# <insert Developer’s name INCLUDING acn OR abn>

# and

**Moreton Bay CITY Council**

**ABN 92 967 232 136**

**INFRASTRUCTURE AGREEMENT**

**FOR EARLY APPROVAL OF SUBDIVISION PLAN**

**<insert estate name and stage number, if applicable>**

**<insert location of development>**

**Contents**

1. Definitions and Interpretation

2. Infrastructure Agreement

3. Developer’s Obligations

4. Indemnity

5. Council’s Obligations

6. Waiver

7. Costs and Outlays

8. Notices

**Agreement Date**

This Agreement is made the day of 20 between:

# PARTIES

**Moreton Bay City Council ABN 92 967 232 136**

of 220 Gympie Road, Strathpine in the State of Queensland (“the Council”)

### AND

**<insert Developer’s name>** **ACN <insert Developer’s ACN>**

of <insert Developer’s address>, in the State of <insert State> (“the Developer”)

**Introduction**

1. The Developer is the Owner of the Land or is entitled to become the owner of the land.
2. Development approvals have been issued by Council in respect of the Land. A list of those approvals is set out in Schedule 1 to this Agreement.
3. The Developer has provided a certificate from an RPEQ certifying that at least fifty percent (50%) of the Council Administered Works have been completed; that all of the earthworks have been completed; the estimated cost of the uncompleted Council Administered Works; and that the information in the certificate and the accompanying schedule is accurate. A copy of that certificate is contained in Schedule 2 to this Agreement.
4. <Insert one of the following:

The required Subdivision Works do not incorporate Water Connection Works

OR

The Developer has provided evidence of either a Certificate of Completion or a Provisional Certificate of Completion issued by Unitywater in respect of the Unitywater Administered Works. A copy of the relevant Certificate is contained in Schedule 4 to this Agreement.>

1. In accordance with Council’s policy (Approval of Subdivision Plan prior to Completion of all Subdivision Works), Council is prepared to approve the Subdivision Plan and to accept security to secure the Developer’s performance of its obligations on the terms set out in this Agreement.
2. The parties have agreed to enter into this infrastructure agreement.

**It is agreed:**

* 1. **Definitions and interpretation**
	2. **Definitions**

In this Agreement, unless the context otherwise requires:

**“Act”** means the *Planning Act 2016* and, where applicable, the repealed *Sustainable Planning Act 2009* and/or the repealed *Integrated Planning Act 1997,* and all subordinate legislation made under those Acts;

**“Agreement”** means this Agreement, any amendment to this Agreement and includes the schedules, plans, maps, tables, drawings, annexures and documents identified in it or incorporated by reference in it;

**“Business Day”** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

**“Certificate of Completion”** means a notice issued by Unitywater confirming that:

* + - 1. the Water Connection Works have been completed and accepted on maintenance;
			2. all conditions of the Water Approval for the Water Connection Works have been complied with; and
			3. all fees and charges associated with the Water Approval that are owed by the Developer to Unitywater have been paid;

**“Commencement Date”** means the date that this Agreement is made;

**“Council”** means Moreton Bay City Council ABN 92 967 232 136and includes its predecessors, successors, transferees and assignees;

**“Council Administered Works”**means that component of the Subdivision Works required to be completed pursuant to conditions of the development approval/s;

**“Developer”** means<insert Developer’s Name> ACN <insert ACN No.> and includes the corporation, its predecessors, successors, transferees and assignees;

**“Early Approval of a Subdivision Plan”** means approval of the Subdivision Plan prior to completion of all of the required Subdivision Works;

**“Land”** means the land described as <insert RPD> and located at <insert street address>, in the State of Queensland;

**“Notice”** means any certificate, demand or notice to be made, given or served by a party under this document;

**“Maintenance Bond”** isthe financial security issued in favour of the Council to secure the Developer’s performance of its obligations during the On Maintenance Period for the Council Administered Works. The value of such security is to be calculated in accordance with Council’s requirements in place at the time that the securities are accepted;

**“On Maintenance Period”** for the Council Administered Worksmeans the period commencing when Council accepts those aspects of the Subdivision Works on maintenance and concluding when the Council accepts those same aspects off maintenance;

**“Owner”** means the registered owner of the Land;

**“Plan of Subdivision”** has the meaning given to it in Schedule 24 of the *Planning Regulation 2017*, and a copy of which is included in Schedule 3 of this Agreement;

**“Planning Scheme”** means the planning scheme applicable to that part of Council’s local government area in which the Land is located;

**“Provisional Certificate of Completion”** means a notice issued by Unitywater confirming that the Developer has:

1. provided sufficient security to Unitywater to ensure completion of all Water Connection Works and compliance with all conditions of the Water Approval for those works; and
2. paid all fees and charges associated with the Water Approval that are owed by the Developer to Unitywater;

**“RPEQ”** means a registered professional engineer of Queensland;

**“Subdivision Works”** means all works (particularly the operational works and the Water Connection Works) required to be completed pursuant to the conditions of the development approval/s listed in Schedule 1 and conditions of any required Water Approval.

**“Unitywater”** is the entity described as the Northern SEQ Distributor-Retailer Authority in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

**“Unitywater Administered Works”**means that component of the Subdivision Works required to be completed pursuant to conditions of the Water Approval/s.

**“Water Approval”** has the meaning given to it in the *South-East Queensland Water (Distribution and Retail Restructuring) Act 2009*.

**“Water Connection Works”** means all works associated with the provision of water supply and wastewater infrastructure that is, or on completion will become, the property of Unitywater.

#### 1.2 Other expressions

If a term is not defined in this document, it shall, unless the context otherwise requires, have the meaning given to it by:

1. the Act; or
2. the Planning Scheme in the absence of a definition in the Act; or
3. the Macquarie Dictionary in the absence of a definition in the Act and the Planning Scheme.

## 1.3 Commencement

This Agreement commences on the Commencement Date.

#### 1.4 Application of Law

This Agreement is to be interpreted in accordance with the law of the State of Queensland. Each party submits to the jurisdiction of the Courts of Queensland and all courts of appeal from them.

1.5 **Parties**

1.5.1 If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.

1.5.2 An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.

* + 1. A party which is a trustee is bound both personally and in its capacity as a trustee.
	1. **Infrastructure Agreement**
	2. The Parties agree that this Agreement is an Infrastructure Agreement for the purposes of section 150 of the Act.
	3. The development obligations under this Agreement attach to the Land and are binding on the Developer, the owner where the owner has consented, and the owner’s successors in title of the Land.
	4. For the purposes of section 152(1)(a) of the Act, the development obligations are not to be affected by a change in the ownership of the Land.
	5. **Developer’s Obligations**
	6. In consideration of the Council approving the Subdivision Plan, the Developer agrees that:

(a) all Council Administered Works will be completed to Council’s satisfaction within three (3) months of the date that the Council approves the Subdivision Plan; and

(b) all transfers of land and interests in land to the Council must be free of encumbrances and registered in the Titles Office at the same time as the Subdivision Plan is registered and at no cost to the Council; and

(c) during the On Maintenance Period, the Council Administered Works will be maintained and any defects for which the Developer is responsible will be remedied in accordance with Council’s requirements.

* 1. To secure to the Council the due fulfillment of the Developer’s obligations under this Agreement, the Developer must provide to Council at the time of signing this Agreement, a financial security, the value of which is to be no less than the estimate of the cost of completing all of the uncompleted Council Administered Works as certified in Schedule 2, plus twenty-five percent (25%). Where that equates to less than $5,000 or the value of the Maintenance Bond, the value of the security to be provided is to be the greater of the value of the Maintenance Bond and $5,000.
	2. The above security must comply with Council’s policy No 11-2150-23 “Provision of Financial Securities”. Where the security takes the form of a cash bond, the Developer acknowledges that no interest shall accrue or be payable.
	3. The Developer acknowledges and agrees that the security will be released by Council as set out in this Agreement.
	4. The Developer acknowledges that Council will not release the security until the Developer has provided the Maintenance Bonds and the Developer agrees to provide the Maintenance Bonds prior to, or at the time of, commencement of the On Maintenance Period.
	5. The Developer acknowledges and agrees that, if it should fail to complete all Council Administered Works within the time set out in this Agreement, then the Council is entitled to the monies comprising, or mentioned in, the financial security and that the Council may spend the monies to complete those Council Administered Works (or any part thereof) and to remedy any defects which become evident during the On Maintenance Period.
	6. The Developer undertakes that it will not interfere with the recovery by Council of monies from the security notwithstanding the existence of any dispute between the Council and the Developer.

**4. Indemnity**

4.1 The Developer agrees that, at all times, it indemnifies the Council against all actions, proceedings, liability, claims, damages, costs and expenses of any nature whatsoever which may arise directly or indirectly from any incorrect or misleading information contained in the certificate/s in schedule 2 and schedule 4 or from the Developer’s failure to comply with its obligations under this Agreement.

**5. Council’s Obligations**

5.1 Upon commencement of this Agreement, and the Developer providing the security required in clause 3.2 of this Agreement, the Council agrees to take all necessary steps to approve the Subdivision Plan.

5.2 Council will release the security provided in clause 3.2 of this Agreement when each of the following has occurred:

(a) all Council Administered Works have been completed and the On Maintenance Period has commenced;

(b) the Developer has provided to Council all “as constructed” drawings and flood drainage plans, and all other documentation as required by the relevant Planning Scheme and development approvals;

(c) all transfers of land or interests to the Council and all dedications of land have been duly registered in the Titles Office; and

(d) the Developer has provided to Council a Maintenance Bond in favour of Council.

5.3 Council agrees that, as an alternative to 5.2(d) above, the Developer can elect not to have the security provided in clause 3.2 of this Agreement released and instead have that security reduced to the value of the Maintenance Bond.

**6. Waiver**

No waiver by either party of a breach by the other party of any of the provisions of this agreement is to be implied, or be otherwise effected, unless written notice has been given to that effect. Delay by a party in enforcing any of its rights does not prejudice those rights.

**7. Costs and outlays**

Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Agreement.

**8. Notices**

8.1 A notice given by a party may be signed by an officer of that party or the solicitor for that party. A party receiving a notice is not obliged to enquire as to the authority of the person signing the notice. A notice must be in writing and is treated as being duly given if it is:

* + - * 1. left at the other party’s address; or
			1. sent by pre-paid mail to the other party’s address; or
			2. transmitted by facsimile to, and received by, the other party’s facsimile facility; or
			3. sent by e-mail to the other party’s contact e-mail address.

8.2 A notice given in accordance with clause 8.1 is treated as having been duly received:

1. when delivered (if left at the party’s address); or
2. two (2) Business Days after posting, if sent by pre-paid mail; or
3. on receipt of confirmation on the sender’s facsimile facility that the facsimile has been successfully transmitted; or
4. on receipt of confirmation on the sender’s e-mail facility that the e-mail has been successfully sent.

8.3 For the purposes of clauses 8.1 and 8.2, the address and facsimile number of a party is the address and number set out below or another address or number of which a party may from time to time advise the other.

|  |  |  |
| --- | --- | --- |
| **Party** | **Address** | **Facsimile No.** |
| Moreton Bay City Council | P O Box 159Caboolture QLD 4510OR2 Hasking StreetCaboolture QLD 4510 | N/A |
| <insert Developer’s details> | <insert Developer’s address> | <insert fax no., if applicable> |

EXECUTED AS AN AGREEMENT.

|  |  |
| --- | --- |
| SIGNED ON BEHALF OFMORETON BAY CITY COUNCILBY\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_THE DELEGATED OFFICERTHEREOF. | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_DELEGATED OFFICER |
| **[Developer to insert appropriate signing clause that complies with the Corporations Act 2001 or the Company’s constitution]** | \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |

# Schedule 1

# *List of Development Approvals*

<insert list of development approvals including Op Works approvals>

# Schedule 2

***RPEQ Certificate***

# Schedule 3

***Subdivision Plan***

# Schedule 4

***Unitywater Certificate***

*<Omit this Schedule if Water Connection Works are not required>*