

**UNCOMPLETED WORKS DEED
(FOR WORKS OVER \$200,000.00)**

THIS DEED is made the _____ day of _____

BETWEEN

MINISTER FOR ECONOMIC DEVELOPMENT QUEENSLAND of Level
4, 229 Elizabeth Street, Brisbane, Queensland 4000

("the MEDQ")

AND

The person named in Item 1

(the "Developer")

RECITALS

- A. The MEDQ has approved, subject to conditions, a PDA Development Application for reconfiguration of a lot lodged by the Developer in respect of the Land.
- B. The PDA Development Approval requires, among other things, completion of the Uncompleted Works by the Developer.
- C. The MEDQ has agreed, at the request of the Developer, to seal the Survey Plan reconfiguring the Land before the Uncompleted Works are completed, subject to the terms of this Deed.

The parties agree:-

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Deed, unless the context otherwise requires:

- 1.1.1 "**Act**" means the *Economic Development Act 2012*.
- 1.1.2 "**Bulk Earthworks**" means the bulk earthworks that are required to be completed in accordance with the PDA Development Approval and any other legal requirements.
- 1.1.3 "**Business Day**" means a day (other than a Saturday, Sunday or public holiday) on which banks are open for business in Brisbane.
- 1.1.4 "**Certifier**" means the person nominated by the MEDQ in the PDA Development Conditions as the certifier under the MEDQ's certification procedures manual.
- 1.1.5 "**Deed**" means this deed.
- 1.1.6 "**Developer**" means the person described in Item 1.
- 1.1.7 "**Footpath Works**" means those concrete footpath strips and other works to be completed in the Footways in accordance

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- with the PDA Development Approval and any other legal requirements.
- 1.1.8 “**Footway**” means that part of a road set apart primarily for the use of and by pedestrians.
- 1.1.9 “**Item**” means an item of particulars in Schedule A to this Deed.
- 1.1.10 “**Land**” means the land described in Item 2.
- 1.1.11 “**Landscaping Works**” means the landscaping works to be completed in accordance with the PDA Development Approval and any other legal requirements.
- 1.1.12 “**MEDQ**” means the person described in Item 9.
- 1.1.13 “**Obligor**” means the bank described in Item 3.
- 1.1.14 “**Road and Drainage Works**” means the road and drainage works (other than the Footpath Works) to be completed in accordance with the PDA Development Approval and any other legal requirements.
- 1.1.15 “**Security**” means the security described in Item 4 (in the amount of the Security Sum), to be provided to the MEDQ by the Obligor.
- 1.1.16 “**Security Sum**” means the amount stated in Item 5 or such reduced sum as notified by the MEDQ under clause 9 as the amount of security payable for completion of the Uncompleted Works.
- 1.1.17 “**Sewerage Works**” means those mains, manholes, house connections, installations and other equipment to be completed in accordance with the PDA Development Approval and in accordance with the engineering plans and specifications approved by the MEDQ and any other legal requirements.
- 1.1.18 “**Survey Plan**” means the survey plan or plans described in Item 6.
- 1.1.19 “**Total Value of all Works**” means the amount stated at Item 7, being the estimated value of all work required to be undertaken by or on behalf of the Developer to comply with the PDA Development Approval.
- 1.1.20 “**PDA Development Application**” means the development application lodged under the Act by the Developer in respect of the Land.
- 1.1.21 “**PDA Development Approval**” means the PDA Development Approval stated in Item 8.

- 1.1.22 **“PDA Development Conditions”** mean the conditions imposed by the MEDQ to which the PDA Development Approval is subject.
- 1.1.23 **“Uncompleted Works”** for the purpose of this Deed means those remaining works which must be completed to comply with the PDA Development Approval, being the works specified in Item 10.
- 1.1.24 **“Value of the Uncompleted Works”** means the amount stated in Item 11.
- 1.1.25 **“Water Supply Works”** means those mains, scours, services, installations and other equipment to be completed in accordance with the PDA Development Approval and any other legal requirements.

1.2 **Interpretation of this Deed**

- 1.2.1 Unless expressed to the contrary:
 - (a) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) any gender include the other genders;
 - (b) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
 - (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes legal personal representatives, successors and permitted assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments and replacements of any of them;
 - (iv) a right includes a benefit, remedy, discretion, authority or power;
 - (v) an obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation;
 - (vi) time is to local time in Queensland;

- (vii) \$ or “dollars” is a reference to the lawful currency of Australia;
 - (viii) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmissions;
 - (ix) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
 - (x) all parties, clauses or schedules unless otherwise provided, is a reference to the parties, clauses or schedules of or to this Deed;
- (d) a consent or notice is to be in writing;
 - (e) in calculating time under this Deed the term “day” means calendar day. If any period of time expires on a Saturday, Sunday or gazetted holiday for the City of Brisbane, then the period will be taken to expire on the next Business Day. The term “year” means a calendar year of 365 or 366 days as the case may be;
- 1.2.2 if a term is not defined in this Deed it will, unless the context otherwise requires, have the meaning given to it by:
- (a) the Act; or if not defined in the Act;
 - (b) the Development Scheme; or if not defined in the Development Scheme; and
 - (c) its ordinary meaning.

1.3 **Headings**

Headings do not affect the interpretation of this Deed.

2 UNCOMPLETED WORKS

The Developer warrants that:

- 2.1 the Value of the Uncompleted Works, including Water Supply Works and Sewerage Works, does not exceed 50% of the Total Value of all Works;
- 2.2 the Uncompleted Works are capable of being completed on or before that day which is three months from the date the MEDQ endorses the Survey Plan; and

- 2.3 there is a contract, agreement or other arrangement in place that provides for the completion of the Uncompleted Works on or before that day which is three months from the date the MEDQ endorses the Survey Plan.

3 COMPLETION OF THE UNCOMPLETED WORKS

- 3.1 The Developer must (on or before that day which is three months after the MEDQ endorses the Survey Plan), at its own cost and expense, execute and complete the Uncompleted Works in accordance with the PDA Development Approval.
- 3.2 The Developer must otherwise comply with the PDA Development Approval and its obligations under this Deed.

4 ENDORSEMENT OF SURVEY PLAN

- 4.1 In consideration for the Developer providing the Security (but subject to clause 4.2 of this Deed), the MEDQ agrees to endorse the Survey Plan, notwithstanding the Uncompleted Works have not been completed at the time of endorsement.
- 4.2 Despite clause 4.1 of this Deed the MEDQ will not be obliged to endorse the Survey Plan:
- 4.2.1 until the Certifier has provided the MEDQ with certification of the Value of the Uncompleted Works, including a detailed schedule of the scope and costs of the Uncompleted Works;
 - 4.2.2 until the Security is received by the MEDQ;
 - 4.2.3 until all works required to be undertaken by the PDA Development Approval (except for the Uncompleted Works) have been completed;
 - 4.2.4 until the Bulk Earthworks have been completed;
 - 4.2.5 until all erosion and sediment control is completed to the standard required by the MEDQ;
 - 4.2.6 until the filling of allotments is completed (where the PDA Development Conditions require such filling);
 - 4.2.7 where the Uncompleted Works include Water Supply Works:-
 - (a) until the laying, installation and construction of all mains and scours as required by the PDA Development Approval; and
 - (b) until the Water Supply Works are completed to the extent that the cost of any uncompleted Water Supply Works does not exceed the Value of the Uncompleted Works;
 - 4.2.8 where the Uncompleted Works include Sewerage Works:-

- (a) until the laying, installation and construction of the sewerage mains and manhole barrels as required by the PDA Development Approval is completed; and
 - (b) until the Sewerage Works are completed to the extent that the cost of any uncompleted Sewerage Works does not exceed the Value of the Uncompleted Works;
- 4.2.9 unless the Survey Plan complies in all respects with the PDA Development Approval;
- 4.2.10 until all outstanding rates, fees and levies associated with the Land have been paid; and
- 4.2.11 until the completion of all other lawful requirements relating to the PDA Development Approval, including the payment of all monetary contributions.

5 SECURITY

- 5.1 The Developer must, at its own cost and expense, provide the Security to the MEDQ at the same time this Deed is presented to the MEDQ for execution.
- 5.2 The Security:
- 5.2.1 will be security for the fulfilment by the Developer of any obligation of the Developer under this Deed; and
 - 5.2.2 will constitute the security against defects in:
 - (a) materials used for; and
 - (b) construction of;the Uncompleted Works.

6 COMPLETION OF UNCOMPLETED WORKS AND RIGHT OF ENTRY

- 6.1 If the Developer fails to complete any of the Uncompleted Works as required by clause 3 of this Deed the MEDQ may complete the Uncompleted Works.
- 6.2 The Developer grants the MEDQ the full and free right and liberty for its employees, contractors, sub-contractors, agents and servants to enter upon the Land with all necessary vehicles, plant and equipment, in order to undertake any or all of the following:
- 6.2.1 satisfy itself whether the Developer is complying with its obligations under this Deed;
 - 6.2.2 satisfy itself whether the Developer has completed any component of the Uncompleted Works; and

- 6.2.3 undertake any other function authorised by this Deed.
- 6.3 If the Developer is not the owner of the Land:
 - 6.3.1 the name and address of the owner of the Land (the “Landowner”) must be stated in Item 12;
 - 6.3.2 the Developer warrants that the Developer has the Landowner’s authority to permit the MEDQ to enter onto the Land pursuant to clauses 6.1 and 6.2 of this Deed; and
 - 6.3.3 the Applicant must provide to the MEDQ with this Deed an irrevocable authority issued by the Landowner in the form attached in Schedule B to this Deed.

7 INDEMNITY AND RELEASE

- 7.1 The Developer indemnifies the MEDQ and its employees, contractors, sub-contractors, agents and servants against all liability, loss, penalties, payments, costs, charges and expenses directly or indirectly arising from or incurred in connection with damage to or loss of any property or injury of any person caused or contributed to by the MEDQ and the MEDQ’s employees contractors, sub-contractors, agents and servants (except where arising from the negligent act or omission of the MEDQ) in connection with the MEDQ doing anything the MEDQ is required or permitted to do under this Deed.
- 7.2 The Developer releases the MEDQ and its employees, contractors, sub-contractors, agents and servants from and agrees that THE MEDQ is not liable for liability, loss, penalties, payments, costs, charges and expenses directly or indirectly arising from or incurred (except where arising from the negligent act or omission of the MEDQ) in connection with the MEDQ doing anything the MEDQ is required or permitted to do under this Deed.
- 7.3 The indemnity and release given by the Developer under this clause is independent of the Developer’s other obligations under this Deed and does not come to an end when this Deed ends and does not come to an end if the Developer assigns this Deed or sells or transfers the Land (or any part of the Land).

8 RECOURSE TO SECURITY

- 8.1 The MEDQ may demand that the Obligor make payment to the MEDQ under the Security if:
 - 8.1.1 the Developer fails to complete any of the Uncompleted Works as required by clause 3 of this Deed, however the payment may not exceed the estimated cost to complete all of the Uncompleted Works not completed at the date the Obligor is requested to make a payment; and
 - 8.1.2 the Developer is in default of any of its obligations under this Deed, excluding under clause 3 of this Deed, however the payment may not exceed the estimated cost of carrying out

the work required to ensure compliance with the obligations of the Developer not fulfilled.

- 8.2 The Obligor must make payment to the MEDQ if demand is made under this clause of the Deed.
- 8.3 The Developer must not intervene with the Obligor if the MEDQ makes demand for any payment from the Obligor under this clause, even if the MEDQ and the Developer are in dispute or disagreement about any matter.
- 8.4 The MEDQ may in its discretion apply any sum or sums paid to it under this clause towards the costs (including but not limited to the MEDQ's usual charges for design, supervision, administration and overheads) of:
- 8.4.1 carrying out any Uncompleted Works;
 - 8.4.2 completing any of the Uncompleted Works that have only been partly completed;
 - 8.4.3 rectifying any of the Uncompleted Works that have not been properly completed by the Developer;
 - 8.4.4 carrying out any work necessary to mitigate the effects of the matters stated at clauses 8.4.1 - 8.4.3 of this Deed or to make the Uncompleted Works more effective and useful, whether such work is:
 - (a) an addition or extension to the Uncompleted Works; or
 - (b) carried out inside or outside the Land or partly inside or outside the Land;
 - 8.4.5 complying with any outstanding obligation of the Developer under this Deed; or
 - 8.4.6 reimbursing itself for any damages suffered by it.
- 8.5 If the sum or sums paid to the MEDQ under this clause are not sufficient to complete in full any work referred to in this clause, the MEDQ may undertake such part or parts of that work as it thinks fit and claim the cost of undertaking the work as a liquidated debt from the Developer.

9 REDUCTION AND DISCHARGE OF SECURITY

- 9.1 Upon:
- 9.1.1 the Developer completing any one or more of:
 - (a) the Road and Drainage Works;
 - (b) the Footpath Works;
 - (c) the Water Supply Works and Sewerage Works; or

(d) the Landscaping Works;

9.1.2 the Developer providing notice to the MEDQ of satisfaction of clause 9.1.1 of this Deed;

9.1.3 The MEDQ being satisfied that any or all of the work set out in clause 9.1.1 of this Deed has been completed;

the MEDQ may reduce the Security Sum, having regard to the cost of those matters referred to in clause 8 of this Deed so far as they remain outstanding, and if the Security Sum is to be reduced, the MEDQ will notify the Developer and the Obligor of the reduced Security Sum.

9.2 Upon:

9.2.1 the Developer completing the Uncompleted Works and otherwise complying with its obligations under this Deed;

9.2.2 the Developer providing notice to the MEDQ of satisfaction of clause 9.2.1 of this Deed; and

9.2.3 The MEDQ being satisfied that the Uncompleted Works have been completed and the Applicant has otherwise complied with its obligations under this Deed;

the MEDQ will return the Security to the Developer.

10 DEVELOPER NOT TO ASSIGN OR SELL

10.1 The Developer must not without the prior written consent of the MEDQ (which must not be unreasonably withheld) assign its rights, interests or obligations under this Deed.

10.2 The Developer must not (prior to the discharge of the Security) sell or transfer the Land (or any part of the Land) without:

10.2.1 obtaining from the transferee a deed in favour of the MEDQ to be bound by the obligations set out in this Deed. That deed must include a covenant that if the transferee transfers the Land (or any part of the Land) the subsequent transferee obtains a deed in similar terms including this term; and

10.2.2 the transferee delivering to the MEDQ replacement Security in accordance with this Deed.

11 DECISIONS OF THE MEDQ

Where under this Deed, any decision is to be made by MEDQ, that decision may be made by the MEDQ as it in its absolute discretion thinks fit.

12 RIGHTS OF THE MEDQ

Nothing contained in this Deed will effect, prejudice or derogate from the rights, powers and authorities of the MEDQ under any statute, rule, regulation, ordinance or by-law.

13 COSTS

The costs, charges and expenses of and incidental to the preparation, completion and stamping of this Deed (including any duty on this Deed and the Security) must be paid by the Developer.

14 NOTICES

- 14.1 A communication in connection with this Deed:
- 14.1.1 may be given by an authorised officer of the relevant party or the solicitors for the relevant party;
 - 14.1.2 must be in writing; and
 - 14.1.3 must be left at the address of the addressee or sent by prepaid ordinary post to the address of the addressee as set out in the Items Schedule or by facsimile to the facsimile number of the addressee as set out in the Items Schedule, or if the addressee notifies in writing another address or facsimile number in Australia then to that address or facsimile number.
- 14.2 Unless a later time is specified in it, a communication takes effect from the time it is actually received or taken to be received.
- 14.3 A communication delivered by hand or sent by post or facsimile is taken to be received:
- 14.3.1 in the case of delivery by hand, on the day of delivery if delivered by 5.00pm on a Business Day, otherwise on the next Business Day;
 - 14.3.2 in the case of delivery by post, on the day when, by the ordinary course of post, it would have been delivered; and
 - 14.3.3 in the case of facsimile, on the day shown on the transmission report produced by the machine from which the facsimile was sent, which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient set out in the Items Schedule; but if the time of transmission is after 5:00 pm on a Business Day the facsimile is to be taken to be received on the following day.

15 TIME OF THE ESSENCE

In every essence, time is of the essence of this Deed.

16 GOVERNING LAW AND JURISDICTION

This Deed is to be governed and determined in accordance with the law of the State of Queensland and the parties submit to the jurisdiction of the Courts of that State.

17 ENTIRE AGREEMENT

Except to the extent set out in this Deed:-

- 17.1 this Deed constitutes the entire agreement between the parties with respect to its subject matter and contains all of the representations, undertakings, warranties, covenants, agreements and deeds of the parties;
- 17.2 this Deed supersedes all prior negotiations, contracts, arrangements, understandings, agreements and deeds with respect to the subject matter of this Deed; and
- 17.3 there are no representations, undertakings, warranties, covenants, agreements or deeds between the parties, express or implied, except as contained in this Deed.

18 WAIVER AND VARIATION

A provision of or a right created by this Deed may not be waived or varied except in writing signed by the party or parties to be bound.

19 EXERCISE OF RIGHTS

- 19.1 A party may exercise a right under this Deed at its discretion, and separately or concurrently with another right.
- 19.2 A single or partial exercise of a right by the party does not prevent a further exercise of that or any other right.
- 19.3 Failure by the party to exercise, or delay in exercising a right does not prevent its exercise.

20 REMEDIES CUMULATIVE

The rights provided in this Deed are cumulative with and not exclusive of the rights provided by law or in equity independently of this Deed.

21 PRESERVATION OF ACCRUED RIGHTS

The expiration, termination or determination of this Deed:

- 21.1 will not affect the provisions expressed or implied to operate or have effect after expiration, termination or determination; and
- 21.2 will be without prejudice to any right of action already accrued to a party in respect of a breach of this Deed by another party.

22 INVALIDITY

If any term, clause or provision of this Deed is invalid for any reason, that invalidity will not affect the validity or operation of any other term, clause or provision of this Deed except to the extent necessary to give effect to that invalidity.

23 COUNTERPARTS

This Deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument. The exchange of executed counterparts by facsimile will create a binding agreement.

24 JOINT AND SEVERAL LIABILITY

If an obligation is to be performed by a person for or with another person, each person will be both jointly liable with the other person and severally liable on its own account to perform the obligation. A release given to the other person will not release the other from any obligation. The granting of time or any other indulgence to another person will not release the person from its obligations under this Deed.

25 ACT OR OMISSION

In this Deed, reference to act or omission by a party includes:

- 25.1 if a party comprises more than one person, an act or omission by any one or more of those persons;
- 25.2 permitting or allowing by the party of an act or omission; and
- 25.3 an act or omission of an employee (whether or not acting within the scope of his/her employment), agent, contractor or invitee of the party.

26 NO WAIVER

Failure or omission by a party at any time to enforce or require strict or timely compliance with a provision of this Deed will not affect or impair that provision in any way or the rights of that party to avail itself of the remedies it may have in respect of a breach of that provision

SCHEDULE A

Item	Reference	Description
1.	DEVELOPER	Name: Address:
2.	LAND	Real Property Description: Address:
3.	OBLIGOR <i>insert name of Bank acceptable to the MEDQ</i>
4.	SECURITY	Bank Guarantee
5.	SECURITY SUM	\$..... <i>insert amount which is 125% of the Value of the Uncompleted Works</i>
6.	SURVEY PLAN	SP
7.	TOTAL VALUE OF ALL WORKS	\$.....
8.	PDA DEVELOPMENT APPROVAL	No.
9.	THE MEDQ	(a) Name Minister for Economic Development Queensland (b) Address Level 4, 229 Elizabeth Street BRISBANE QLD 4000

10.	UNCOMPLETED WORKS	
11.	VALUE OF THE UNCOMPLETED WORKS	\$.....
12.	LANDOWNER	

SCHEDULE B

IRREVOCABLE AUTHORITY ISSUED BY THE LANDOWNER

(Clause 6.3.3 of the Deed)

EXECUTED as a DEED.

**EXECUTED as a DEED by the
Minister for Economic Development
Queensland by:**

)
)
)

(Full Name)

a person duly authorised to act in this
behalf

in the presence of

Signature of Witness

Name of Witness (print)

*****NOTE: Redundant signing clause to be deleted**

EXECUTED as a DEED by
[COMPANY NAME AND ACN], in
accordance with section 127 of the
Corporations Act 2001:

)
)
)
)

Director

Director/Secretary

SIGNED SEALED AND DELIVERED
by **[NAME]**, in the presence of:

)
)
)

Witness