ANNEXURE “A”
MORETON BAY REGIONAL COUNCIL
SALE OF PROPERTY FOR OVERDUE RATES AND CHARGES

These special conditions are to be read with and form part of the Contract of Sale between the Moreton Bay Regional Council as Seller

And - _________________________________________________________________

As Buyer/s in respect of the property situated at:

13  Sale under Authority of the Local Government Regulation 2012

13.1 The Seller makes no representation or warranty as to what improvements will be left on the property upon completion. Vacant possession of any dwelling erected on the Property is the responsibility of the Buyer.

13.2 Where the Property sold is occupied by a tenant or otherwise, or contains furniture, furnishings, or other movable chattels, the Buyer will be required to take all necessary steps to obtain vacant possession at the Buyer’s own expense, or to have the furniture, furnishings or other moveable chattels removed by arrangement with the owner/s or person/s having possession of such items.

13.3 The Property is sold free of any mortgage or encumbrance (except as indicated by the Auctioneer), lien, bill of sale, caveat, judgement, writ, warrant or other charge, agreement or process registered against or in any way affecting the Property except any mortgage, encumbrance, lien, bill of sale, caveat, judgement, writ, warrant, or other charge, agreement or process registered against or in any way affecting the Property, timber, goods or chattels concerned in favour of the Crown, or any Crown instrumentality, or any Minister or person representing the Crown.

13.4 The purchase price must be paid by the Buyer to the Seller by confirmed electronic funds transfer or bank cheque by 4.00pm on the Settlement Date.

13.5 If the Buyer fails to pay the purchase price by 4.00pm on the Settlement Date, then without limiting the Seller’s rights under the terms of contract, such Buyer will forfeit all right to purchase and the Property may be resold, either by public auction, or by private contract at the option of the Seller and at the risk and expense of such Buyer.

13.6 Despite the provisions of the Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 or any amendment for the time being in force, the Seller will not at any time, be required by the Buyer or by any transferee of the Buyer to join in or contribute towards the cost of erecting or maintaining any dividing fence between the Property sold and any adjoining Property whether owned by the Seller or otherwise.

13.7 If the Property is subject to a resumption for road or any other purpose, the balance of the Property remaining only is offered for sale and no
objection or requisition may be raised by the Buyer that the area so offered is approximate only, or that the area left after such resumption has been finalised 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 Property purchased.

13.8 The Buyer will be required at the Buyer’s own expense and on the Buyer’s own responsibility, to ascertain the true description of the Property and to identify the Property purchased. No representation whatsoever is made by the Seller or the Auctioneer in this regard.

14. The Buyer accepts the Property “as is”

14.1 Despite anything to the contrary contained in this contract, the Buyer expressly acknowledges that the Property is sold in an “as is where is” condition with any and all patent and latent defects. The Seller and its agents make no representations or warranties as to the state of the Property, the existence of development approval/s, building approval/s in relation to the construction of any works carried out on the Property, whether the construction works have been carried out in accordance with the building approval/s (if any). Further, no representation or warranty is given in relation to the current state of the Property and the Buyer expressly agrees not to make any claim against the Seller for any damage that may be caused to the Property by any cause or matter whatsoever from the date of this contract.

15. Amendment of Standard Terms of Contract

15.1 Clauses 2.2, 2.3, 2.4, 2.6, 3, 4, 5.2(2), 5.3(1)(a), 5.3(1)(d), 5.3(1)(e), 5.3(1)(f), 5.3(3), 5.4, 5.5, 5.6, 5.7, 7.2, 7.4(1)(a), 7.4.(1)(b), 7.4.(1)(d), 7.4(2), 7.4(3), 7.4(4), 7.5, 7.6, 7.7, 8.1, 8.2, 8.3 and 8.4 are deleted.

15.2 Clause 5.2(1) is amended so that: “The Transfer Documents must be prepared by the Seller’s Solicitor and delivered to the Buyer on the Settlement Date”.

16. Extension of Settlement Date

16.1 The Buyer agrees that if the Seller is restricted or prohibited by any means in effecting completion on the Settlement Date, in accordance with the terms of this Contract, then the Settlement Date will be that day which is nominated in writing by the Seller as the date it can effect completion, provided that should the Seller having used reasonable endeavours and having always done all things reasonably necessary it nevertheless is not able to effect completion within 1 month from the Settlement Date, either party may elect to terminate this Contract by written notice to that effect delivered to the other and all deposit and other monies paid by the Buyer will be refunded to the Buyer in full, and neither party will have any further claim upon the other.

16.2 If for any reason, other than the wilful default of the Seller, the Seller is unable to perform any or all of its obligations under this Contract, then the Seller will not be liable by way of damages or compensation for any loss sustained by the Buyer from the failure of the Seller to perform this Contract and/or give title to the Property.
16.3 In the event that any proceedings to restrain or set aside the sale are commenced in any Court, then the Seller may by notice in writing to the Buyer rescind this Contract, provided that this notice is given within 30 days of the Seller first being served with the process originating those proceedings and provided further, that if any Order is made restraining or setting aside the sale as a result of those proceedings, then the notice may be given within 14 days of the date of making that Order, and will be effective despite that more than 30 days elapsed since originating process was served upon the Seller.

17. Guarantee

17.1 This Clause 17 will apply if the Buyer is a corporate entity.

17.2 The Buyer will procure, contemporaneously with the signing of this Contract, where the Buyer is a corporate entity, the Directors of the Buyer to sign the Guarantee which is contained in Annexure “B”.

17.3 The Buyer agrees that this Contract is binding upon the Buyer despite the failure of any person referred to in Clause 17.2 to sign the Guarantee required, but in that case, the Seller may terminate this Contract by giving written notice to that effect to the Buyer on or before the Settlement Date.

18. Payment of Registered Proprietors Debt

18.1 The Buyer acknowledges that the property is being sold by the Seller under authority of the Local Government Regulation 2012 on the grounds that the registered owner/s of the property owe/s rates and other monies to the Seller.

18.2 Despite anything to the contrary contained in the Contract, if before the fall of the hammer payment is tendered to the Seller to pay all outstanding debts (including arrears of rates, interest, legal and other expenses) owed by the registered owner of the Property to the Seller and such payment is by means other than cash, the Buyer agrees that the Seller may terminate this Contract by written notice to that effect delivered to the Buyer prior to the Settlement Date if, within ten (10) days of the date of this Contract, the funds are cleared upon their first presentation for payment.

19. Adjustments to Purchase Price

19.1 The Seller will retain all rates, charges and associated fees owing in relation to the property up to and including the Settlement Date on behalf of the Registered Owner from the proceeds of the Auction.

20. Inconsistency

20.1 If any inconsistency exists between the meaning and effect of the standard terms of Contract and the terms contained in these special conditions, the meaning and effect of the special conditions will prevail.

21. Severance
21.1 A provision of this Contract which is unenforceable in a jurisdiction, will in that jurisdiction, be ineffective to the extent of the unenforceability without invalidating the remaining provisions of this Contract and without affecting enforceability of the provision in another jurisdiction.

22. GST

22.1 Clause 2.1 of the Contract is deleted and replaced with the following:

“2.1 GST

The Seller and the Buyer agree that the supply of the property under this Contract is input taxed and not subject to any GST”.

......................................................  ......................................................
SELLER     WITNESS

......................................................  ......................................................
BUYER     WITNESS
ANNEXURE “B”

GUARANTEE

I/We ........................................................................................................................... ..........................................................

(“the Guarantor”) in consideration of the MORETON BAY REGIONAL COUNCIL (the “Seller”) having at our request, which request is testified by our signatures hereto, agreed conditionally upon the execution of this Guarantee to enter into a Contract (“the Contract”) to sell the Property situated at

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(“the Buyer”), IRREVOCABLY AND UNCONDITIONALLY GUARANTEE to the Seller the due and punctual payment by the Buyer to the Seller of all sums of money as will or may at any time or times become due owing or payable by the Buyer to the Seller under the terms of and/or as a result of the Contract (called “guaranteed moneys”) at the times and in the manner as set out in the Contract or otherwise on demand AND also the due and punctual performance and observance by the Buyer of all and singular the covenants, provisions and stipulations on the part of the Buyer to be performed and observed under and pursuant to the Contract.

AND IT IS AGREED

1. That this Guarantee will be a continuing guarantee until the whole of the guaranteed moneys are paid and will be independent of and additional to and in no way affected by any other security instrument or document which the Seller now holds or may obtain or hold for any indebtedness or liability (whether present future direct or contingent matured or unmatured joint or several) of the Buyer or of the Guarantor to the Seller.

2. That the Seller may at any time and from time to time grant or agree to grant to the Buyer any time or other indulgence or consideration and may compound with or release or assent to the winding up of the Buyer and may wholly or partially release or discharge the Buyer from any of the terms set out in the Contract and may vary any of the terms of the Contract without notice to or the consent of the Guarantor without affecting or discharging the liability of the Guarantor.

3. The Guarantor agrees and declares that the Seller will not be bound at any time to exercise any of its rights under the said Contract or any collateral or other contract and any omission failure or refusal by the Seller so to do will not prejudice affect discharge or diminish any of the liabilities of the Guarantor and the liability of the Guarantor will not be affected or discharged by any other laches or mistakes on the part of the Seller.

4. Should the liability of the Guarantor become merged in any judgement or order then the Guarantor will pay to the Seller interest at the rate per centum per annum mentioned in the Contract on the amount owing under such judgement or order from the date until payment.

5. If by reason of any statute or any rule of law or for any other reason whatsoever any covenant term or condition of the Contract is rendered unenforceable by the Seller against the Buyer then the Guarantor for the consideration agree at all times
to indemnify the Seller to the full extent in respect of the guaranteed moneys or any part which have been rendered unrecoverable by the Seller from the Buyer and the Guarantor further indemnifies the Seller against and in respect of any damage, loss, claim, demand, cost, expense or obligation direct or indirect which the Seller has or may suffer, incur or sustain.

6. If there is more than one Guarantor, this Guarantee will be binding on each of the Guarantors who signs the same notwithstanding that any one or more of the Guarantors named may not have signed or may never sign this Guarantee.

7. In order to give full effect to the provisions of this Guarantee the Guarantor declares that the Seller will be at liberty to act as though the Guarantor is the principal Debtor and the Guarantor waives all rights either at law or under any Statute that the Guarantor might otherwise be entitled to claim or enforce.

8. Any notice or demand to be given to or made upon the Guarantor by the Seller will be deemed to be fully given or made if the same be in writing and be signed by the Seller or any Director or Secretary or executive for the time being of the Seller or any Attorney of the Seller or by its Solicitors and if the same be posted by prepaid post addressed to the Guarantor at the Guarantor’s address and any such notice or demand if sent through the post will be deemed to have been received by any such Guarantor at the time when the envelope or wrapper containing such notice or demand would in the ordinary course of the post be delivered.

9. The Guarantor does not execute this instrument as a result of or by reason of any promise, representation, statement or information of any nature or kind whatsoever given or offered to them by or on behalf of the Seller whether in answer to an enquiry by or on behalf of the Guarantor whether or not.

10. This Guarantee will not be determined by the death or winding up of the Guarantor or any of them.

11. This Guarantee being given for valuable consideration, is irrevocable until the Contract has been fully performed and carried into effect by the Buyer.

12. In the event that the Seller will transfer or assign all its interest in the land to any person this Guarantee will remain in full force and effect and will be enforceable against the Guarantor by such transferee or assignee as if such transferee or assignee were the Seller.

13. That except to the extent that such interpretation will be excluded by or be repugnant to the context whenever the same is used the word “Guarantor” will mean and include the Guarantor his executors, administrators and assigns or (in the case of a Company) such Guarantor and its successors and assigns and when two or more Guarantors are parties will mean and include every person and company who or which is a Guarantor and each or any of them their his or its assigns and the executors and administrators or successors of each Guarantor and when two or more Guarantors are parties to this Guarantee and the obligations and agreements on their part within this Guarantee or implied will bind them and every two or greater number of them jointly and each of them severally, and the expressions “the Seller” will mean and include the Seller its successors and assigns, words importing the singular number or plural number will be deemed to include the plural number and the singular number respectively and words importing any gender will include every gender, and reference in case of a
corporation to winding up will include Official Management Receivership or Scheme of Arrangement.

DATED the 14th day of February 2019

SIGNED SEALED AND DELIVERED )
By the Guarantor in the presence of ) ..................................................
) (Signature)
) ..................................................
) ......................................................... ) (Print Full Name)
Witness

SIGNED SEALED AND DELIVERED )
By the Guarantor in the presence of ) ..................................................
) (Signature)
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