



Warning statement

Property Agents and Motor Dealers Act 2000

This form is effective from 1 July 2009.

The contract attached to this warning is subject to a five 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 five 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 for advice on finding a solicitor.
- contact the Australian Property Institute on 07 3832 3139 or www.propertyinstitute.com.au or the Valuers Registration Board on 07 3221 3892 or www.valuersboard.qld.gov.au to find a suitable valuer.
- arrange a search for the property's sales history from your local Department of Environment and Resource Management on 07 3227 6626, or for a map of latest sales www.nrw.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.

First names.....

First names.....

Last name.....

Last name.....

Signature.....

Signature.....

Date.....

Date.....

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 (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 fifth 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 or your nearest Office of Fair Trading on 13 13 04.

Contract Warning (Body corporate information)*Body Corporate and Community Management Act 1997*

This form is effective from 1 January 2010

Department of **Employment, Economic
Development and Innovation (DEEDI)**

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 must attach this information sheet to the top of 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.



The Real Estate Institute of Queensland

Accredited Agency

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Contract

For Residential Lots in a Community Titles Scheme

Second 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:

Active Property Sales Pty Ltd atf RW & SL Bardon Family Trust trading as Ray White Middle Park

ABN:

47 792 040 187

Licence Number: 3174081

Address:

Shop 20, 92 Horizon Drive, Middle Park Qld 4074

Telephone:

3279 4777

Facsimile: 3376 5781

Mobile: 0405 484 828

Email:

mail@rwmp.com.au

Parties

Seller:

ABN:

Address:

Telephone:

Email:

Facsimile:

Mobile:

Seller's Solicitor:

ABN:

Address:

Telephone:

Email:

Ref:

[or any other solicitor notified to the Buyer]

Facsimile:

Mobile:

Buyer:

ABN:

Address:

Telephone:

Email:

Facsimile:

Mobile:

Buyer's Solicitor:

ABN:

Address:

Telephone:

Email:

Ref:

[or any other solicitor notified to the Seller]

Facsimile:

Mobile:

Property

Lot:

Address:

Description:

Lot:

Scheme:

on _____ :

Community Titles Scheme:

County:

Parish:

Title Reference:

Present Use:

Local Government:

Excluded Fixtures:

Included Chattels:



Matters Affecting Property

Title Encumbrances:

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

Residential 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: Active Property Sales Pty Ltd 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:

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

Finance

Finance Amount: \$ sufficient to complete the purchase

[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: Registered Lending Authority of Buyer's choice

Finance Date: 21 days from Contract date

Building and/or Pest Inspection

Inspection Date: 7 days from Contract date

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

Building Inspector: Licensed Building Inspector of Buyer's choice

[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]

Pest Inspector: Licensed Pest Inspector of Buyer's choice

[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

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:

Special Conditions

DRAFT

Settlement Date:
Place for Settlement: Brisbane

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

Settlement

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(2)

[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”** includes any security for the performance of any obligation under a Residential Tenancy;
- (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 Saturday, Sunday or 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) **“Disclosure Statement”** means the statement under section 206 (existing lot) or section 213 (proposed lot) of the *Body Corporate and Community Management Act 1997*;
- (k) **“Encumbrances”** includes unregistered and statutory encumbrances;
- (l) **“Financial Institution”** means a Bank, building society or credit union;
- (m) **“General Purpose Socket Outlet”** means an electrical socket outlet as defined in the *Electrical Safety Regulation 2002*;
- (n) **“GST”** means the goods and services tax under the *GST Act*;
- (o) **“GST Act”** means *A New Tax System (Goods and Services Tax) Act* and includes other GST related legislation;
- (p) **“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;
- (q) **“ITAA”** means the *Income Tax Assessment Act 1936* (**“1936 Act”**) and the *Income Tax Assessment Act 1997* (**“1997 Act”**), or if a specific provision is referred to, the Act which contains the provision; however if a specific provision of the 1936 Act is referred to which has been replaced by a provision of the 1997 Act, the reference must be taken to be to the replacement provision;

- (r) **“Keys”** means keys, codes or devices in the Seller’s possession for all locks or security systems on the Property;
- (s) **“Land”** means the Scheme land;
- (t) **“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);
- (u) **“Plan”** means the building units, group titles or survey plan containing the Lot;
- (v) **“Property”** means:
 - (i) the Lot;
 - (ii) the Improvements; and
 - (iii) the Included Chattels;
- (w) **“Regulation Module”** means the regulation module for the Scheme;
- (x) **“Rent”** means any periodic amount, including outgoings, payable under the Residential Tenancies;
- (y) **“Reserved Items”** means the Excluded Fixtures and all chattels in the Lot other than the Included Chattels;
- (z) **“Scheme”** means the community titles scheme containing the Lot;
- (aa) **“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;
- (bb) **“Tenancy Documents”** means all agreements, deeds of covenant and other documents relating to the Residential Tenancies;
- (cc) **“Tenant”** means a tenant under the Residential Tenancies;
- (dd) **“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 to stamp or register the transfer; and
- (ee) **“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 post-dated cheque; or
 - (c) pays the Deposit by cheque which is dishonoured on presentation.
- (3) The Seller may recover from the Buyer any part of the Deposit which is not paid when required as a liquidated debt.

2.3 Investment of Deposit

- (1) If:
 - (a) the Deposit Holder is instructed by either the Seller or the Buyer; and
 - (b) it is lawful to do so; the Deposit Holder must:
 - (c) 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
 - (d) provide the parties' tax file numbers to the Financial Institution (if they have been supplied).
- (2) If there is income from the investment of the Deposit in respect of any financial year to which no beneficiary is presently entitled for the purpose of Division 6 of Part III of ITAA as at 30 June of that financial year:
 - (a) the parties must pay to the Deposit Holder the tax assessed to it in respect of that income [other than tax in the nature of a penalty for late lodgment ("**Penalty**") which the Deposit Holder must bear itself] and all expenses of the Deposit Holder in connection with the preparation and lodgment of the tax return, payment of the tax, and furnishing to the parties the information and copy documents they reasonably require;
 - (b) if the tax (other than Penalty) and the Deposit Holder's expenses are not paid to the Deposit Holder on demand, it may deduct them from the Deposit and income;
 - (c) if tax is not assessed on the income when the Deposit and income are due to be paid to the party entitled, the Deposit Holder may deduct and retain its estimate of the assessment; and
 - (d) as between the parties, the tax must be paid by the party receiving the income on which the tax is assessed, and the Deposit Holder's expenses must be paid by the party receiving the Deposit.

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 (if any), unless the termination is due to the Seller's default, misrepresentation 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:

Interest schedule lot
entitlement of Lot _____

Unimproved value of the Land under *Valuation of Land Act 1944* x 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) to 2.6(10) inclusive.
- (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 is 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 contract is terminated; 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

- 4.1 This contract is conditional on 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

- (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

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

- (1) any instrument of title for the Lot required to register the transfer to the Buyer;
- (2) unstamped Transfer Documents capable of immediate registration after stamping;
- (3) 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
- (4) if there are Residential Tenancies:
 - (a) the Seller’s copy of any Residential Tenancy Documents;
 - (b) a notice to each Tenant advising of the sale and assignment of rights under this contract in the form required by law (if applicable); and
 - (c) any notice required by law to transfer to the Buyer the Seller’s interest in any Bond.
- (5) If the Keys are not delivered at Settlement under clause 5.3(3), 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:

- (1) the Seller's rights and obligations under the Residential Tenancies;
- (2) guarantees and Bonds supporting the Residential Tenancies; and
- (3) manufacturers' warranties for the Included Chattels; 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 to the extent necessary to allow recovery of those arrears by the Seller. Any bond subject to the *Residential Tenancies Act 1994* must be dealt with in accordance with that legislation.

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 Residential 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, Residential 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 and Statements

- (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);
 - (c) there will be no valid notice or order by any competent authority or court requiring work to be done or money spent in relation to the Property or common property for the Scheme or any scheme of which the Scheme is a subsidiary; and

- (d) there will be no unsatisfied judgment, order or writ affecting the Property.

- (2) 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).

- (3) If a warranty in clause 7.4(1) is not correct, the Buyer may do any or all of the following:
 - (a) terminate this contract by notice to the Seller, if it has not already settled; or
 - (b) affirm this contract and, subject to clause 7.4(4), claim compensation including damages.

- (4) If a warranty in clause 7.4(1)(c) is not correct, the Buyer may only claim compensation including damages under clause 7.4(3) if the relevant notice or order is issued before the Contract Date.

- (5) If:
 - (a) a warranty in clause 7.4(2) 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(3), 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.

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 Notices under Building Act 1975

The Buyer may terminate this contract by notice to the Seller if there is an outstanding notice at the Contract Date under:

- (1) sections 247 or 248 of the *Building Act 1975*; or
- (2) sections 4.3.9 or 4.3.11 of the *Integrated Planning Act 1997*.

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 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:
 - (a) inspect records held by any authority relating to the Lot or the Land; and
 - (b) 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 the Seller. The Buyer waives any right it may have 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 Residential 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:
 - (a) any notice it receives of a proposed meeting of the Body Corporate to be held after the Contract Date; and
 - (b) 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:
 - (a) 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
 - (b) 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:

- (1) copies of all documents relating to any unregistered interests in the Property;
- (2) full details of the Residential 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.

8.6 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) keep 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 settles 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.

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 each of them separately and any two or more of them jointly.
- (b) An obligation, representation or warranty in favour of more than one person is for the benefit of them separately and jointly.
- (c) 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.