

Contract of Sale

[Lot 2 on SP206660]

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Contract of Sale

[Lot 2 on SP206660]

PART 1 REFERENCE INFORMATION

Item 1 Formation

Date: **TBD**

Item 2 Seller

Name: Mount Isa City Council
ABN 48 701 425 059

Address for Notices:

Delivery: C/- King & Company Solicitors
Level 7, 95 North Quay, Brisbane Qld.

Post: C/- King & Company Solicitors
GPO Box 758, Brisbane Qld 4001.

Facsimile: (07) 3236 1885.

Item 3 Seller's Solicitors

Name: King & Company Solicitors.

Address for Notices:

Delivery: Level 7, 95 North Quay, Brisbane, Qld.

Post: GPO Box 758, Brisbane, Qld 4001

Facsimile: (07) 3236 1885

Email: Gabrielle.Dunks@kingandcompany.com.au

Item 4 Purchaser

Name:

Address for Notices:

Delivery:

Post:

Facsimile:

Email:

Item 5 Purchaser's Solicitors

Name:

Address for Notices:

Delivery:

Post:

Facsimile:

Email:

Item 6 Land

Address 30 Mullan Street, The Gap QLD 4825

Real Property Description

Title Reference	Description
50702922	Lot 2 on SP206660

Nature of Title: Freehold

Local Government: Mount Isa City Council

Item 7 Purchase Price

Full Price \$

Deposit 10% of full price

Balance Purchase Price \$

Deposit Holder King & Company Solicitors

Deposit Holder's Trust Account

██

Bank:

██

BSB:

██████████

Account

██████████

Item 8 Default Interest

Rate: The rate charged by the Commonwealth Bank of Australia, at the relevant time, upon business overdrafts exceeding \$100,000.00.

Item 9 Completion

Date: **TBD**
Venue: King & Company Solicitors
Level 7, 95 North Quay
Brisbane, Qld 4000.

PART 2 INTERPRETATION

2.1 General

Unless:

- (1) the context otherwise requires; or
- (2) a contrary intention appears,

this Agreement is to be interpreted by reference to the definitions and subsequent provisions of Part 2.

2.2 Definitions

Each of the following expressions bears the meaning shown opposite:

Act	Includes: <ol style="list-style-type: none">(1) an omission; and(2) a refusal to act.
Act	<ol style="list-style-type: none">(1) An Act of the Commonwealth Parliament or the Queensland Parliament.(2) Subordinate legislation made under any such Act.(3) A direction or requirement made by a competent authority or person under any such Act or subordinate legislation.(4) A licence, authorization, consent, approval, or exemption granted under the enactment or subordinate legislation.(5) A planning instrument and a local law.
Act of Insolvency	<ol style="list-style-type: none">(1) Suffering the appointment of a receiver or a receiver and manager, which appointment is not terminated, postponed or enjoined within 14 days after it is made.(2) Entering voluntary administration.(3) Failing to satisfy a bankruptcy notice or a statutory demand under section 459E of the Corporations Act.(4) Suffering the presentation of a bankruptcy petition.(5) Suffering the presentation of a winding-up application or the appointment of a provisional liquidator.(6) Signing an authority under section 188 of the Bankruptcy Act.(7) Entering a composition or scheme of arrangement for the benefit of creditors.(8) Where all available appeal rights have been exhausted or waived, failing:

- (a) to pay the relevant debt (if the debt exceeds \$5,000.00); or
 - (b) to satisfy the relevant order,
- within 14 days after suffering execution against one's assets.
- (9) Failing to secure the return of one's assets within 14 days after their lawful seizure by a creditor or an encumbrancee

Address for Notices With respect to each Participant:

- (1) its address, facsimile number or email address shown at whichever is relevant of Item 2 to Item 5;
- (2) such other address, facsimile number or email address as it has notified in writing to the Participant giving it a notice as its address, facsimile number or email address for notices under this Agreement; or
- (3) if it is not at either such address, facsimile number or email address, the subject of paragraph (1) or paragraph (2) of this definition, its last principal place of business or facsimile number known to the Participant giving it a notice. as it has notified in writing to the Participant giving it a notice as its

Administering Authority The authority responsible for enforcing relevant provisions of an Act.

Agreement This instrument and the agreement it evidences.

Attestation An attestation upon this Agreement by a Party.

Balance Purchase Price The sum specified as such at Item 7 (being the difference between the Purchase Price and the Deposit).

Bankruptcy Act *Bankruptcy Act 1966* (Cwlth).

Business Day A day, other than a Saturday or Sunday, public holiday or a day between the period 27 to 31 December, upon which banks are open for business in the locality:

- (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.

[Example of an event the subject of paragraph (2): Completion].

Claim Claim means a claim, action, proceeding, damage, cost, loss, expense or liability however arising and whether present, unascertained, immediate, future or contingent.

Clause A clause, sub-clause or paragraph of this Agreement.

Completion Completion of the Sale pursuant to Part 5.

Completion Date The date specified at Item 9.

Completion Venue The place specified at Item 9.

Corporations Act *Corporations Act 2001* (Cwlth).

Default Rate (1) The interest rate specified at Item 8; or

	(2) if no rate is specified at Item 8, the interest rate the Seller's banker charges at the relevant time on customer overdraft accommodation exceeding \$100,000.00.
Deposit	The sum specified as such at Item 7.
Deposit Holder	The Party listed under Item 7.
Electronic Settlement	Settlement facilitated by an Electronic Lodgment Network Operator, as defined under section 15 of the <i>Electronic Conveyancing National Law</i> (Qld).
Encumbrances	Includes any of the following that affects land— (1) a mortgage, lien or charge; (2) a caveat; (3) an agreement; (4) a judgment, writ or process; (5) an interest adverse to the interest of the land's owner; but does not include an easement.
Existing Fitout	The fitout and fittings installed on the Land by the Registered Owner, or previous lessee and remaining on the Land as at the Completion Date.
Formation Date	(1) The date upon which this Agreement is formed. (2) The date is, in the basence of evidence establishing a different date, that date is the date specified at Item 1.
GST	The goods and services tax, value added tax, consumption tax or similar tax and includes tax imposed under the <i>A New Tax System (Goods & Services) Act 1999</i> (Cwlth) and other GST related legislation.
Include	Comprise or encompass, without being limited to what is stated to be included. <i>[Example: "act" is defined as including an omission and a refusal to act. However, the expression is not confined to an omission and a refusal to do something; it also encompasses (obviously) a positive action].</i>
Item	A numbered item of information in Part 1.
Land	The land described at Item 6.
Land Title Act	<i>Land Title Act 1994</i> (Qld).
Local Government	The local government of the territorial unit in which the Land is situated, specified at Item 6.
Officer	(1) A director, alternate director, secretary, assistant secretary, executive officer, attorney, managing agent, or solicitor of or for a Party. (2) The expression includes, with reference to the Seller, the manager of the Complex together with the manager's employees, contractors and agents.
Part	A numbered part or division of this Agreement, other than in an Appendix, or an Attestations page, containing:

	(1) Reference particulars; or (2) one or more Clauses.
Participants	(1) The Seller and the Seller's Solicitors. (2) The Purchaser and the Purchaser's Solicitors.
Parties	The Seller and the Purchaser.
Property Law Act	<i>Property Law Act 1974</i> (Qld).
Purchase Price	The sum specified at Item 7 as the "Full Price".
Purchaser	The person specified at Item 4.
Purchaser's Solicitors	The solicitors specified at Item 5, or solicitors appointed to replace them.
Sale	Sale and purchase of the Land under this Agreement.
Seller	The person specified at Item 2.
Seller's Solicitors	The solicitors specified at Item 3, or solicitors appointed to replace them.
Supply of a Going Concern	A supply of a going concern as defined by subsection 38-325(2) of the <i>A New Tax System (Goods & Services) Act 1999</i> (Cwlth).
Tax Invoice	A tax invoice as defined by the <i>A New Tax System (Goods & Services) Act 1999</i> (Cwlth)
Title Encumbrances	The easements, restrictive covenants and other encumbrances over the Land.
Transfer	An instrument: (1) in the form prescribed under the Land Title Act; and (2) properly executed on behalf of the Seller, transferring from the Seller to the Purchaser title to the Land subject only to the Title Encumbrances.

2.3 Grammatical Similarities

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.

2.4 Parties

Reference to a Participant includes:

- (1) in the case of a natural person, that person, his personal representatives and assigns; and
- (2) in the case of a corporation, the corporation, its successors and assigns.

2.5 Concurrent Responsibility

Where a Participant is composed of two or more persons, the Agreement binds jointly and severally:

- (1) those persons and each of them; and

- (2) their and each of their executors, administrators and assigns (transferees).

2.6 Warranty of Authority

Each person signing the Agreement as an Officer, attorney or trustee, or in any other representative capacity, assures each other Party or signatory that he/she possesses unrestricted authority to execute the document in that capacity at the time of signing.

2.7 Imputed Acts

Reference (whether direct or indirect) to a person's act includes the act of another person, if the other person's act is deemed by law also to be the first-mentioned person's act because of the legal relationship between the two.¹

2.8 Miscellaneous References

Reference to:

- (1) the singular includes the plural, and vice versa;
- (2) a gender includes each other gender;
- (3) a person includes a corporation, a firm and a voluntary association;
- (4) an Act includes an Act that amends, consolidates or replaces an Act;
- (5) money is a reference to Australian dollars and cents;
- (6) a time of day is a reference to Australian eastern standard time; and
- (7) writing is a reference to reproduction of words, figures, symbols and shapes in visible form, including print, type, lithograph, facsimile and photocopy.

2.9 Headings and Notes

Subject headings, footnotes, endnotes, and the table of contents:

- (1) exist for convenience only; and
- (2) are to be disregarded when interpreting the Agreement.

2.10 Nature of Agreement

This document is a Deed.

2.11 Merger

Any provision of this Agreement:

- (1) to which effect is not given by Completion or by Registration of the Transfer; and
 - (2) capable of taking effect after Completion or Registration of the Transfer,
- will continue to be fully enforceable despite Completion or Registration.

¹ Example: The act of an employee, in the performance of that person's duties as employee, is imputed to his/her employer; that is, it is deemed by law also to be the act of the employer.

2.12 Severance

If:

- (1) any provision of the Agreement is void, voidable, illegal or unenforceable; or
- (2) the Agreement would be void, voidable, illegal or unenforceable unless a particular provision were deleted from it,

the provision will be deemed deleted from the Agreement.

2.13 Governing Law

The laws of Queensland govern the Agreement.

2.14 Entirety of Agreement

- (1) The Agreement details the entire bargain concluded between the Parties in relation to the Sale, irrespective of:
 - (a) any negotiations or discussions preceding execution of the Agreement; and
 - (b) the content of any brochure, report or other document produced by or on behalf of the Seller for potential purchasers of the Land.
- (2) The Purchaser acknowledges that it has not been induced to acquire the Land by any representation, verbal or other, made by or on behalf of the Seller but not detailed in the Agreement.

PART 3 SALE OF LAND

3.1 Agreement to Sell and Purchase pursuant to the Local Government Regulation 2012

The Seller undertakes to sell the Land to the Purchaser, and the Purchaser to buy the Land from the Seller, pursuant to Chapter 4, Part 12, Division 3 of the Local Government Regulation 2012.

3.2 Land sold free of encumbrances

Pursuant to section 145(4) of the Local Government Regulation 2012, the Land is sold to the Purchaser free of all encumbrances, other than an encumbrance that confers rights on a State or government entity.

3.3 Land sold free of local government rates and charges

The Land is sold free of all local government rates and charges accrued prior to the Completion date.

3.4 Purchaser Acknowledgement

The Purchaser acknowledges that, in entering this Agreement, it has **not** been guaranteed, warranted or otherwise assured by or on behalf of the Seller:

- (1) That vacant possession of the Land will be provided at Completion;
- (2) As to the condition, state of repair or suitability for any use of the Land;
- (3) That the Land presently is being used in accordance with approvals (if any) granted by the Commonwealth, State or Local Governments, or by any semi-Government authority;

-
- (4) That the improvements (if any) on Land have been constructed in accordance with all applicable legislative requirements of the State or Local Governments.

3.5 Fitout Acknowledgement

The Purchaser acknowledges that:

- (1) The Existing Fitout was left on the Land by the Registered Owner and accepts the Existing Fitout subject to any Claim by the Registered Owner, a previous lessee, or any party claiming through the Registered Owner or a previous lessee.
- (2) The Seller gives no warranty as to the ownership, condition, or suitability for any use of the Existing Fitout.
- (3) The Purchaser indemnifies the Seller against all Claims in relation to the Existing Fitout.
- (4) The Seller is not required to undertake any work in relation to the removal of any Existing Fitout from the Land as at the Completion Date.

3.6 Lease Warranty Acknowledgement

The Purchaser acknowledges that, in entering this Agreement, it has **not** been guaranteed, warranted or otherwise assured by or on behalf of the Seller that there are no:

- (1) Existing or renewed retail tenancy disputes;
- (2) Mediation agreements, proceedings, or orders in existence under the *Retail Shop Leases Act 1994* (Qld); or
- (3) Circumstances existing which might give rise to a Claim for compensation under the *Retail Shop Leases Act 1994* (Qld).

3.7 Risk

The Land is at the risk of the Purchaser from noon on the Business Day following the Formation Date.

3.8 Payment of Rates (discovered subsequent to Formation Date)

- (1) If, at any time between the Formation Date and the Completion Date the Seller becomes aware that payment of the overdue rates burdening the Land was tendered prior to the Formation Date, then the Seller may terminate this Agreement by written notice to the Purchaser in which event all monies paid by way of Deposit are refundable to the Purchaser without deduction.
- (2) For avoidance of doubt, if the Seller terminates this Agreement pursuant to this clause, such termination is not an event of default.

PART 4 PURCHASE PRICE

4.1 Purchase Price exclusive of GST

- (1) The Purchase Price does not include the Seller's liability for GST (if any) for the supply of the Land.
- (2) On the Completion Date, the Purchaser must pay to the Seller in addition to the Purchase Price an amount equivalent to the amount payable by the Seller as GST on the supply of the Land (if any).
- (3) Where GST is payable on the supply of the Land, the Seller must give to the Purchaser a Tax Invoice by the Completion Date.

4.2 Method of Payment

The Purchaser must pay any sum (excluding the Deposit) due to the Seller under this Agreement:

- (1) by cheque dated on or before the date of delivery, issued by a Licensed Bank conducting business within Queensland; or
- (2) electronic funds transfer.

4.3 Method of Payment (Deposit)

The Purchaser must pay the Deposit to the Deposit Holder under this Agreement by electronic funds transfer to the Deposit Holder's nominated bank account listed in Item 7.

4.4 Payment of Deposit

- (1) The Purchaser must make reasonable efforts to pay the Deposit on the Formation Date, and in any event pay the Deposit by 4:30pm on the following Business Day.
- (2) The Deposit is to be paid by electronic funds transfer in accordance with Clause 4.3.
- (3) The Purchaser must provide the Seller with evidence that the electronic transfer of the Deposit has occurred.
- (4) If it fails to pay the Deposit as required by this clause, the Purchaser commits a fundamental breach of this Agreement and the Seller may affirm or terminate the Agreement.

4.5 Balance Purchase Price

The Purchaser must pay to the Seller on the Completion Date the Balance Purchase Price.

4.6 Interest on Late Payments

- (1) If the Deposit or any other money payable under this Agreement is not paid when due, the Purchaser 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 also will bear interest from the date of judgment to the date of payment (both inclusive).
- (3) Interest:
 - (a) is to be calculated on daily balances at the Default Rate; and
 - (b) paid upon Completion.

PART 5 COMPLETION

5.1 Time and Place for Completion

- (1) Completion is to be effected:
 - (a) on the Completion Date;
 - (b) at the Completion Venue;
 - (c) at the time agreed by the parties (agreement to be reached not later than 5.00pm on the day before the Completion Date); and

- (d) irrespective of a time agreed by the parties under clause 5.1(1)(c) between the hours of 9.00am and 4.00pm.
- (2) Irrespective of any other provision in this Agreement, if the Completion Date falls on a Saturday, Sunday or public holiday in Brisbane, Completion is to be effected on the Business Day next following the Completion Date.
- (3) The parties acknowledge that Completion cannot be effected by Electronic Settlement.

5.2 Facilitating Completion (Seller's Obligation)

Subject to the Purchaser discharging its obligations under the Agreement, the Seller must do whatever the Purchaser reasonably requires of it to ensure that:

- (1) the Sale is completed; and
- (2) the Purchaser obtains valid title to the Land.

5.3 Transfer Documents

In exchange for payment of the Balance Purchase Price in accordance with clause 4.5, the Seller must:

- (1) prepare the Transfer and related documents at its own expense; and
- (2) deliver the unstamped Transfer capable of immediate registration after stamping to the Purchaser at Completion.

5.4 Registration of Transfer

After Completion, the Purchaser must:

- (1) ensure that the Transfer is lodged promptly for Registration;
- (2) pursue Registration of the Transfer diligently, to ensure in turn that the change in ownership of the Land can be:
 - (a) notified by the Registration Authority to the Local Government; and
 - (b) recorded upon the Local Government's land record, at the earliest possible time (allowing for normal administrative uncertainties and protraction).

5.5 Further Assurances

Each Party must do everything lawfully or reasonably required of it by the other Party to:

- (1) give effect to the provisions, and achieve the intent, of this Agreement; and
- (2) preserve and promote the entitlements of the other Party under the Agreement, before and after Completion.

PART 6 ERRORS AND MISDESCRIPTIONS

6.1 Errors and Misdescriptions

- (1) The Seller believes the Land to be, and the Purchaser accepts the Land as, correctly described in this Agreement.
- (2) No error, omission or misdescription in:

- (a) Item 6;
 - (b) the boundaries or area of the Land,
- will invalidate this Agreement or entitle the Purchaser to claim compensation.

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
 - (b) by any structure on adjoining land onto the Land,and the Purchaser may not:
 - (c) make any objection or claim; or
 - (d) delay completion,because of any inaccuracy or misdescription (whether material or not) in the details of the Land contained in this Agreement.
- (3) The Sale is subject to any encroachment from or upon the Land.

PART 7 DEFAULT

7.1 Events of Default

Subject to Part 8, a Party will be in default under the Agreement if:

- (1) it fails to discharge an obligation the Agreement imposes upon it; or
- (2) it commits or suffers the occurrence of an Act of Insolvency.

7.2 Termination for Insolvency

- (1) If the Purchaser commits an Act of Insolvency before Completion, the Seller may terminate this Agreement by written notice to the Purchaser.
- (2) The Seller's entitlement to terminate under this clause extends to an Act of Insolvency committed by the Purchaser before the formation of this Agreement.

7.3 Seller's Remedies

- (1) If the Purchaser defaults under the Agreement, in addition to any other entitlement it may possess at law or in equity with respect to the default the Seller may affirm or terminate the Agreement.
- (2) If it affirms the Agreement, the Seller may:
 - (a) sue the Purchaser for specific performance;
 - (b) sue the Purchaser for damages for breach; or
 - (c) sue the Purchaser for specific performance and damages for breach,and may recover from the Purchaser as a liquidated debt so much of the Deposit as the Purchaser has failed to pay.

-
- (3) If it terminates the Agreement, the Seller may:
- (a) declare forfeited any Deposit paid;
 - (b) sue the Purchaser for damages for breach; or
 - (c) declare forfeited any Deposit paid and sue the Purchaser for damages for breach.

PART 8 MISCELLANEOUS

8.1 Time

Unless expressly provided otherwise in this Agreement, time is of the essence of the Agreement in every respect.

8.2 Waiver

Neither:

- (1) a failure, delay or indulgence, committed, caused or granted in exercising a power or entitlement in relation to this Agreement; nor
- (2) a single or partial exercise, or a single or partial failure to exercise, such a power or entitlement, will operate to waive the power or entitlement, or to preclude its exercise or further exercise.

8.3 Service of Notices

A notice under this Agreement:

- (1) must be given in writing;
- (2) may be given and received by a party's solicitors;
- (3) may be delivered personally, posted, or transmitted by facsimile, to the intended recipient's Address for Notices.

8.4 Receipt of Notices

- (1) A notice delivered personally will be deemed received at the moment of personal delivery.
- (2) A notice sent by registered 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.
- (4) A notice sent by email will be deemed received at the time specified on a delivery receipt, if the receipt discloses that the transmission was received before 5.00pm.
- (5) If the Confirmation Report or delivery receipt discloses that the transmission or email was received after 5.00pm, the notice will be deemed received at 8.30am on the day following the date of receipt disclosed in the report or receipt.

8.5 Legal Costs

- (1) Each party must bear its own legal expenses in relation to the negotiation, preparation, stamping and execution of this Agreement.

- (2) The Purchaser, however, must bear, and indemnify the Seller against, all stamp duty assessed upon the Agreement and the Transfer, including any penalty duty the assessment of which is precipitated by an act of the Purchaser.
- (3) The Purchaser also must pay the cost of registering the Transfer.

[Signatures follow]

SIGNATURES

Seller

Executed on behalf of Mount Isa City Council ABN 48 701 425 059

- pursuant to *Local Government Act 2009* section 236;
- by a Council delegate, who certifies his/her authority to sign;
- in the presence of a witness:

..... Delegate Witness
..... Full name [<i>Print</i>] Full name [<i>Print</i>]

Purchaser

Executed by

- as his/her deed;
- in the presence of a witness:

..... Signatory Witness
 Full name [<i>Print</i>]

Purchaser

Executed by

- as his/her deed;
- in the presence of a witness:

.....
Signatory

.....
Witness

.....
Full name *[Print]*

[End of Instrument]
