- (q) **“GST Act”** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
- (r) **“Improvements”** means fixed structures in the Lot (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;
- (s) **“Keys”** means keys, codes or devices in the Seller’s possession for all locks or security systems on the Property;
- (t) **“Land”** means the Scheme land;
- (u) **“Notice of no pool safety certificate”** means the Form 36 under the *Building Regulation 2006* to the effect that there is no Pool Safety Certificate issued for the Land and/or the Lot;
- (v) **“Outgoings”** means:
 - (i) rates or charges on the Lot by any competent authority (for example, council rates, water rates, fire service levies);
 - (ii) land tax; and
 - (iii) regular periodic contributions payable to the Body Corporate (other than Special Contributions);
- (w) **“Plan”** means the building units, group titles or survey plan containing the Lot;
- (x) **“Pool Safety Requirements”** means the requirements for pool safety contained in the *Building Act 1975* and *Building Regulation 2006*;
- (y) **“Pool Safety Certificate”** means either:
 - (i) a certificate of compliance; or
 - (ii) an exemption from compliance; issued in accordance with the Pool Safety Requirements;
- (z) **“Pool Safety Inspection Date”** means the Pool Safety Inspection Date inserted in the Reference Schedule. If no date is inserted in the Reference Schedule, the Pool Safety Inspection Date is taken to be the earlier of the following:
 - (i) the Inspection Date for the Building and/or Pest Inspection; or
 - (ii) 2 Business Days before the Settlement Date;
- (aa) **“Pool Safety Inspector”** means a person licensed or authorised under the *Building Act 1975* and *Building Regulation 2006* to issue a Pool Safety Certificate;
- (bb) **“Property”** means:
 - (i) the Lot;
 - (ii) the Improvements; and
 - (iii) the Included Chattels;
- (cc) **“Regulation Module”** means the regulation module for the Scheme;
- (dd) **“Rent”** means any periodic amount, including outgoings, payable under the Tenancies;
- (ee) **“Reserved Items”** means the Excluded Fixtures and all chattels in the Lot other than the Included Chattels;
- (ff) **“Scheme”** means the community titles scheme containing the Lot;
- (gg) **“Special Contribution”** means an amount:
 - (i) levied by the Body Corporate under the Regulation Module for a liability for which no



- provision or inadequate provision has been made in the budget of the Body Corporate; or
 - (ii) payable in connection with an exclusive use by-law;
- that is not an Outgoing;
- (hh) **“Transfer Documents”** means:
- (i) the form of transfer under the *Land Title Act 1994* required to transfer title in the Lot to the Buyer; and
 - (ii) any other document to be signed by the Seller necessary for stamping or registering the transfer; and
- (ii) **“Transport Infrastructure”** has the meaning defined in the *Transport Infrastructure Act 1994*.

1.2 Words and phrases defined in the *Body Corporate and Community Management Act 1997* have the same meaning in this contract unless the context indicates otherwise.

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.
- (3) The Seller may recover from the Buyer as a liquidated debt any part of the Deposit which is not paid when required.

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, 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:
 - (a) for those paid, on the amount paid;
 - (b) for those assessed but unpaid, on the amount payable (excluding any discount); and
 - (c) for those not assessed:
 - (i) on the amount the relevant authority or the Body Corporate advises will be assessed (excluding any discount); or
 - (ii) 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 Lot at the Settlement Date and the Local Government informs the Buyer that it will not apportion rates between the Buyer and the Seller, then:
 - (a) the amount of rates to be adjusted is that proportion of the assessment equal to the ratio of the interest schedule lot entitlement of the Lot to the aggregate interest schedule lot entitlement of the Scheme; and
 - (b) 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:
 - (a) on the assessment that the Office of State Revenue would issue for the land tax year current at the Settlement Date if the Seller was one natural person resident in Queensland and the Lot was the Seller’s only land; or
 - (b) based on the assumptions in clause 2.6(4)(a), if there is no separate unimproved value for the Lot, on a notional unimproved value equal to:

Unimproved value of the Land under *Valuation of Land Act 1944* x $\frac{\text{Interest schedule lot entitlement of Lot}}{\text{Aggregate interest schedule lot entitlement}}$

- (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 Lot 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 or the Body Corporate, as appropriate. 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) If Rent payments are reassessed after the Settlement Date for periods including the Settlement Date, any additional Rent payment from a Tenant or refund due to a Tenant must be apportioned under clauses 2.6(8), 2.6(9) and 2.6(10).
- (12) Payments under clause 2.6(11) must be made within 14 days after notification by one party to the other but only after any additional payment from a Tenant has been received.
- (13) The Seller is liable for any Special Contribution levied on or before the Contract Date. The Buyer is liable for any Special Contribution levied after the Contract Date.
- (14) For the purposes of clause 2.6(13), an amount payable under an exclusive use by-law will be treated as levied on the date it is due.
- (15) The cost of Bank cheques payable at settlement:
 - (a) to the Seller or its mortgagee are the responsibility of the Buyer; and
 - (b) 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:
 - (1) approval has not been obtained by the Finance Date and the Buyer terminates this contract; or

- (2) 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 and Pool Safety

4.1 This contract is conditional on the Buyer obtaining a written building report from a building inspector and a written pest report from a 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 must give notice to the Seller that:

- (1) a satisfactory inspector's report under clause 4.1 has not been obtained by the Inspection Date and the Buyer terminates this contract. The Buyer must act reasonably; or
- (2) clause 4.1 has been either satisfied or waived by the Buyer.

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 The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.2 by 5pm on the Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.

4.5 The Seller's right under clause 4.4 is subject to the Buyer's continuing right to terminate this contract under clause 4.2(1) or waive the benefit of this clause 4 by giving written notice to the Seller of the waiver.

4.6 If required under the *Queensland Building Services Authority Act 1991*, an inspector referred to in clause 4.1 must hold a current licence under that Act.

4.7 Pool Safety for non-shared pools on the Lot

- (1) This clause 4.7 applies if:
 - (a) there is a pool on the Lot and the answer to Q2 of the Reference Schedule is No or Q2 is not completed (for a non-shared pool on the Lot); and
 - (b) this contract was not formed on a sale by auction.
- (2) This contract is conditional upon the Buyer obtaining from a Pool Safety Inspector by the Pool Safety Inspection Date:
 - (a) confirmation that the Pool Safety Requirements have been met and the issue of a Pool Safety Certificate; or
 - (b) confirmation of the works required before a Pool Safety Certificate can be issued.
- (3) The Buyer must give notice to the Seller on or before the Pool Safety Inspection Date that:
 - (a) a Pool Safety Inspector has issued a Pool Safety Certificate in which case neither the Buyer nor the Seller have any further rights under this clause 4.7; or
 - (b) a Pool Safety Inspector has not issued a Pool Safety Certificate and the Buyer terminates this

- contract. The Buyer must act reasonably; or
- (c) the Buyer waives the benefit of this clause 4.7 and elects to proceed to settlement notwithstanding that there is no Pool Safety Certificate.
- (4) The Buyer's right to terminate this contract or waive the benefit of this clause 4.7 ends on the earlier of:
- (a) a Pool Safety Certificate being issued; or
- (b) settlement occurring.
- (5) The Seller may terminate this contract by notice to the Buyer if notice is not given under clause 4.7(3) by 5pm on the Pool Safety Inspection Date. This is the Seller's only remedy for the Buyer's failure to give notice.
- (6) The Seller's right under clause 4.7(5) is subject to the Buyer's continuing right to terminate this contract or waive the benefit of this clause 4.7 by giving written notice to the Seller of the waiver.
- (7) If the Buyer terminates this contract in accordance with clause 4.7(3)(b), and the Seller asks the Buyer for a copy of the pool safety inspection report, the Buyer must give a copy of the report to the Seller without delay.
- (8) For the purpose of this clause 4.7, "**formed on a sale by auction**" means formed on sale by auction—
- (a) directly on the fall of the hammer, by outcry; or
- (b) directly at the end of another similar type of competition for purchase.

5. Settlement

5.1 Time and Date

- (1) Settlement must occur between 9am and 5pm on the Settlement Date.
- (2) 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

- (1) The Transfer Documents must be prepared by the Buyer's Solicitor and delivered to the Seller a reasonable time before the Settlement Date.
- (2) 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

- (1) 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 Lot required to register the transfer to the Buyer; and
- (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 Lot or the common 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; and
- (e) if the answer to Q2 in the Reference Schedule is Yes, a copy of a current Pool Safety Certificate, if not already provided to the Buyer.

- (2) 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 and Rooming Accommodation Act 2008*) supporting the Tenancies; and
- (3) manufacturers' warranties regarding the Included Chattels;
- (4) builders' warranties on the Improvements.
- to the extent that they are assignable and the Buyer accepts the assignment. 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 Lot 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).

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 Lot is sold subject to the *Body Corporate and Community Management Act 1997* and the by-laws of the Body Corporate.

7.2 Encumbrances

The Property is sold free of all Encumbrances other than the Title Encumbrances, Tenancies and interests registered on the Plan.

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) it will be the registered owner of an estate in fee simple in the Lot and will own the rest of the Property;
 - (b) it will be capable of completing this contract (unless the Seller dies or becomes mentally incapable after the Contract Date); and
 - (c) 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) The Seller warrants that, except as disclosed in this contract, at the Contract Date:
 - (a) there is no unregistered lease, easement or other right capable of registration and which is required to be registered to give indefeasibility affecting the common property or Body Corporate assets;
 - (b) there is no proposal to record a new community management statement for the Scheme and it has not received a notice of a meeting of the Body Corporate to be held after the Contract Date or notice of any proposed resolution or a decision of the Body Corporate to consent to the recording of a new community management statement for the Scheme;
 - (c) all Body Corporate consents to improvements made to common property and which benefit the Lot, or the registered owner of the Lot, are in force;
 - (d) the community management statement recorded for the Scheme contains details of all allocations that affect the Lot or the registered owner of the Lot; and
 - (e) the Additional Body Corporate Information is correct (if completed).
- (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) If:
 - (a) a warranty in clause 7.4(3) is not correct; or
 - (b) the Additional Body Corporate Information is not completed;
 and, as a result, the Buyer is materially prejudiced, the Buyer may terminate this contract by notice to the Seller given within 14 days after the Contract Date but may not claim damages or compensation.
- (6) Clauses 7.4(4) and 7.4(5) do not restrict any statutory rights the Buyer may have which cannot be excluded by this contract.
- (7)
 - (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(7), the Buyer may:
 - (i) terminate this contract by notice in writing to the Seller given no later than 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.
 - (8) The Seller does not warrant that the Present Use is lawful.

7.5 Survey and Mistake

- (1) The Buyer may survey the Lot.
- (2) If there is:
 - (a) an error in the boundaries or area of the Lot;
 - (b) an encroachment by structures onto or from the Lot; or
 - (c) a mistake or omission in describing the Lot 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) If any Work or Expenditure that is the Seller's responsibility under clause 7.6(1)(a) is not done before the Settlement Date, the Buyer is entitled to claim the reasonable cost of work done by the Buyer in accordance with the notice or order referred to in clause 7.6(1) from the Seller after settlement as a debt.
- (3) 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.

- (4) The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under section 246AG of the *Building Act 1975* that affects the Lot. 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 588 or 590 of the *Sustainable Planning Act 2009* that affects the Property or Land.

7.7 Property Adversely Affected

- (1) If at the Contract Date:
- the Present Use is not lawful under the relevant town planning scheme;
 - 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;
 - access or any service to the Land passes unlawfully through other land;
 - any competent authority has issued a current notice to treat, or notice of intention to resume, regarding any part of the Land; or
 - 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 Lot or the Land; and
 - apply for a certificate of currency of the Body Corporate's insurance from any insurer.

7.8 Dividing Fences

The Seller need not contribute to the cost of construction of any dividing fence between the Lot 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:

- once to read any meter;
- for inspections under clause 4;
- once to inspect the Property before settlement; and
- 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 Body Corporate Meetings

- (1) The Seller must promptly give the Buyer a copy of:
- any notice it receives of a proposed meeting of

the Body Corporate to be held after the Contract Date; and

- resolutions passed at that meeting and prior to settlement.
- (2) The Buyer may terminate this contract by notice in writing to the Seller given before settlement if it is materially prejudiced by:
- any resolution of the Body Corporate passed after the Contract Date, other than a resolution of the Body Corporate passed to record a new community management statement, details of which are disclosed to the Buyer in this contract; or
 - where the Scheme is a subsidiary scheme, any resolution of a body corporate of a higher scheme.
- (3) In clause 8.4(2) a resolution includes a decision of the Body Corporate Committee to consent to recording a new community management statement.
- (4) If the Buyer is not given a copy of the resolutions before settlement, it may sue the Seller for damages.

8.5 Information Regarding the Property

Before settlement, the Seller must give the Buyer:

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

8.6 Possession Before Settlement

If possession is given before settlement:

- the Buyer must maintain the Property in substantially its condition at the date of possession, fair wear and tear excepted;
- entry into possession is under a licence personal to the Buyer revocable at any time and does not:
 - create a relationship of landlord and tenant; or
 - waive the Buyer's rights under this contract;
- the Buyer must insure the Property to the Seller's satisfaction; and
- 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. Parties' Default

9.1 Seller and Buyer May Affirm or Terminate

Without limiting any other right or remedy of the parties including those under this contract, or any right at common law, if the Seller or Buyer, as the case may be, fails to comply with an Essential Term, or makes a fundamental breach of an intermediate term, the Seller (in the case of the Buyer's default) or the Buyer (in the case of the Seller's default) 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:

- damages;
- specific performance; or
- damages and specific performance.

9.3 If Buyer Affirms

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

- damages;

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

9.4 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 any interest earned;
- (3) sue the Buyer for damages;
- (4) resell the Property.

9.5 If Buyer Terminates

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

- (1) recover the Deposit and any interest earned;
- (2) sue the Seller for damages.

9.6 Seller's Resale

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

9.7 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 an indemnity basis and the cost of any Work or Expenditure under clause 7.6(3).

9.8 Buyer's Damages

The Buyer may claim damages for any loss it suffers as a result of the Seller's default, including its legal costs on an indemnity basis.

9.9 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 9.9 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 Severance

If any term or part of a term of this contract is or becomes legally ineffective, invalid or unenforceable in any jurisdiction it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.

10.9 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.