

Contract of Sale

Local Government Regulation 2012 (Qld)
(Chapter 4 Part 12 Division 3)

PART 1 REFERENCE SCHEDULE

<p>(a) Was the contract formed at auction?</p>	Yes / No
<p>(b) Was the contract formed within 2 business days of an auction?</p>	Yes / No / Not applicable
<p>(c) Was the Buyer a registered bidder at that auction?</p>	Yes / No
Item 1 Contract Date	
<p>Item 2 Seller</p> <p>Identity:</p>	<p>Name: Tablelands Regional Council (A.B.N. 77 642 342 175) pursuant to Chapter 4 Part 12 Division 3 of the <i>Local Government Regulation 2012 (Qld)</i></p> <p>45 Mabel Street, Atherton Queensland 4883</p>
<p>Item 3 Seller's Solicitors</p> <p>Identity:</p>	<p>Name: Recoveries & Reconstruction Legal</p> <p>Delivery: Southport Central Tower, Suite 2709, 5 Lawson Street, Southport QLD 4215</p> <p>Address for Notices: Post: PO Box 101 Southport BC Qld 4215</p> <p>Facsimile: 1300 556 864</p>
<p>Item 4 Buyer</p> <p>Identity:</p>	<p>Name:</p> <p>Delivery:</p> <p>ABN:</p> <p>Address for Notices: Post:</p> <p>Telephone:</p> <p>Email:</p>

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Item 5 Buyer's Solicitors Identity: Name: Delivery: Address for Notices: Post: Facsimile: Telephone: Email:	
Item 6 Seller's Real Estate Agent Identity: Address:	
Item 7 Stakeholder Identity: Tablelands Regional Council (A.B.N. 77 642 342 175)	
Item 8 Land Address: Real Property Description: Nature of Title: Remaining Encumbrances: Statutory Charges:	(a) Title Reference: ##### - Description: Lot # on Crown Plan NR#### Freehold Title Reference: ##### - Description: Lot # on Crown Plan NR#### (a) Rights and interests reserved to the Crown by Deed of Grant No. ##### (POR 569) (b) Mortgage No ##### DD/MM/YYYY at 0:00 Bank Australia (c) The Encumbrances, tenancies, and interests registered on the crown plan, registered plan, building unit plan, group title plan or survey plan containing the Land (d) Any statutory charge, including but not limited to land tax and Local Government rates and charges

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<p>Item 14 Outstanding Statutory Notices</p>	<p>This Agreement may be affected by outstanding statutory obligations and notices; including but not limited to such obligations or notices under the <i>Local Government Act 2009 (Qld)</i> and <i>Local Government Regulation 2012 (Qld)</i>, and/or Local Laws. This may include works that have or have not been undertaken on the Land or outstanding notices issued by Local Government or other Statutory Authorities. It is the Buyer's responsibility to make independent enquiries in this regard and the Seller makes no warranties in relation thereto whatsoever.</p>
<p>Item 15 - GST Withholding Law Notice (read in conjunction with Item 9)</p>	<p>Pursuant to section 14-255 Schedule 1 Taxation Administration Act 1953 (Cth). The Buyer is required to make a payment under section 14-250 of Schedule 1 of the Taxation Administration Act 1953 (Cth) in relation of the supply of the above property. For avoidance of doubt, Goods and Services Tax (GST) is payable on the Auction price, being the highest bid. Meaning that GST shall be added to the highest bid. For example: The highest bid at Auction is \$100,000.00 (Highest Bid). 10% GST shall be added to the Highest Bid. Meaning that the purchase price shall be \$110,000.00 this now being inclusive of GST. The highest bid, plus 10% GST shall be the purchase price of this contract.</p> <p>Thus, the Buyer will be required to make a payment under section 14-250 in relation to the supply of this property, such payment must be made upon Settlement Date. The Buyer must supply its full name and the Buyers ABN. This Item shall constitute the Seller's Notification in accordance with the Withholding Law.</p>
<p>Signature of the Buyer:</p> <p>Signature of the Buyer:</p> <p>Signature of Witness:</p> <p>Name of Witness:</p> <p>Address of Witness:</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>
<p>Signed on behalf of Seller:</p> <p>Signature of Witness:</p> <p>Name of Witness:</p> <p>Address of Witness:</p>	<p>.....</p> <p>.....</p> <p>.....</p> <p>.....</p>

Note: The Parties are to sign each page of this Agreement.

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PART 2: INTERPRETATION & OPERATIVE PART A

2.1 Definitions

In this Agreement, unless the context otherwise indicates, each of the following expressions bears the meaning shown opposite.

Expressions identified in the Reference Schedule shall bear the meaning set out in the Reference Schedule.

Act of Insolvency	<ol style="list-style-type: none">(1) a Controller, Voluntary Administrator, Administrator, Receiver or a Receiver and Manager, or trustee is appointed;(2) the issuing of and/or failing to satisfy a bankruptcy notice or a statutory demand under section 459E of the <i>Corporations Act 2001 (Cth)</i>;(3) the presentation of a creditor's petition;(4) the filing of a winding up application or the appointment of a Provisional Liquidator or Liquidator;(5) Any matter arising as a consequence of Part IX or X of the <i>Bankruptcy Act 1966 (Cth)</i> including but not limited to signing an authority, or recording of a debt agreement or making a debt agreement proposal;(6) Any conduct amounting to an act of Bankruptcy or act of insolvency under the <i>Bankruptcy Act 1966 (Cth)</i> or <i>Corporations Act 2001 (Cth)</i> respectively.
Address for Notices	With respect to each party: <ol style="list-style-type: none">(1) its address or facsimile number shown at whichever is relevant of Item 3 to Item 5 (inclusive) in Part 1 of this Agreement;(2) such other address or facsimile number as it has notified in writing to the party giving it a notice as its address or facsimile number for notices under this Agreement; or(3) if it is not at the address or facsimile number the subject of <i>paragraph (1)</i> or <i>paragraph (2)</i> of this definition, its last principal place of business or facsimile number or email known to the party giving it a notice; or(4) the registered office pursuant to the <i>Corporations Act 2001 (Cth)</i>;(5) is the address for service of documents, including but not limited to notices and correspondence.
Agreement	This document and the agreement it evidences.
Approved Safety Switch	A residual current device as identified in the <i>Electrical Safety Regulation 2013 (Qld)</i> and related legislation.
Balance Purchase Price	The Purchase Price, less the Deposit paid, and subject to such adjustments as may be made pursuant to this Agreement.

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Business Day	A day, other than a Saturday, Sunday or public holiday, upon which banks are open for business in Queensland: (1) to which a notice under this Agreement is to be sent; or (2) at which an event for which this Agreement provides is to occur.
Compliant Smoke Alarm	A smoke alarm complying with the requirements for such alarms in domestic dwellings under the <i>Fire and Emergency Services Act 1990 (Qld)</i> .
Deposit	Means the amount as identified as “ <i>Deposit</i> ” in Item 9 in Part 1 of the Agreement.
Encumbrances	Has the meaning defined in Schedule 4 <i>Local Government Act 2009 (Qld)</i> , but does not include: – (1) an easement; and (2) an encumbrance that gives the State or a Government entity an interest in the Land; or (3) body corporate levies and charges; (4) Encumbrances, rights and obligations arising pursuant to the <i>Body Corporate and Community Management Act 1997</i> and the terms and by laws of the Scheme, or legislation which replaces or supplements from time to time.
General Purpose Socket Outlet	An electrical socket outlet as defined in the <i>Electrical Safety Regulation 2013 (Qld)</i> .
Item	A numbered item of information in Part 1 of this Agreement.
Land	Means the real property identified in Item 8 in Part 1 to this Agreement.
Local Laws	Includes subordinate Local Law of the Tablelands Regional Council.
Parties	The Seller as set out in Item 2 in Part 1 of this Agreement and the Buyer as set out in Item 4 in Part 1 of this Agreement.
Remaining Encumbrances	The easements, restrictive covenants and other encumbrances over the Land, as known to the Seller detailed at Item 8 in Part 1 of this Agreement.
Sale	Sale and purchase of the Land under this Agreement.
Scheme	The community titles scheme containing the Land.

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Scheme Land	The land of the Scheme.
Settlement	Completion of the sale and purchase pursuant to Part 5 of this Agreement.
Settlement Date	The date based upon the time period specified in Item 11 in Part 1 of this Agreement, or as may be extended pursuant to this Agreement.
Settlement Venue	The place specified for Settlement in Item 11 in Part 1 of this Agreement, or such other place as may be notified by the Seller to the Buyer.
Transfer	An appropriate form pursuant to and or in accordance with section 145 <i>Local Government Regulation 2012 (Qld)</i> .
Withholding Law	Means Schedule 1 to the <i>Taxation Administration Act 1953 (Cth)</i> and any amendments and also known in this Agreement as “TA”.

2.2 Interpretation generally

In this Agreement, except where the context otherwise requires:

- (a) the singular includes the plural and vice versa, and a gender includes other genders;
- (b) another grammatical form of a defined word or expression has a corresponding meaning;
- (c) a reference to A\$, \$A, dollar or \$ is to Australian currency;
- (d) a reference to time is to the time in Queensland;
- (e) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
- (f) a document or instrument (including this Agreement) includes any variation or replacement of it;
- (g) a clause, annexure, item, part or schedule is a reference to a clause in or annexure or item or part or schedule to this Agreement;
- (h) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (i) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of it;
- (j) headings and footnotes are for ease of reference and convenience only and do not affect interpretation;
- (k) any term referred to in Part 1 of this Agreement has the meaning as set out in Part 2;
- (l) words or expressions used in this contract which are defined in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* (“GST Act”) have the same meaning in this Agreement;

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- (m) Where a word or phrase is specifically defined, other parts of speech and grammatical forms of that word or phrase bear meanings corresponding to and consistent with that definition;
 - (n) A person includes but is not limited to an individual, a partnership, a corporation, a firm, a body corporate, a body politic, a statutory body, the Crown or an association, nor is it limited to a party to this agreement;
 - (o) writing is a reference to reproduction of words, figures, symbols and shapes in visible form, including print, type, lithograph, facsimile, photocopy or electronic form;
 - (p) a reference to an act includes an omission, deliberate or otherwise.;
 - (q) a reference to “time” is a reference to Queensland, Australian time;
 - (r) if an act must be done on a given day which is not a Business Day it must be done instead on the next Business Day; and
 - (s) the words or phrase: “include”, “including”, “for example” or “such as” do not limit the meaning of the words to which it relates.

2.3 Parties

- (1) Reference to a party includes:
 - (a) in the case of a natural person, that person, his/her personal representatives, agents, beneficiaries, trustees, attorneys and assigns; and
 - (b) in the case of a corporation, the corporation, its agents, successors, administrators, receiver managers, liquidators and assigns.
- (2) Where a party is composed of two or more persons, this Agreement binds jointly and severally:
 - (a) those persons and each of them; and
 - (b) each of their executors, administrators, beneficiaries, trustees, receiver managers, liquidators, agents and assigns.
- (3) Each person signing this Agreement as Buyer or in any representative capacity for and or on behalf of the Buyer assures the Seller and irrevocably warrants that he or she possesses sufficient authority to execute this Agreement and any other document(s) in any way arising or relating to this Agreement, in that capacity at the time of signing, but also remains personally liable and agrees to all the terms of this Agreement in his or her representative capacity for and or on behalf of the Buyer and in his or her personal capacity. This clause does not merge on settlement.

2.4 Warranty of Authority

Each person signing this Agreement as an officer, attorney or trustee, delegate or nominee or in any other representative capacity, as the Buyer or on behalf of the Buyer assures the Seller that such signatory irrevocably warrants that he/she possesses unrestricted authority to execute this Agreement for and or on behalf of the Buyer and any other the document(s) in any way arising or relating to this Agreement, in that capacity at the time of signing this Agreement. This clause does not merge on settlement. This is an essential term of this Agreement.

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2.5 Reference to Statute

In this Agreement a reference to a statute, ordinance, code or other law includes any regulations and other instruments made under it and any consolidations, amendments, re-enactments or equivalent provision(s) in any replacement of any of them occurring at any time before or after the date of this Agreement, and to any supplementary legislation.

2.6 Waiver

No waiver of any breach of this Agreement or any of the terms of this Agreement will be effective unless that waiver is in writing and signed by the Buyer and the Seller or his/her delegate or representative, against whom the waiver is claimed. No waiver of any breach shall operate as a waiver of any other breach or subsequent breach.

2.7 Severability

In the event of any part of this Agreement being or becoming void or unenforceable or being illegal then that part shall be severed from this Agreement to the extent that all parts that shall not be or become void, unenforceable or illegal shall remain in full force and effect and be unaffected by such severance. This clause does not merge on settlement.

2.8 Negotiation

- (1) The Buyer and the Seller acknowledge that prior to entering into this Agreement, the Buyer and the Seller have had the opportunity to negotiate the terms of this Agreement.
- (2) The Buyer irrevocably warrants that prior to entering this Agreement, the Buyer has obtained independent legal advice in respect to this Agreement and the purchase of the Land.

2.9 Entire Agreement

- (1) This Agreement comprises the entire agreement between the Buyer and Seller and it is expressly agreed that no other covenants or promises are implied into this Agreement or arise between the Buyer and the Seller pursuant to any collateral or other agreement(s). This Agreement details the entire bargain concluded between the Buyer and the Seller in relation to the Sale of the Land irrespective of:
 - (a) any negotiations, assertions, representations or discussions preceding execution of this Agreement; and
 - (b) the content of any brochure, report, advertisement, representation or other document(s) or thing produced by or on behalf of the Seller for the potential Buyer of the Land.
- (2) The Buyer acknowledges and irrevocably warrants that it has not been induced to acquire the Land by any representation, verbal or otherwise, made by or on behalf of the Seller but not detailed in this Agreement. The Buyer irrevocably warrants that the Buyer has entered into this Agreement consequently upon making its own independent due diligence enquiries.

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(3) This clause does not merge on settlement.

2.10 Introduction by Agent

Where an agent is identified in **Item 6 in Part 1** the Buyer irrevocably warrants that it was not introduced to the Seller or to the Land by any agent other than the agent named in this Agreement. The Buyer acknowledges that the Seller enters into this Agreement in reliance upon that warranty. The Buyer shall indemnify the Seller against any commission and/or any other fee and/or interest, which may be payable by the Seller to any other agent in respect of any such introduction. This clause does not merge on settlement.

2.11 Trustee

A party who executes this Agreement as trustee for the Buyer is bound both personally and in his, her or its capacity as trustee, and irrevocably warrants that he, she or it will adhere to the terms of this Agreement. The trustee acknowledges that the Seller entering into the agreement is consideration passing to the trustee, both as trustee and in his/her/its personal capacity. This clause does not merge on settlement. This is an essential term of this Agreement.

2.12 Time of the Essence

Time is of the essence in this Agreement. This is an essential term of this Agreement.

2.13 Governing Law

The laws of Queensland govern this Agreement and the parties irrevocably submit to the exclusive jurisdiction of the courts of Queensland.

PART 3: SALE OF LAND (OPERATIVE PART B)

31 Seller

The Buyer acknowledges that the Seller is a Local Government as defined in the *Local Government Act 2009 (Qld)* and *Local Government Regulation 2012 (Qld)*.

32 Buyer's Acknowledgement that Land Acquisition is pursuant to Local Government Regulation 2012

- (1) The Buyer acknowledges that the Buyer is purchasing the Land from the Seller and the Seller is selling the Land to the Buyer pursuant to Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012 (Qld)* on the basis that an amount of money is due to the Seller by the registered owner of the Land. The Buyer acknowledges that the Buyer is buying the Land from the Seller even though the Seller is not on title. The Buyer irrevocably warrants that the Buyer shall not make any objection, requisition, claim, or seek any compensation whatsoever, or seek further information from the Seller or delay settlement of this Sale in any way whatsoever.
- (2) The Seller agrees to sell the Land to the Buyer, and the Buyer agrees to buy the Land from the Seller, pursuant to Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012 (Qld)* (the Seller is selling the Land as a consequence of overdue rates or charges including interest owed to the Seller).

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- (3) Where the Land is a lot in a community titles scheme, the Land is sold subject to the *Body Corporate and Community Management Act 1997 (Qld)*, related legislation and the bylaws of the Body Corporate of the Scheme.
- (4) The Buyer irrevocably agrees that should the outstanding rates, charges, interest, and any other moneys owed to the Seller including the costs as a consequence of the Sale process and procedure pertaining to this Land be paid prior to the Settlement Date then the Seller may terminate this agreement without penalty and return to the Buyer the deposit (excluding interest which shall be retained by the Seller) and the Buyer shall have no recourse or remedy whatsoever against the Seller. The Buyer irrevocably warrants that the Buyer shall not bring any action, suit, claim, objection or requisition whatsoever against the Seller, and should a third party bring an action against the Seller through the Buyer or as a consequence of the Sale or matters pertaining to the Sale of this Land the Buyer irrevocably warrants that the Buyer shall indemnify the Seller, and this agreement may be pleaded as a complete bar to any proceedings, action, claim or suit against the Seller.
- (5) The Buyer acknowledges that the Seller is not in possession of the Land, nor is the Seller providing the land with vacant possession. For the avoidance of doubt, it is the Buyer's sole responsibility to seek and obtain possession of the Land. The Buyer shall forever indemnify and keep indemnified the Seller in connection with any matter relating to the Buyer taking possession of the Land, and this agreement may be pleaded as a complete bar to any proceedings, action, claim or suit against the Seller.
- (6) This clause does not merge upon settlement and is an essential term of this Agreement.

33 Effect of Transfer

Upon the registration of a Transfer pursuant to section 145(4) of the *Local Government Regulation 2012 (Qld)*, the interest of the registered owner will be transferred to the Buyer subject to the Remaining Encumbrances.

34 Buyer Acknowledgment

- (1) The Buyer acknowledges that the Seller enters this Agreement without having possession or physical control of the Land or being on title.
- (2) Where the Land is a lot in a community titles scheme, the Buyer acknowledges this transaction is undertaken without the Seller having participated in any business of the Scheme.
- (3) The Buyer acknowledges that, where the Buyer bids at auction, it bids in the knowledge that, and where this Agreement is not formed at auction, it enters this Agreement in the knowledge that, the Seller has made no representation, warranty, or assurance of any nature:
 - (a) to the effect that vacant possession of the Land or any improvements will be provided at Settlement or whether any tenancies exist, and the Buyer acknowledges that it is the Buyer's responsibility to obtain possession after Settlement and will take no action whatsoever against the Seller or join the Seller to proceedings to enforce possession, and the Buyer at all times indemnifies the Seller;
 - (b) as to the condition, state of repair, or suitability for any use of the Land or any improvements, and the Buyer in that regard acknowledges that the Seller has not been in possession or had physical control of the Land;

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- (c) that the Land presently is being used in accordance with approvals (if any) granted by any Government authority;
- (d) that any improvements on the Land have been constructed or placed upon the Land with all or any applicable legislative requirements of any Government authority being met;
- (e) where the Land is a lot in a community titles scheme, that the records of the Scheme are complete and/or accurate;
- (f) that in respect of any pool on the Land or used in association with the Land there is any Compliance or Exemption certificate, the Buyer acknowledging that the Seller is not an "owner" for the purposes of section 16 of the *Building Regulation 2006 (Qld)* and as a result is not obliged to comply with pool safety requirements under the *Building Act 1975 (Qld)* and the *Building Regulation 2006 (Qld)* (or related legislation) including any obligation of owners to give notices thereunder;

and the Buyer irrevocably warrants to the Seller that it has before entering this Agreement carried out and made all enquiries and searches in relation to the Land and the improvements on it. The Buyer irrevocably agrees that the property may not be provided with vacant possession and the Buyer acknowledges that it is the Buyer's responsibility to obtain vacant possession and the Buyer shall have no recourse against the Seller whatsoever, and the Buyer irrevocably warrants that the Buyer shall not make any objection, or terminate, or rescind, or make any requisition, or bring any proceedings, action, claim or suit or make any claim against the Seller whatsoever, nor shall the Buyer in any way seek to delay settlement of this sale as a consequence of that which appears in this clause. The Seller acknowledges and irrevocably agrees that the Seller may rely upon the content of this clause of this Agreement as an absolute and complete bar to any proceedings, claim, action or suit brought by the Buyer in connection with any matter(s) referred to in this clause.

- (4) This clause does not merge upon settlement and is an essential term of this Agreement.

35 Payment of overdue rates

- (1) If, at any time between the formation of this Agreement and the Settlement Date, the Seller becomes aware that payment of the overdue rates and costs in respect of the Land was tendered to the Seller prior or subsequent to the auction or sale, then the Seller may terminate this Agreement by written notice to the Buyer in which event all monies paid by way of Deposit are refundable to the Buyer without deduction (excluding interest which is retained by the Seller). This is the Buyers only entitlement being the return of the Deposit.
- (2) For avoidance of doubt, if the Seller terminates this Agreement pursuant to this clause, such termination is not an event of default and does not entitle the Buyer to damages or any relief whatsoever.
- (3) The Buyer irrevocably warrants and agrees not to seek to terminate, rescind or make any objection or requisition or seek further information, or delay settlement or make any claim for compensation whatsoever or bring any proceedings, action, claim or suit arising out of any of the matters referred to in this clause. The Buyer acknowledges and irrevocably agrees that the Seller may rely upon the content of this clause of the Agreement as an absolute and complete bar to any proceedings, action, claim or suit brought by the Buyer in connection with any matter(s) referred to in this clause.

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- (4) This clause does not merge upon settlement and is an essential term of this Agreement.

3.6 Impediment to Settlement

- (1) In the event that:
- (a) before Settlement, an injunction is made or sought or proceedings relating to this Agreement or the Seller's entitlement to sell are instituted by any person; or
 - (b) the Seller reasonably forms the view that any encumbrance (other than the Remaining Encumbrances) will not be removed from the title to the Land on the registration of the Transfer or becomes aware of any potential claims by any party negotiating the sale or the Seller forms the view that the Sale ought not proceed due to any irregularity or issue with respect to its statutory or legal obligations or the procedures set out in the *Local Government Act 2009 (Qld)* or *Local Government Regulation 2012 (Qld)*; or
 - (c) there is some other event or circumstance which impacts or restricts the Seller's ability to give the Transfer and convey title to the Buyer or pay the proceeds of Sale to the parties entitled by law; or
 - (d) there is in the Seller's absolute discretion any matter that impacts upon the efficacy of this proposed transaction in any manner whatsoever. For the purpose of this Agreement this event is regarded as an impediment to Settlement;

then the Seller may serve notice on the Buyer extending the Settlement Date for a period of not less than one (1) Business Day and not more than 120 Business Days, in which case the Settlement Date shall be the date set forth in the Seller's notice. The Seller may give this notice on more than one occasion provided however that the aggregate of the extensions shall not exceed 120 Business Days from the Settlement Date set out in this Agreement.

- (2) Where the Seller has given, or not given, such notice and extended the Settlement Date, and/or the Seller determines in its absolute discretion that any impediment to Settlement exists and or remains, then it may terminate this Agreement by written notice in which event all monies paid by way of Deposit (excluding interest accrued which shall be retained by and or paid to the Seller) shall be refunded to the Buyer, and the Buyer shall have no claim whatsoever against the Seller and this clause may be pleaded as a complete bar in any proceedings, action, claim or suit brought against the Seller. Nothing in this clause will oblige the Seller to extend the date for Settlement or complete this transaction.
- (3) This clause does not merge upon settlement and is an essential term of this Agreement.

3.7 No transfer of chattels or fixtures

- (1) The Buyer acknowledges that by this Agreement, the Seller will provide a Transfer of the title to the Land only. The Buyer acknowledges that:
- (a) the Seller does not have the power to sell chattels in or about the Land;
 - (b) chattels are not included in the Sale of the Land;
 - (c) the Seller is not required to remove any chattels or fixtures from the Land; and

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- (d) the Seller does not claim and will not exercise any rights in respect of chattels or fixtures and makes no representation or warranty that any such chattels or fixtures will remain in or about the Land or attached to it at Settlement, or be removed prior to or following Settlement;
 - (e) the Buyer irrevocably warrants that the Buyer cannot terminate or rescind this Agreement as a consequence of any matter arising or in connection with any matter(s) contained in this clause whatsoever;
 - (f) the Buyer irrevocably warrants that the Buyer cannot delay Settlement or seek to make or make any objection or requisitions in connection with the Agreement as a consequence of any matter arising or in connection with any matter(s) contained in this clause whatsoever;
 - (g) the Buyer irrevocably warrants that the Buyer shall make no claim against or seek compensation from the Seller, or commence or maintain any proceedings, action, claim or suit against the Seller as a consequence of any matter arising or in connection with any matter(s) contained in this clause whatsoever; and
 - (h) the Seller may rely upon this clause as a complete bar to any such proceedings, action, claim or suit brought against the Seller by the Buyer in connection with this Sale and or Agreement.
- (2) This clause does not merge upon settlement and is an essential term of this Agreement.

3.8 Buyers Acknowledgement

- (1) The Buyer acknowledges, and irrevocably warrants and agrees that the Buyer is buying the Land in **item 8 in Part 1** of this Agreement as a result of its own enquires and inspections, and not relying upon any representation made by the Seller or any other person on the Seller's behalf whatsoever, and is purchasing the Land:
- (a) in its present condition and state of repair;
 - (b) subject to all defects latent and or patent;
 - (c) subject to any infestations and or dilapidation;
 - (d) subject to all existing water, sewerage, drainage and plumbing services and connections in respect of the property;
 - (e) subject to any non-compliance with any Local Government Act or any ordinance or provision of any of Act or regulation or local laws in respect to the building or the entirety of the Land the subject of the Sale;
 - (f) subject to any contamination including, but not limited to, by any hazardous substances;
 - (g) subject to any defects on title;
 - (h) subject to any encumbrances referred to in this Agreement;
 - (i) subject to any tenancies (acknowledging that the Seller is not in possession);

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- (j) without vacant possession (acknowledging that the Seller is not in possession); and
 - (k) subject to any nuance or substance which has in the past, in the present or shall in the future escape from the Land, the subject of this Sale.
- (2) The Buyer irrevocably warrants and agrees not to seek to terminate, rescind or make any objection or requisition or seek further information, or delay settlement or make any claim for compensation whatsoever or bring any proceedings, action, claim or suit arising out of any of the matters referred to in this clause and or Agreement whatsoever.
- (3) Notwithstanding any other provision of this Agreement, this clause shall take priority, and the Buyer acknowledges, and irrevocably warrants and agrees that the Seller may rely upon this clause or any other clause deemed appropriate by the Seller as a complete bar in any proceedings brought by the Buyer or any other party through the Buyer in any action, claim, suit or proceeding, and the Buyer irrevocably warrants not to object or oppose the dismissal or permanent stay of any such action, claim, suit or proceeding brought by the Buyer or through the Buyer by another party against the Seller, and shall consent to such a course.
- (4) This clause shall not merge upon settlement and is an essential term of this agreement.

3.9 Buyer to be satisfied as to use

The Buyer acknowledges that the Seller does not in any way warrant the use to which the Land may be put and the Buyer irrevocably warrants that the Buyer is satisfied as to the requirements of all responsible authorities in relation to the use of the Land for any and all purposes. In particular the use of the Land by the registered owner or any third party does not of itself mean that such use is permitted. This clause does not merge upon settlement and is an essential term of this agreement.

3.10 Risk upon Exchange of Agreement

The Buyer acknowledges and irrevocably agrees that upon execution of this Agreement risk regarding any loss or damage of any structure, or anything to do with the Land and anything that may escape from the Land and any loss or damage arising as a consequence thereof is the Buyer's responsibility. The Buyer irrevocably warrants that the Buyer shall take out an insurance policy which includes comprehensive insurance, and public liability insurance of no less than 20 million dollars. The Buyer irrevocably warrants to nominate the Seller as an interested party and beneficiary of the said policy. The Buyer irrevocably warrants to indemnify the Seller for any loss or all potential loss the Seller may suffer as a consequence of the Sale of the Land or anything relating thereto. Hence, notwithstanding the law or equity or any other provision herein the Seller and the Buyer irrevocably agree that the risk of the Land shall pass to the Buyer upon exchange, and from that time the Buyer shall not make any requisition, objection or claim for compensation nor have any right of rescission or termination in relation to any loss or damage as a consequence of the Sale of the Land. A copy of the policy and certificate of insurance as a consequence of this clause is to be provided to the Seller by the Buyer within 24 hours of the policy being issued. This clause does not merge upon settlement.

3.11 Outstanding Notices or Orders

- (1) The Buyer acknowledges that there may be outstanding notices or orders pertaining to the Land that the Seller is aware of and have not been disclosed. The Buyer acknowledges that there may be outstanding notices or orders pertaining to the Land that the Seller may not be aware of, in either case these notices or orders may not have been complied with. The Buyer irrevocably

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warrants that the Buyer shall comply with such notices or orders and shall forever release Seller from such obligations to do so and indemnify the Seller. For the avoidance of doubt the Buyer irrevocably warrants that the Buyer shall not make any objection, requisition, or any claim, terminate or rescind or seek any compensation whatsoever, seek further information from Seller, or delay the settlement of this Sale in any way as a consequence directly or indirectly based upon the subject matter of what is stated in this clause. The Buyer acknowledges and irrevocably agrees that the Seller may rely upon the content of this clause of the Agreement as an absolute and complete bar to any proceedings, action, claim or suit brought by the Buyer in connection with any matter(s) referred to in this clause.

- (2) This clause shall not merge upon settlement and is an essential term of this Agreement.

3.12 Indemnity

The Buyer irrevocably warrants that the Buyer releases the Seller from all demands, claims, actions, suits, costs and expenses now or later arising from the Sale of this Land to the Buyer. For the avoidance of doubt, the Buyer irrevocably indemnifies the Seller against any claims whatsoever and howsoever arising in relation to the Sale of this Land to the Buyer. This clause does not merge on settlement and is an essential term of this agreement.

3.13 Seller's additional right to rescind

Should the Buyer become entitled to rescind this Agreement as a consequence of any statutory imposed right to so rescind, the Seller shall also then be entitled to rescind this Agreement provided such right is exercised before the Buyer has served its notice of rescission.

3.14 Requisitions

The Buyer acknowledges and irrevocably warrants and agrees that the Buyer shall not seek any information or any requisitions from the Seller.

3.15 Deposit Bond and Bank Guarantees

The Buyer irrevocably agrees and acknowledges that the Seller shall not accept a deposit bond or a bank guarantee.

3.16 Vacant Possession

- (1) The Buyer acknowledges that the Buyer may not be receiving the Land with vacant possession. The Buyer irrevocably warrants that the Buyer shall not make any objection, terminate, rescind, or make any requisition, or bring any proceedings, action, claim or suit or make any claim against the Seller whatsoever, nor shall the Buyer in anyway seek to delay the Settlement Date of this Sale as a consequence of that which appears in this clause. The Buyer acknowledges and irrevocably agrees that the Seller may rely upon the content of this clause of the Agreement as an absolute and complete bar to any proceedings, action, claim or suit brought by the Buyer in connection with any matter(s) referred to in this clause.
- (2) The Buyer acknowledges that the Buyer may be receiving the Land in a dilapidated state and with garbage and other refuse, debris, rubbish, waste, litter, scrap, dross, personal property or other materials on the Land. The Buyer shall make its own enquires in this regard. The Buyer irrevocably warrants that the Buyer shall not make any objection, or terminate, or rescind, or make any requisition, or bring any proceedings, action, claim or suit or make any claim against

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the Seller whatsoever, nor shall the Buyer in any way seek to delay settlement of this Sale as a consequence of that which appears in this clause. The Seller acknowledges and irrevocably agrees that the Seller may rely upon the content of this clause of this Agreement as an absolute and complete bar to any proceedings, claim, action or suit brought by the Buyer in connection with any matter(s) referred to in this clause.

- (3) This clause shall not merge upon settlement and is an essential term of this Agreement.

3.17 Settlement

If this Agreement is not completed by 3.00pm on the Settlement Date, the party not in default may serve a notice to complete on the defaulting party any time after 3.00pm on the Settlement Date. The notice:

- (1) must require the defaulting party to complete the Agreement not less than 14 days after service of the notice; and
- (2) may be withdrawn at any time by the party that served it, without prejudice to its right to serve a further notice under this clause.

For the avoidance of doubt such notice may be served by email.

3.18 Notice to Complete

Despite any rule of law or equity to the contrary, the Seller and the Buyer agree that any notice to complete given by either party under this Agreement shall be reasonable as to time if a period of 14 days from the date of service of the notice is allowed for completion and in this regard, time will be of the essence.

3.19 Acceptance of Transfer

- (1) The Buyer irrevocably warrants that the Buyer shall at settlement (on the Settlement Date) accept a Transfer from the Seller, and the Buyer shall not make any objection, terminate, rescind, or make any requisition, or claim against the Seller whatsoever, nor shall the Buyer in any way seek to delay the Settlement Date of this Sale in any way.
- (2) The Buyer irrevocably warrants that the Buyer shall not commence or maintain any proceedings, action, claim or suit against the Seller as a consequence of anything arising or in any way directly or indirectly connected with the Transfer pertaining to this Land the subject to the Sale.
- (3) This clause shall not merge upon settlement and is an essential term of this Agreement.

3.20 Pre-Estimate

- (1) Provided that the Seller is ready, willing and able to give title to the Buyer, if this Agreement is not completed for any reason (other than the Seller's default) on or before the Settlement Date then in addition to any other right(s) which the Seller may have under this Agreement or otherwise the Buyer will on the Settlement Date (which will in this clause include rescission or termination as a consequence of the Buyer's conduct) of this Agreement pay to the Seller interest on any part of the purchase price not released to the Seller (including the deposit if such is being retained by the Seller's agent) at the rate of 11% per annum calculated on daily balances, commencing on the Settlement Date and continuing until settlement of this

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Agreement. This interest is a genuine pre-estimate of liquidated damages and will be deemed to be part of the balance of purchase money due and payable on completion.

- (2) If completion does not take place on the Settlement Date and the Seller is not at fault and the Seller issues a Notice to Complete in accordance with these terms, the Buyer must pay to the Seller the sum of \$220.00 to cover the legal costs and other expenses incurred as a consequence of the issuing of the said notice. The parties agree that it is a genuine pre-estimate of the additional costs and other expenses or costs incurred by the Seller as a consequence of issuing such a notice.
- (3) This clause shall not merge upon settlement and is an essential term of this Agreement.

3.21 Approved Safety Switch and Complaint Smoke Alarm

- (1) The Seller has not been in occupation or possession of the Land or improvements and has not verified the existence or otherwise of:
 - (a) An Approved Safety Switch for the General-Purpose Socket Outlets;
 - (b) The installation or otherwise of a Compliant Smoke Alarm.
- (2) The Seller accordingly gives notice that neither an Approved Safety Switch nor a Compliant Smoke Alarm is installed in the residence.

3.22 Resumption

If the Land is subject to a resumption for road or any other purpose, the balance of the Land remaining only is offered for Sale and no objection or requisition shall be raised by the Buyer that the area so offered is approximately only, or that the area left after such resumption has been finalized is more or less than the approximate area so offered, or that the Buyer is delayed in any respect in obtaining a title for the Land purchased. The Buyer irrevocably warrants that the Buyer shall not make any objection, or terminate, or rescind, or make any requisition, or bring any proceedings, action, claim or suit or make any claim against the Seller whatsoever, nor shall the Buyer in any way seek to delay settlement of this Sale as a consequence of that which appears in this clause. The Seller acknowledges and irrevocably agrees that the Seller may rely upon the content of this clause of this Agreement as an absolute and complete bar to any proceedings, claim, action or suit brought by the Buyer in connection with any matter(s) referred to in this clause. This clause shall not merge upon settlement and is an essential term of this Agreement.

PART 4: PURCHASE PRICE

4.1 Method of Payment

- (1) The Buyer must pay the Purchase Price as set out in **Item 9 in Part 1**, and any other sum due to the Seller under this Agreement in:
 - (a) legal Australian tender; and
 - (b) by a bank cheque, dated on or before the date of delivery, issued by an authorised deposit-taking institution as defined by section 5 of the *Banking Act 1959 (Cth)*, or a bank constituted under a law of the State of Queensland.

4.2 Payment of Deposit

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- (1) The Buyer must pay the Deposit in cleared funds being in Australian dollars immediately upon execution of this Agreement, and this time is essential.
 - (2) The Deposit is to be paid to the Stakeholder.
 - (3) If the Buyer fails to pay the Deposit as required by this clause, the Buyer commits a fundamental breach of this Agreement and the Seller may affirm or terminate this Agreement.
 - (4) Without derogating from the strict effect of the terms of this Agreement, the Seller may recover the Deposit to the extent it is unpaid as a liquidated debt in a Court of competent jurisdiction in Queensland, and a certificate issued by the Seller will be prima facie evidence of the amount owed pursuant to this Agreement.
 - (5) The Deposit shall be 10% of the Purchase Price as set out in **Item 9** in **Part 1** of this Agreement.
 - (6) This clause shall not merge upon settlement and is an essential term of this Agreement.

4.3 Reduction of Deposit

- (1) In the event that:-
 - (a) the Buyer defaults in the observance of any obligation in the Agreement; or
 - (b) the Buyer has paid a deposit of less than 10% of the Purchase Price; or
 - (c) the Seller terminates this Agreement;

then the Seller shall be entitled to recover from the Buyer the amount equal to 10% of the Purchase Prices (as contained in **Item 9** in **Part 1** of this Agreement) less the deposit paid as liquidated damages and it is agreed that this right shall be in addition to and shall not limit any other remedies available to the Seller contained in this Agreement or implied by law or in equity notwithstanding any rule of law or equity to the contrary. This clause does not merge upon settlement and is an essential term of this Agreement.

4.4 Genuine and Fair Pre-Estimate of Loss

In addition to any other rights which the Seller has, the rights of which are specifically preserved, in the event of a failure to complete by the Buyer, the Buyer irrevocably agrees to the forfeiture of the deposit, being 10% of the purchase price (as contained in **Item 9** in **Part 1** of this Agreement) as a genuine and fair pre-estimate of the loss and damage suffered by the Seller and is agreed as a fixed liquidated sum. This sum if necessary, can be recovered as a debt by the Seller against the Buyer in a Court of competent jurisdiction in Queensland. This clause does not merge upon settlement and is an essential term of this Agreement.

4.5 Balance Purchase Price

The Buyer must pay to the Seller on the Settlement Date the Balance of the Purchase Price (**Item 9** in **Part 1**) in such a manner as the Seller directs. For the avoidance of doubt, the Balance of the Purchase Price is the Purchase Price as contained in **Item 9** in **Part 1** of the Agreement, less any deposit that was actually paid by the Buyer and received by the Seller in cleared funds. This clause does not merge upon settlement and is an essential term of this Agreement.

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4.6 Stakeholder's Obligation (General)

- (1) Without limiting the effect of any specific obligation imposed upon the Stakeholder in this Agreement, the Stakeholder must:
 - (a) Retain the Deposit until:
 - (i) Settlement; or
 - (ii) termination of this Agreement.
- (2) Notwithstanding anything to the contrary, the Buyer irrevocably warrants and agrees the Deposit shall be released to the Seller forthwith upon the execution of this Agreement.

4.7 Interest on Late Payments

- (1) If the Deposit or any other money payable under this Agreement is not paid when due, the Buyer must pay interest on the overdue money from the due date for payment to the date of payment (both inclusive).
- (2) A judgment for money payable under this Agreement will also bear interest from the date of judgment to the date of payment (both inclusive).
- (3) Interest is to be:-
 - (a) calculated on daily balances at the Default Interest rate of 11% per annum upon any outstanding amount;
 - (b) paid upon Settlement Date or otherwise on demand.
- (4) This clause shall not merge upon settlement and is an essential term of this Agreement.

4.8 Application of Proceeds of Sale

- (1) The Seller will apply the proceeds of sale (to the extent that such proceeds are available) in the order set out in regulation 146 of the *Local Government Regulation 2012 (Qld)*. As at the date of this Agreement, that order is as follows:
 - (a) to pay any amount for the release of a State encumbrance under section 138(4)(b) or (5) of the *Local Government Regulation 2012 (Qld)*, including payment of an amount pertaining to the State's interest in the Land and any amount that is owing to the State under this Agreement if any;
 - (b) to pay the expenses of the sale;

*Example of expenses of the sale include—
administrative costs incurred by the local government*
 - (c) to pay the overdue rates or charges for the Land;
 - (d) to pay any other amounts relating to the Land that the owner of the Land owed the

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- local government immediately before the sale;
- (e) to pay any rates or charges, other than overdue rates or charges, for the Land;
 - (f) to pay any registered encumbrances, other than State encumbrances, in order of their priority under the Land Title Act;
 - (h) to pay the person who owned the Land immediately before the Sale.
- (3) The Buyer irrevocably acknowledges and agrees that if there are insufficient funds from the proceeds of sale to pay charges including those referred to in this clause the Buyer will become responsible for them to the extent that they are unpaid.
- (4) The Buyer irrevocably acknowledges and agrees that where any land tax is due and payable or becomes due and payable following the entering into this Agreement the Buyer shall pay the land tax so owed, without any reduction to the Purchase Price.
- (5) The Buyer irrevocably acknowledges and agrees that the Buyer shall have no action against the Seller whatsoever and shall neither commence nor maintain any proceedings, action, claim or suit against the Seller in connection with the subject matter of this clause, nor raise any objections, requisitions or seek to delay settlement of this Sale, and that the Seller may plead as an absolute bar to any proceedings, action, claim or suit brought by the Buyer against the Seller in regard to any matter referred or in connection with the subject matter of this clause. This clause does not merge upon settlement and is an essential term of this Agreement.

PART 5: SETTLEMENT

5.1 Time and Place for Settlement

- (1) Settlement is to be effected:
 - (a) on the Settlement Date;
 - (b) at the Settlement Venue;
 - (c) at the time agreed by the Parties (agreement to be reached not later than 3.00pm on the day before the Settlement Date);
 - (d) between the hours of 11.00am and 3.00pm.
- (2) Irrespective of any other provision in this Agreement, if the Settlement Date falls on a Saturday, Sunday or public holiday in Queensland, Settlement is to be effected on the Business Day next following the Settlement Date.
- (3) any agreement or proposal between the Parties to effect Settlement before 3.00pm on the Settlement Date does not have the effect of varying this Agreement and is without prejudice to the rights of either party to require Settlement at 3.00pm on the Settlement Date.
- (4) At Settlement the Seller will provide to the Buyer the Transfer in exchange for the Balance Purchase Price (being the Purchase Price as set out in **Item 9** in **Part 1**, less any Deposit received by the Seller in cleared funds). The Buyer irrevocably acknowledges and agrees that the Buyer

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shall not receive an instrument of title or release of any Encumbrances or the keys of any building or improvements on the Land.

- (5) Subject to any other provision in this Agreement if, on or before the Settlement Date, the Seller is not in a position to provide the Buyer with either a current ATO Clearance Certificate under s14-220 of the Withholding Law or a variation notice under s14-235 of the Withholding Law, the Seller may:
 - (a) inform the Buyer that it will settle on the Settlement Date without providing either an ATO Clearance Certificate or variation notice; or
 - (b) serve notice on the Buyer extending the Settlement Date for a period of not less than two (2) Business Days and not more than 120 days, in which case the Settlement Date shall be the date set forth in the Seller's notice. The Seller may give this notice on more than one occasion provided however that the aggregate of the extensions shall not exceed 120 days from the Settlement Date set out in this Agreement.
- (6) The Buyer irrevocably acknowledges and agrees that the Buyer shall have no action against the Seller and shall neither commence nor maintain any proceedings, action, claim or suit against the Seller in connection with the subject matter of this clause, nor raise any objections, requisitions or seek to delay Settlement of this Sale, and that the Seller may plead as an absolute bar to any proceedings, action, claim or suit brought by the Buyer against the Seller in regard to any matter referred or in connection with the subject matter of this clause. This clause does not merge upon settlement and is an essential term of this Agreement.

5.2 Preparation and Delivery of Transfer Documents

- (1) The Seller will:
 - (a) prepare the Transfer; and
 - (b) deliver it to the Buyer at Settlement.
- (2) The Seller may (but is not required to) cooperate with the Buyer for the provision of the Transfer prior to Settlement Date for stamping purposes, and such provision shall be on such terms and subject to such conditions as the Seller may impose.
- (3) The Buyer irrevocably acknowledges and agrees that the Buyer shall have no action against the Seller and shall neither commence nor maintain any proceedings, action, claim or suit against the Seller in connection with the subject matter of this clause, nor raise any objections, requisitions or seek to delay settlement of this Sale, and that the Seller may plead as an absolute bar to any proceedings, action, claim or suit brought by the Buyer against the Seller in regard to any matter referred or in connection with the subject matter of this clause. This clause does not merge upon settlement and is an essential term of this Agreement.

5.3 Registration of Transfer

- (1) After Settlement, the Buyer must:
 - (a) ensure that the Transfer is lodged promptly for registration; and
 - (b) pursue registration of the Transfer diligently, meaning that the Buyer must register the

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Transfer within a period of 48 hours of Settlement.

(2) This clause does not merge upon settlement and is an essential term of this Agreement.

5.4 Further Assurances

Each party must do everything lawfully or reasonably required of it by the other party to give effect to the provisions, and achieve the intent, of this Agreement; and preserve and promote the entitlements of the other party under this Agreement, before and after Settlement. This clause does not merge upon settlement.

5.5 No Claim

The Buyer irrevocably acknowledges and warrants that the Buyer once he, she or it executes this Agreement is thereafter bound to complete and the Buyer will not be entitled to make any claim against the Seller for damages, compensation or otherwise rescind or terminate this Agreement, unless the Seller agrees to releasing (in writing) the Buyer from the terms of this Agreement. Any release of the Buyers' obligation arising from the Agreement will be at the Seller's absolute discretion.

5.6 Delay & Other Events

- (1) In addition to any other terms of this Agreement, where the Seller is restrained or is prevented in any way or manner whatsoever from conveying title by the original Settlement Date, the Seller may extend the Settlement Date for a period or periods, the total of which shall not exceed 120 Business days from the original Settlement, by notice in writing to the Buyer, which notice(s) shall specify such extended date(s). In the event of a settlement delay(s) in accordance with this clause, the Buyer irrevocably agrees that it shall not make any claim or bring any proceedings, claim, action or suit for damages or loss, compensation or account or relief whatsoever, or seek to enforce any other remedies at law or in equity against the Seller.
- (2) If there is such an extension, and if the Seller shall be restrained or prevented in any way or manner whatsoever from conveying title in terms of this Agreement, the Seller may in its absolute discretion rescind or terminate this Agreement by notice in writing to the Buyer and all deposit and other monies received by the Seller or agent or Stakeholder on account of the Purchase Price (excluding interest accrued on the Deposit which shall be retained by the Seller) shall be refunded to the Buyer without interest, without costs and without damages. The Buyer irrevocably agrees that it shall not make any claim or bring any proceedings, claim, action or suit for damages or loss, compensation or account whatsoever, or seek to enforce any remedy at law or in equity including seeking declaratory relief or specific performance against the Seller and the Buyer's only remedy in such event will be to accept the refund of the deposit without interest, without costs, and without damages which shall be accepted by the Buyer in full and final satisfaction of all claims and the Buyer thereby forever releases and forgives the Seller from any such claims whatsoever. The Buyer acknowledges that the Seller may use such release as a complete bar to any claim, action, proceeding, relief or suit brought by the Buyer or any party acting on behalf of the Buyer (including an undisclosed principal, assigns, executors/executrix, administrators, trustees or other representatives or agents) as a consequence of the provisions of this contract. This clause shall not merge upon settlement.
- (3) Notwithstanding anything to the contrary in this Agreement or at law or in equity, in the event the Seller is for any reason whatsoever unable or unwilling to perform any of its obligations pursuant to the terms of this Agreement, the Buyer irrevocably agrees that it shall not make any claim or bring any proceedings, claim, action or suit for damages or loss, compensation or account whatsoever, or seek to enforce any other remedies at law or in equity including seeking

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declaratory relief or specific performance against the Seller and the Buyer shall release the Seller for all actions, suits or claims past, present or future and the Seller may rely upon such release as an absolute and complete bar to any claim, action, proceeding, relief or suit brought by the Buyer or any party acting on behalf of the Buyer (including an undisclosed principal, assigns, executors/executrix, administrators, trustees or other representatives or agents), as a consequence of the provisions of this Agreement. This clause does not merge upon settlement.

- (4) Provided the Buyer is not in default of any of the terms of this Agreement and where the Buyer has a right to rescind or terminate this Agreement arising from the terms of this Agreement or at law or in equity, the Buyer's only remedy in such event will be to rescind the Agreement, in which case all deposit and other monies received by the Seller or agent on account of the Purchase Price shall be refunded to the Buyer without interest, without costs, and without damages or loss and shall be accepted by the Buyer in full and final satisfaction of all claims and the Buyer thereby forever releases and forgives the Seller from any claim whatsoever. The Buyer acknowledges that the Seller may use such release as a complete bar to any claim, action, proceeding, relief or suit brought by the Buyer or any party acting on behalf of the Buyer (including an undisclosed principal, assigns, executors/executrix, administrators, trustees or other representatives or agents), as a consequence of the provisions of this Agreement.
- (5) This clause does not merge upon settlement and is an essential term of this Agreement.

5.7 Stamp Duty and Any other Impost

The Buyer must pay all stamp duty or other government impost (including but not limited to taxes, penalties and fines including any duty payable or interest whatsoever or contemplated by this Agreement which are payable in connection with this Agreement and indemnifies the Seller against any liability whatsoever, which arises or results from default, delay or omission to pay those duties or imposts or failure to make proper disclosure to any authority or government or statutory body in relation to those duties or imposts. This clause does not merge upon settlement and is an essential term of this Agreement.

5.8 Gross Up of Consideration

- (1) The Seller says that the Sale under this Agreement is subject to GST.
- (2) Where GST is payable on any supply the Seller makes under or in connection with this Agreement:
 - (a) the highest bid meaning the price or consideration payable for the supply (GST exclusive consideration) is increased by 10% being the GST, the Buyer must pay to the Seller, an additional amount equal to the GST payable by the Seller on the supply (GST Amount) in addition to the highest bid;
 - (b) the GST Amount must be paid by the Buyer to the Seller at the earlier of:
 - (i) Settlement Date; or
 - (ii) the time when the GST exclusive consideration is payable; whichever is the earliest.

and the Buyer irrevocably agrees, acknowledges and warrants that the Buyer shall have no recourse against the Seller whatsoever and will keep the Seller indemnified against any liability whatsoever in connection with this Agreement.

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- (3) The Buyer irrevocably acknowledges and agrees that the Buyer shall have no action against the Seller and shall neither commence nor maintain any proceedings, action, claim or suit against the Seller in connection with the subject matter of this clause, nor raise any objections, requisitions or seek to delay settlement of this Sale, and that the Seller may plead as an absolute bar to any proceedings, action, claim or suit brought by the Buyer against the Seller in regard to any matter referred or in connection with the subject matter of this clause.
- (4) This clause does not merge upon settlement and is an essential term of this agreement.

5.9 Extension of Settlement Date

The Buyer acknowledges notwithstanding anything else contained in this Agreement, the Seller has the right in its absolute discretion and for any reason whatsoever to extend the Settlement Date of this Agreement up to 120 Business days from the original Settlement Date by notice in writing to the Buyer or otherwise rescind or terminate this Agreement, the Buyer irrevocably agrees and acknowledges that the Buyer shall have no recourse against the Seller whatsoever and will keep the Seller indemnified against any liability whatsoever in connection with this Agreement. The Buyer irrevocably acknowledges and agrees that the Buyer shall have no action against the Seller and shall neither commence nor maintain any proceedings, action, claim or suit against the Seller in connection with the subject matter of this clause, nor raise any objections, requisitions or seek to delay settlement of this Sale, and that the Seller may plead as an absolute bar to any proceedings, action, claim or suit brought by the Buyer against the Seller in regard to any matter referred or in connection with the subject matter of this clause. This clause does not merge upon settlement and is an essential term of this Agreement.

5.10 A. Withholding Law (Tax)

- (1) This clause 5.10.A. applies if and to the extent the obligation to pay an amount to the Commissioner of Taxation pursuant to section 14-250 of Schedule 1 to the Taxation Administration Act 1953 (Cth) ('TA Act') or other legislation arises in respect of the Sale made under or in connection with this contract but is not negated or excluded by the operation of any transitional rules or exemptions, including those contained in the Treasury Laws Amendment (2018 Measures No. 1) Act 2018 (Cth) or any other act.
- (2) If necessary, in the Seller's absolute discretion, the Seller will provide a written notice to the Buyer as required in accordance with section 14-255 of Schedule 1 to the TA Act prior to settlement (in either case, a Seller Notification).
- (3) Upon receipt of the Seller Notification, the Buyer must lodge a notification with the ATO in the approved form in accordance with subsection 16-150(2) of Schedule 1 to the TA Act (Buyer Notification) within 1 business day of the Seller issuing the Seller Notification.
- (4) The Buyer will provide written evidence of lodgement of the Buyer Notification to the Seller within 1 business day of the Buyer Notification being lodged with the ATO, including providing to the Seller:
 - (a) a copy of the Buyer Notification; and
 - (b) a copy of any receipt together with any payment reference number and lodgement reference number received by the Buyer in response to the Buyer Notification.
- (5) Unless otherwise directed by the Seller in the Seller Notification, the Buyer must provide the

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Seller (or the Seller's nominee) with a Bank Cheque on or before settlement that is payable to the Commissioner of Taxation for the amount of the Withheld GST.

- (6) If the Buyer provides a Bank Cheque in accordance with clause 5.10.A.(5), the Seller:
 - (a) undertakes to send that Bank Cheque to the ATO as soon as is reasonably practicable after the Settlement Date; and
 - (b) will provide the Buyer with a receipt for that Bank Cheque.
- (7) If the Buyer does not comply with its obligations under this clause 5.10.A., the Seller can delay settlement until such time as the Seller is satisfied that the Buyer has complied or will comply with its obligations under that clause.
- (8) Where the parties have elected to settle electronically through the electronic platform provided by Property Exchange Australia Limited (PEXA) and the payment of the Withheld GST to the ATO is made by the Buyer through the electronic platform, clauses 5.10.A.(5) and 5.10.A.(6) do not apply.
- (9) If and to the extent that, in addition to the Buyer Notification, the Buyer is required to notify the ATO of settlement or any other transaction details:
 - (a) the Buyer must complete and electronically submit such notification (including Form 2) to the ATO prior to completion, or such other form or earlier time as required by the ATO; and
 - (b) at settlement, the Buyer must provide the Seller with evidence of having submitted that notification, including receipt from the ATO.
- (10) The Buyer will indemnify the Seller for all costs, interest and penalties incurred by the Seller following a failure of the Buyer to comply with its obligations under this clause 5.10.A.
- (11) Subject to the Buyer complying with its obligations under this clause 5.10.A. the parties agree that the Buyer's payment of the Withheld GST in accordance with this clause will satisfy the Buyer's obligation to pay a portion of the consideration under this Contract that is equal to that amount. For the avoidance of doubt, if and to the extent that the Buyer does not comply with this clause 5.10.A., the Seller retains the right to payment of the full consideration payable under this Agreement including the GST component.
- (12) Subject to the Buyer complying with its obligations under this clause 5.10.A. the parties agree that the Buyer's payment of the Withheld GST in accordance with this clause will satisfy the Buyer's obligation to pay a portion of the consideration under this Contract that is equal to that amount. For the avoidance of doubt, if and to the extent that the Buyer does not comply with this clause 5.10.A., the Seller retains the right to payment of the full consideration payable under this contract plus the amount of the withholding tax. This may be claimed by the Seller from the Buyer as a liquidated debt in any Court of competent jurisdiction.
- (13) In this clause 5.10.A.:
 - (a) ATO means the Australian Taxation Office and includes a reference to the Commissioner of Taxation and Deputy Commissioner of Taxation, and vice versa, as required;
 - (b) Bank Cheque means an unendorsed cheque made payable to the Commissioner of

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Taxation that is:

- (i) issued by the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank, a building society or a credit union; or
 - (ii) if authorised in writing by the Seller or the Seller's representative or agent, some other bank cheque;
 - (c) Form 2 means '*Form 2: GST Land settlement date confirmation*' provided on the ATO website, or any such equivalent form as notified by the ATO;
 - (d) Withheld GST means the amount the Buyer is required to withhold and to pay to the ATO in accordance with section 14-250 of Schedule 1 to the TA Act (or any provision which replaces it) in relation to the Sale made under or in connection with this Agreement.
- (14) This clause does not merge upon completion and is an essential term of this Agreement.

B. Reimbursements and adjustments (net of GST)

- (1) If under this Agreement a party must make an adjustment, pay an expense of another party or pay an amount payable by or to a third party the adjustment or payment will be:
- (a) reduced by the amount of any input tax credit to which the party receiving the adjustment or payment (or the representative member of the GST group that party is a member of as the case may be) is or was entitled to in relation to that payment; and
 - (b) increased by an amount equal to the GST payable by the supplier if and to the extent that the adjustment or payment is consideration for a taxable supply.

C. Tax invoice

The Seller shall provide the Buyer a tax invoice for any taxable supply by the Seller made under this Agreement.

D. Indemnity

The Buyer warrants that where GST is payable in connection with this transaction that the Buyer shall indemnify the Seller for the sum payable in connection with the GST and notwithstanding anything else contained in this Agreement shall provide this said GST amount to the Seller within 24 hours of being requested to do so by the Seller or the Seller's representative. This clause does not merge upon settlement and shall continue following settlement, whether or not other rights continue. This is an essential term of this Agreement.

E. No Merger

Rights under this clause continue after the Settlement Date, whether or not other rights continue, and does not merge upon settlement.

5.11 Electronic Conveyancing

- (1) At the Seller's discretion, settlement and lodgement of the instruments necessary to record the

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Buyer as registered proprietor of the land will be conducted electronically in accordance with the Electronic Conveyancing National Law. This clause has priority over any other provision to the extent of any inconsistency.

- (2) The Buyer must:
 - (a) engage a representative who is, a subscriber for the purposes of the Electronic Conveyancing National Law;
 - (b) ensure that all other persons for whom that party is responsible and who are associated with this transaction are, or engage, a subscriber for the purposes of the Electronic Conveyancing National Law; and
 - (c) conduct the transaction in accordance with the Electronic Conveyancing National Law.
- (3) The Seller's solicitor will open the Electronic Workspace ("workspace") as soon as reasonably practicable. The inclusion of a specific date for settlement in a workspace is not of itself a promise to settle on that date. The workspace is an electronic address for the service of notices and for written communications for the purposes of any electronic transaction's legislation.
- (4) The Seller shall nominate a time of the day for locking of the workspace at least 3 days before the due date for settlement.
- (5) Settlement occurs when the workspace records that:
 - (a) the exchange of funds or value between financial institutions in accordance with the instructions of the parties has occurred; or
 - (b) if there is no exchange of funds or value, the documents necessary to enable the Buyer to become registered proprietor of the land have been accepted for electronic lodgement.
- (6) The parties must do everything reasonably necessary to effect settlement:
 - (a) electronically on the next business day; or
 - (b) at the option of either party, otherwise than electronically as soon as possible –

if, after the locking of the workspace at the nominated settlement time, settlement in accordance with this clause has not occurred by 3.00 pm, or 6.00 pm if the nominated time for settlement is after 4.00 pm.
- (8) Each party must do everything reasonably necessary to assist the other party to trace and identify the recipient of any missing or mistaken payment and to recover the missing or mistaken payment.
- (9) Whether this method is adopted is at the sole discretion of the Seller's solicitor. If such a method is to be used, the Buyer's solicitor shall be advised. If this method is used the Buyer warrants and so shall retain a solicitor who is registered to use this electronic method.

5.12 Foreign Acquisition

- (1) The Buyer irrevocably warrants:

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- (a) that the Buyer is not a foreign person within the meaning of the *Foreign Acquisition and Takeovers Act 1975 (Cth)*; or
 - (b) that the Buyer is a foreign person within the meaning of the *Foreign Acquisition and Takeovers Act 1975 (Cth)* and that the treasurer of the Commonwealth of Australia has advised in writing that the treasurer has no objection to the acquisition of the Land by the Buyer. In this case the Buyer must provide the Seller with a document of such documentation within 24 hours after executing this Agreement (exchange of this Agreement).
- (2) This clause does not merge upon settlement and is an essential term of this Agreement.

5.13 Property Exceeds \$750,000.00

- (1) In the event that this Sale is of a Land with a value of \$750,000.00 or more:
- (a) Clearance certificate or variation

The Seller will advise the Buyer within 7 Business days after exchange of this Agreement whether a clearance certificate or variation notice from the Australia Taxation Office will be provided. Where no such notice is provided it is deemed that a Clearance Certificate is not required, and the provisions of clause 5.13(d) below shall apply.
 - (b) Withholding and remission of payment
 - (i) If the Seller gives a Clearance Certificate, the Buyer must not withhold any amount.
 - (ii) If the Seller gives the Buyer a variation notice, the Buyer must withhold the amount specified in that notice.
 - (iii) The Buyer must remit to the Australian Taxation Office any amount withheld on account of the Foreign Resident Capital Gains Withholding Payment by no later than 4:30 pm on the day of Settlement of this Land.
 - (c) Compliance costs

The Buyer must bear the remittance cost of the Foreign Resident Capital Gains Withholding Payment himself/herself/itself and shall have no recourse to the Seller for this cost.
 - (d) Where a Clearance Certificate is deemed not to be required

Where the Seller deems in its absolute discretion that, as a consequence of this Sale being pursuant to Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012 (Qld)*, it is exempt from the providing the Buyer with a Clearance Certificate, then the Buyer irrevocably acknowledges and agrees that the Seller is not thus required to produce or provide such a Clearance Certificate. Where this is the case, then the Buyer irrevocably warrants that the Buyer shall not request such a Clearance Certificate from the Seller and shall not in any way delay settlement of this Sale, nor shall the Buyer retain 12.5% or any amount from the Seller in relation thereto. Where the Buyer does

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not comply with this provision the Seller may terminate the Agreement and retain the deposit including any interest. This shall not restrict the Seller from also exercising any other rights it has against the Buyer including but not limited to claiming damages and/or any loss suffered by the Seller.

- (e) The Buyer irrevocably warrants and agrees not to seek to terminate, rescind or make any objection or requisition, or delay settlement or make any claim for compensation or bring any proceedings, action, claim or suit arising out of any of the matters referred to in this clause and shall release the Seller from all such actions. The Buyer acknowledges and irrevocably agrees that the Seller may rely upon this clause as an absolute and complete bar to any proceedings, claim, action or suit brought by the Buyer in connection with any matter(s) referred to in this clause
- (2) This clause shall not merge upon settlement and is an essential term of this Agreement.

PART 5: ERRORS AND MISDESCRIPTIONS

6.1 Errors and Misdescriptions

- (1) The Seller believes the Land to be, and the Buyer accepts the Land as correctly described in this Agreement.
- (2) No error, omission or misdescription in:
 - (a) **Item 8 in Part 1;**
 - (b) the boundaries or area of the Land, will invalidate this Agreement or entitle the Buyer to claim compensation whatsoever;
 - (c) connection with the Sale and or transfer of the Land to the Buyer,

will grant the Buyer any rights or bring any action against the Seller, and the Buyer irrevocably agrees and acknowledges that the Buyer shall have no recourse against the Seller whatsoever and will keep the Seller indemnified against any liability whatsoever in connection with this Agreement. The Buyer irrevocably acknowledges and agrees that the Buyer shall have no action against the Seller and shall neither commence nor maintain any proceedings, action, claim or suit against the Seller in connection with the subject matter of this clause, nor raise any objections, requisitions or seek to delay settlement of this Sale, and that the Seller may plead as an absolute bar to any proceedings, action, claim or suit brought by the Buyer against the Seller in regard to any matter referred or in connection with the subject matter of this clause. This clause does not merge upon settlement and is an essential term of this Agreement.

6.2 Survey and Inspection

- (1) The Seller gives no assurance that the surveyed area of the Land is correct.
- (2) The Seller also gives no assurance that there is no encroachment:
 - (a) by the Land onto adjoining land; or

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(b) by any structure on adjoining land onto the Land,

and the Buyer irrevocably agrees that the Buyer shall not make any objection or claim for Compensation whether before or after Settlement or delay Settlement.

- (3) The Buyer irrevocably acknowledges and agrees that the Seller makes no assurance and does not warrant that the Sale is unaffected by any encroachment from or upon the Land. The Buyer irrevocably acknowledges that the Sale may be effected by encroachments.
- (4) The Buyer irrevocably acknowledges and agrees that as the Seller is selling the Land pursuant to and in accordance with Chapter 4 Part 12 Division 3 of the *Local Government Regulation 2012 (Qld)* the Buyer will be unable to inspect the Land and shall not be provided with a copy of any survey.
- (5) The Buyer irrevocably acknowledges and agrees that the Buyer shall have no action against the Seller and shall neither commence nor maintain any proceedings, action, claim or suit against the Seller in connection with the subject matter of this clause, nor raise any objections, requisitions or seek to delay settlement of this Sale, and that the Seller may plead as an absolute bar to any proceedings, action, claim or suit brought by the Buyer against the Seller in regard to any matter referred or in connection with the subject matter of this clause. This clause does not merge upon settlement and is an essential term of this Agreement.

6.3 Omissions

The Buyer irrevocably acknowledges and warrants that any omission, mistake in the description, misdescription, error in measurements or area of the Land or other error or any defect does not invalidate the Sale and the Buyer cannot make any objection, requisition, rescind or terminate or bring any proceedings, action, claim or suit or make a claim for compensation for any alleged misdescription of the Property or any deficiency in its area or measurements or require the Seller to amend title or pay any cost of amending title. The Buyer acknowledges and irrevocably agrees that the Seller may rely upon the content of this clause of the Agreement as an absolute and complete bar to any proceedings, claim, action or suit brought by the Buyer in connection with any matter(s) referred to in this clause. This clause does not merge upon settlement.

PART 7: DEFAULT

7.1 Seller may affirm or terminate

- (1) Without limiting any other right or remedy of the Parties including those under this Agreement, or any right at law or in equity, the Buyer irrevocably acknowledges and warrants if the Buyer fails to comply with a term of this Agreement (including but not limited to the obligation to pay money when due) or commits any breach, the Seller may affirm or terminate this Agreement. This shall be at the Seller absolute discretion.
- (2) The Buyer irrevocably acknowledges and agrees where the Seller affirms this Agreement, in addition to any other right it may have at law or in equity, it may sue the Buyer for:
- (a) damages;
 - (b) specific performance; or
 - (c) damages and specific performance.

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- (3) The Buyer irrevocably acknowledges and agrees where the Seller terminates this Agreement:
 - (a) The Buyer shall forfeit the Deposit and any interest earned; and
 - (b) The Seller may sue the Buyer for damages. This is in addition to any other rights the Seller may have.
- (4) The Buyer irrevocably acknowledges and agrees where the Deposit exceeds 10% of the Purchase Price:
 - (a) the Buyer shall under clause 7.1(3)(a) forfeit only that part of the Deposit which does not exceed 10% of the Purchase Price (any interest is to be retained by the Seller); and
 - (b) any money paid by the Buyer in excess of 10% of the Purchase Price is to be treated as a payment of an instalment for the purposes of this clause.
- (5) The Buyer irrevocably acknowledges and agrees where the Seller holds an instalment of the Purchase Price, it may retain such instalment pending the termination of any claim for damages by the Seller provided however that if the Seller has not commenced any claim for damages against the Buyer within 24 months after the termination of the Contract, then the Seller must pay to the Buyer, without interest, any instalment held.
- (6) The Buyer irrevocably acknowledges and agrees that the Seller may after determination of any action for damages commenced by it apply the whole or part of the instalment toward any judgment for damages and costs awarded by the court and pay any surplus to the Buyer without interest.
- (7) This clause shall not merge upon settlement.

7.2 Termination for Insolvency

- (1) The Buyer irrevocably acknowledges and warrants that where the Buyer commits or suffers an Act of Insolvency on or before Settlement, the Seller may terminate this Agreement by written notice to the Buyer, the Seller may retain the Deposit (and any interest accrued on the deposit). The act of committing or suffering an Act of Insolvency on or before Settlement shall constitute a fundamental breach of this Agreement, and shall bind the Buyer's trustee, beneficiaries, administrators, receivers and managers and liquidators.
- (2) The Buyer irrevocably acknowledges and warrants that the Seller's entitlement to terminate under this clause extends to an Act of Insolvency committed or suffered by the Buyer before or after the formation of this Agreement.
- (3) The Buyer irrevocably acknowledges and warrants that the Buyer, and the Buyer's trustee, beneficiaries, administrator, receiver and managers and liquidators shall have no action against the Seller and shall neither commence nor maintain any proceedings, action, claim or suit against the Seller in connection with the subject matter of this clause, nor raise any objections, requisitions, and that the Seller may plead as an absolute bar to any proceedings, action, claim or suit brought by the Buyer and the Buyer's trustee, administrator, receiver and managers and liquidators against the Seller in regard to any matter referred or in connection with the subject matter of this clause. This clause does not merge upon completion and is an essential term of this Agreement.

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7.3 Certain acts not to evidence termination

- (1) The Buyer irrevocably acknowledges and agrees that the Seller may, if the Buyer is in breach of its obligation to settle this Agreement, market the Land for Sale and take steps toward the disposal of the Land. No such step is to be taken to evidence an election by the Seller to terminate this Agreement.
- (2) The Buyer irrevocably acknowledges and warrants that the Buyer, and the Buyer's trustee, administrator, receiver and managers and liquidators shall have no action against the Seller and shall neither commence nor maintain any proceedings, action, claim or suit against the Seller in connection with the subject matter of this clause, nor raise any objections, requisitions, and that the Seller may plead as an absolute bar to any proceedings, action, claim or suit brought by the Buyer and the Buyer's trustee, administrator, receiver and managers and liquidators against the Seller in regard to any matter referred or in connection with the subject matter of this clause. This clause does not merge upon settlement and is an essential term of this Agreement.

PART 8: MISCELLANEOUS

8.1 Time

Time shall in all cases and in all respects be deemed the essence of this Agreement.

8.2 Waiver

- (1) Neither:
 - (a) a failure, delay or indulgence, committed, caused or granted in exercising a power or entitlement in relation to this Agreement; nor
 - (b) a single or partial exercise, or a single or partial failure to exercise, such a power or entitlement, will operate to waive the power of entitlement, or to preclude its exercise or further exercise.
- (2) This clause shall not merge upon completion.

8.3 Service of Notices

- (1) A notice under this Agreement:
 - (a) must be given in writing; and
 - (b) may be delivered personally, posted, or transmitted by facsimile, or email to the intended recipient's Address for Notices.

8.4 Representations

- (1) The Buyer irrevocably acknowledges, warrants and accepts that:
 - (a) in entering into this Agreement, the Buyer has relied entirely upon the Buyer's own

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and searches, judgments, enquiries and inspection of and in connection with the Land;

- (b) no representation, oral or written or any conduct, or any arrangement, promise, warranty or undertaking other than as expressly contained in this Agreement, has in any material way induced the Buyer to enter into this Agreement; and
- (c) that prior to entering into this Agreement the Buyer has made all enquiries and investigations the Buyer believes are necessary and has satisfied itself of all matters relating to the Land including but not limited to **Item 8 in Part 1** and the Buyer shall not make any objection, requisition, claim against the Seller, nor shall the Buyer seek to delay the settlement of this Sale in anyway whatsoever;
- (d) the Buyer shall carry out all due diligence on the Land in **Item 8 in Part 1** including but not limited to searches an inspection, all of which shall be at the Buyer's own expense, so as to ensure that the said Land meets the Buyer's requirements and expectations. The Buyer acknowledges that Seller nor of any its representatives or agents have made any representations to the Buyer, which the Buyer has in any way relied upon. The Buyer irrevocably warrants that the Buyer shall not make any objection, requisition or claim whatsoever nor shall the Buyer seek to delay settlement of this Sale based upon any assertion(s) that the Buyer relied upon or any representation made by the Seller or its representatives or agents in relation to the Sale of the Land prior to entering into this Agreement;
- (e) the Buyer was not in any way induced by the Seller or its representatives or agents to enter into this Agreement;
- (f) the Buyer shall have no recourse against the Seller whatsoever and will keep the Seller indemnified against any liability whatsoever in connection with this Agreement;
- (g) the Buyer has had an opportunity to negotiate the terms of this Agreement;
- (h) the Buyer has had the opportunity to seek and obtain independent legal advice in connection with this Agreement and its effect.
- (i) this clause shall not merge upon settlement.

8.5 Receipt of Notices

- (1) A notice delivered personally will be deemed received at the moment of personal delivery.
- (2) A notice sent by post will be deemed received 2 Business Days after it is posted.
- (3) A notice sent by facsimile transmission will be deemed received at the time specified in a confirmation report, if the report discloses that the transmission was received before 5.00pm. If the confirmation report discloses that the transmission was received after 5.00pm, the notice will be deemed received at 8.30am on the next business day following the date of receipt disclosed in the report.
- (4) A notice delivered by email shall be deemed to be received the moment it is electronically received by the recipient.

8.6 Legal Expenses and Duties

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- (1) Each party must bear its own legal expenses in relation to the negotiation, preparation, stamping and execution of this Agreement.
- (2) The Buyer irrevocably acknowledges and warrants (notwithstanding clause 8.6(1) above, the Buyer, shall bear and indemnify the Seller against all transfer duty assessed upon this Agreement and the Transfer, including any unpaid tax and interest, which shall be immediately paid by the Buyer.
- (3) The Buyer irrevocably acknowledges and warrants that the Buyer shall pay the cost of registering the Transfer, in addition to all costs, fees, expenses or imposts in respect of the transaction referred to in this agreement.
- (4) This clause shall not merge upon settlement.

8.7 Non-Merger

For the avoidance of doubt, each party acknowledges, accepts and irrevocably agrees that the terms contained in **Part 1** through to **Part 9** inclusive do not merge upon settlement.

PART 9: GUARANTEE (APPLICABLE TO CORPORATE BUYERS)

9.1 In the event that the Buyer is a company, this clause applies and the Guarantors are jointly and severally liable under this Agreement. The Buyer irrevocably acknowledges and warrants that where the Buyer is a company the Buyer shall have all of the directors of the Buyer execute this Agreement and upon such execution each of the said directors of the Buyer shall become Guarantors in their individual capacity.

- (1) In consideration of the Seller entering this Agreement, the Guarantor, by signing of this Agreement expressly and unconditionally guarantees to the Seller:
 - (a) the due and punctual payment by the Buyer to the Seller of the Purchase Price and of all moneys which are or may become owing or payable by the Buyer to the Seller under this Agreement; and
 - (b) the due and punctual performance by the Buyer of all of the terms, conditions, covenants and obligations contained under this Agreement.
- (2) The Guarantor indemnifies and keeps indemnified the Seller against all loss, damage, cost, and expense which may be suffered or incurred by the Seller due to any default by the Buyer under any of the provisions of this Agreement.
- (3) This Guarantee shall be enforceable against the Guarantor and if more than one jointly and severally. Notwithstanding the fact that this instrument of guarantee may be intended or expressed to be executed or given by more than one person the same shall, in fact, be a valid, effectual and binding against such person or persons as shall execute the same forthwith upon their execution and shall continue to be binding as against such person or persons notwithstanding the fact that any proposed or contemplated party shall not in fact subsequently execute the same.
- (4) This Guarantee continues and remains in full force and effect despite the liquidation of the Buyer

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or the appointment of an external controller to the Buyer until the whole of the Purchase Price and all other moneys payable to the Seller under the terms of this Agreement have been paid and satisfied in full.

- (5) Any discharge, extinguishment or postponement by liquidation, operation of law, act of the Parties or otherwise, of the whole or any part of the indebtedness of the Buyer to the Seller will not impair or affect the liability of the Guarantor.
- (6) This clause and the guarantee do not merge on Settlement of this Agreement.

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9.2 Deed of Guarantee

A corporate Buyer must have all of its directors execute a personal guarantee as set out below.

This is document is a Deed.

In consideration of the Seller agreeing to sell to the corporate Buyer the Land in accordance with the terms of this Agreement, the Buyer (the "Buyer")

being.....
.....

The Guarantors being:

Mr/Mrs..... & Mr/Mrs.....
.....

(the guarantors) of..... (street address), as is evidenced by the guarantor's execution hereof, both jointly and severally guarantee the performance by the Buyer of all of the Buyer's obligations under this Agreement and indemnify the Seller against any costs or damages or loss whatsoever arising as a result of the default of the Buyer in performing its obligations under this Agreement for whatever reason. The Seller may seek to recover any cost or loss or both from the guarantor before seeking recovery from the Buyer and any settlement or compromise with the Buyer will not release the guarantor from the obligation to pay any balance that may be owing to the Seller. This guarantee is binding on the guarantors, their executors, trustees, administrators and assigns and the benefit of the guarantee is available to any assignee of the benefit of this Agreement by the Seller. The guarantors warrant that they have been given the opportunity to seek independent legal advice in respect of the obligations, responsibilities, accountability and legal consequences of the guarantee.

Executed as a Deed
Signed Sealed and Delivered as a Deed
by the guarantors in the presence of:

.....
Signature

Signature of Witness
Print Name of Witness
Street Address:
Date:

Executed as a Deed
Signed Sealed and Delivered as a Deed
by the guarantors in the presence of:

.....
Signature

Signature of Witness
Print Name of Witness
Street Address:
Date:

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Signed Sealed and Delivered as a Deed
by the **Tablelands Regional Council**]
by _____, an authorised]
officer, as Seller in the presence of:]

.....
Witness

.....
UPON EXECUTION OF THIS DEED THE PARTIES PURSUANT TO SECTION 47 OF THE
PROPERTY LAW ACT 1974 (QLD) ACKNOWLEDGE RECEIPT AND DELIVERY OF THE SAID DEED
AND ARE IMMEDIATELY BOUND AND SUBJECT TO THE FULFILMENT OF THE CONDITIONS
CONTAINED HEREIN

EXECUTION OF THE AGREEMENT

EXECUTED by the **Tablelands Regional Council**]
by _____, an authorised]
officer, as Seller in the presence of:]

.....
Witness

EXECUTED by _____]
as Buyer in the presence of:]

.....
Signature of Witness

.....
Full Name of Witness

.....
Address of Witness

EXECUTED by _____]
as Buyer in the presence of:]

.....
Signature of Witness

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.....
Full Name of Witness

.....
Address of Witness

EXECUTED by _____]
As Buyer in the presence of:]

.....
Signature of Director

.....
Signature of Witness

.....
Full Name of Witness

.....
Address of Witness

_____]
in accordance with s.127 of the *Corporations*]
Act 2001 (Cth), as Buyer in the presence of:]

.....
Full name of Director

.....
Address of Director

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EXECUTED by _____]
As Buyer in the presence of:] Signature of Director
]

.....
Signature of Witness

.....
Full Name of Witness

.....
Address of Witness

_____]
in accordance with s.127 of the *Corporations*]
Act 2001 (Cth), as Buyer in the presence of:] Full name of Director

.....
Address of Director

This agreement is an exempt sale and as such no cooling off period applies. However, for the avoidance of doubt, in the event that a cooling off period is held to apply by a Court, this contract may be subject to a 5-business day statutory cooling off period. A termination penalty of 0.25% of the purchase price applies if the Buyer terminates the contract during the statutory cooling off period. It is recommended the Buyer obtain an independent property valuation and independent legal advice about this Agreement and his or her cooling off rights before signing.