

## SPECIAL CONDITIONS

### KINGSTON HERVEY BAY STAGE 4A,4B,4C,2C,5A,5B,5C

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#### 1. Property Sold

- 1.1 The property sold in this Contract is the proposed lot identified in the property section in the Reference Schedule to this Contract identified on the annexed disclosure plan being subdivided from registered Lot 1003 on SP322252 Title Reference 51241220. A copy of the Disclosure Plan is annexed to this Contract.

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#### 2. Land Sales Act Disclosure

- 2.1 The Buyer acknowledges receiving before entering into the Contract:
- (1) Land Sales Act Disclosure Plan, and
  - (2) Land Sales Act Disclosure Statement,
- both of which are annexed to this Contract.

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#### 3. Subject to Registration of Survey Plan

- 3.1 This Contract is subject to and conditional upon the registration of a survey plan creating a separate title for the Property Sold pursuant to the Land Titles Act by the date 18 calendar months from the date of this Contract.
- 3.2 If this Special Condition is not satisfied by the due date in Special Condition 0, either party may terminate this Contract by notice in writing to the other party in which case the deposit must be refunded to the Buyer.
- 3.3 The Seller must notify the Buyer in writing of the registration of the survey plan pursuant to this Special Condition.
- 3.4 In addition to the provisions of this Special Condition, if any competent authority refuses to grant or revokes any necessary permit, or refuses to seal the Survey Plan creating the separate lot for the Property or imposes any condition on any permit, certificate or approval with which the Seller is unwilling to comply, then the Seller may terminate this Contract by notice to the Buyer in which case the deposit must be refunded to the Buyer.

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#### 4. Settlement Date

- 4.1 The Settlement Date is the latter of:-
- (1) 14 days after the Seller gives written notice to the Buyer of the registration of the plan pursuant to special condition 0; or

- (2) 14 days from satisfaction of finance condition.

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## **5. No Objections by Buyer**

- 5.1 The Buyer may not delay settlement, make any objection or requisition or claim compensation or damages arising from and agrees to accept the Property subject to:
- (1) any minor variation (so long as it is of no practical consequence in terms of size, appearance and utility of the Property) in location, dimensions or area between the Property and the proposed Property;
  - (2) any service to the Property being a joint service with any other land or that it passes through or over any other land or that service to other land passes through or over the Property;
  - (3) the existence or passage through the Lot sold or any adjoining land of pipes, wires or connections of any system or service to the Property or adjoining property or jointly to one or more of them and whether or not that it is protected by a registered easement; and
  - (4) any boundary of the Property not being fenced or that a boundary fence is not upon or within the boundary of the Property.

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## **6. Building Covenants**

### **6.1 Approval of Plans**

- (1) The Buyer must not construct any improvements on the Land without first obtaining the approval of the Seller for plans and specifications in accordance with this Special Condition 6.
- (2) To seek the approval of the Seller for improvements, the Buyer must submit to the Seller:
  - (a) Plans – Site plan showing where the building is to be built, front; back and side elevations; and floor plans with room measurements.
  - (b) Specifications – including external materials/finish to be used on the building; fencing and driveways.
  - (c) Any other information reasonably required by the Seller.
- (3) The Seller:
  - (a) Will not withhold approval if the improvements described in the plans and specifications comply with any of the terms of this Special Condition 6, and
  - (b) May withhold approval if the improvements described in the plans and specifications do not comply with any of the terms of this Special Condition 6.

To avoid any doubt, the approval of the Seller is in addition to and not instead of any statutory approvals for the construction of improvements, for example building approval by the local Council.

## 6.2 Controls on Improvements

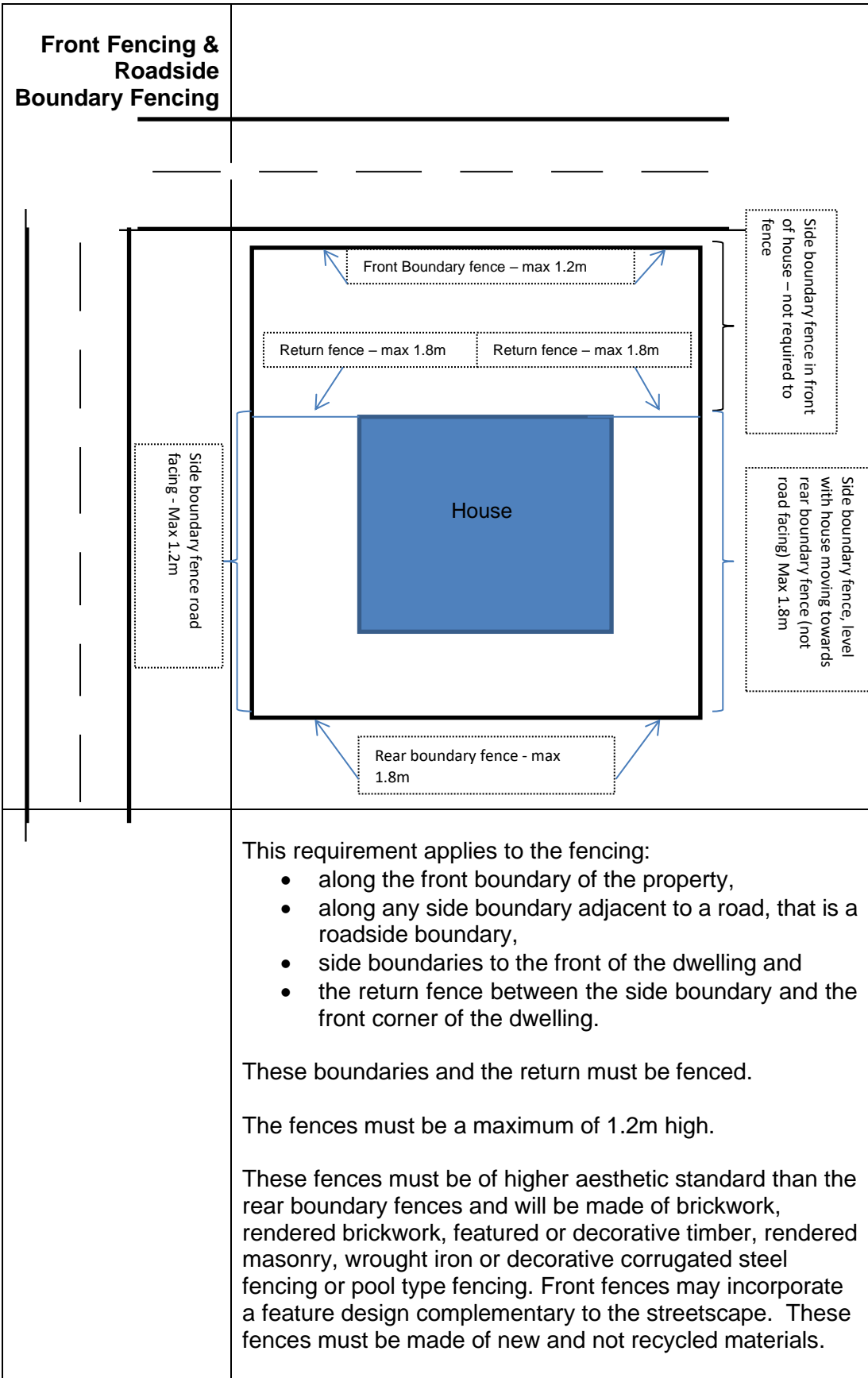
The Buyer:

- (1) Must strictly comply with, and
- (2) Is in default if they breach any of,

the controls on improvements to the Land listed in the table below:

<b>PLANS</b>	All improvements on the Land must be constructed in accordance with the plans and specifications approved by the Seller in accordance with this Contract.
<b>POSITIONING</b>	The position and orientation of the building should take advantage of prevailing breezes, airflow, the position of the sun and to minimise the effects of Queensland weather generally and include the strategic placement of doors, windows, louvres and living spaces to maximise residents' comfort levels.
<b>EXTERNAL WALLS</b>	<p>External walls of all dwellings, attached or detached garages and other improvements will only be constructed with a combination of:</p> <ol style="list-style-type: none"> <li>a. Clay brick that is rendered or bagged, or, a combination of clay brick and render,</li> <li>b. Any new material of a modern contemporary design,</li> <li>c. Masonry block with textured or painted finish, or</li> <li>d. Other materials or combination of materials as may be approved of in writing by the Seller.</li> </ol>
<b>ROOFING</b>	<p>All roofing will be concrete, terracotta tile or colorbond metal. Must be non-reflective and finished in muted colours.</p> <p>Roof pitch – a minimum of 20 degrees.</p> <p>Other roof styles eg Skillion roof must be approved in writing by the Seller.</p>

	Eaves – a minimum of 600mm eaves. Relaxations to a minimum of 400mm eaves must be approved by the Seller in writing and will be considered if in the Seller’s opinion there is architectural merit in the reduction in the context of the building design.
<b>MATERIALS</b>	All dwelling houses and other structures will be constructed using good and new materials.
<b>FENCES</b>  <b>Existing Fencing</b>	<p>Any fencing, temporary or permanent, erected on the Lot on settlement must not be altered, removed or modified in any way without express written permission of the Seller (This will particularly apply for Lots 1, 10 and 147.)</p> <p>The Seller is not obliged to contribute to the cost of fencing any boundary between the Property and land owned by the Seller before or after settlement.</p>



<p><b>Side Boundary and Rear Boundary Fences</b></p>	<p>This requirement applies to the rear boundary of a lot and the side boundaries behind the return that is back from the front edge of the dwelling. They do not apply to roadside boundary fences (i.e. corner blocks).</p> <p>These boundaries must be fenced.</p> <p>The fences must be a maximum of 1.8 metres high.</p> <p>The fence can be of timber palings but must be made of new and not recycled materials.</p>
<p><b>FLOOR AREA</b></p>	<p>The gross floor area of all habitable rooms in this building, including garages shall be a minimum of 180m<sup>2</sup>.</p> <p>The house must contain an alfresco area with a minimum area of 16m<sup>2</sup> under the main roof.</p>
<p><b>DRIVEWAY</b></p>	<p>The Buyer will construct a driveway between the roadway immediately in front of the land and the garage/s.</p> <p>The driveway must be completed before occupancy.</p> <p>The driveway must not be plain concrete or paved.</p> <p>The driveway must be coloured concrete, stencilled concrete or exposed aggregate.</p>
<p><b>LANDSCAPING</b></p>	<p>The Buyer will as soon as reasonably possible construct landscaping on the Land.</p>
<p><b>TURF</b></p>	<p>The Buyer will turf the front yard and footpath before occupancy.</p>
<p><b>SITE MAINTENANCE</b></p>	<p>The Buyer will not, at any time, cause, permit or authorise any person to cause or permit to be caused (whether during the course of the construction of a dwelling house or other construction on the Land) any damage to:</p> <ul style="list-style-type: none"> <li>a. Any land adjoining the land;</li> <li>b. The footpath;</li> <li>c. The kerb and channel or</li> <li>d. The roadway.</li> </ul>

	The Buyer will, at all times, keep the Land in a clean and tidy state and will also take steps reasonably necessary to ensure that no soil or grass cuttings from the Land will be windblown or washed onto the footpath, the kerb and channel or the roadway.
<b>COMPLETION OF BUILDING WORK</b>	The Buyer must start building within 12 months of the date of settlement on the Land. A building will not be left without substantial work being carried out for longer than a period of 1 month. Total construction time for erection of a building will not exceed 9 months.
<b>RELOCATION OF BUILDINGS</b>	A building previously erected on other land will not be erected or place upon the land.
<b>SIGNAGE</b>	No sign, billboard or advertisement of any kind will be displayed on the land or on any building or structure on the Land.
<b>RESIDENTIAL USE</b>	Only single unit residential dwellings may be erected on the Land.  A business, profession or trade may not be carried out from the Land.
<b>ANIMALS</b>	With the exception of house pets, no animal, poultry or other livestock will be kept or maintained on the Land.
<b>LANDSCAPING OF FOOTPATH</b>	The Buyer agrees to assist with the care and maintenance of the landscaping on the footpath at the front of the lot.
<b>OTHER MATTERS</b>	Unregistered vehicles may not be kept in the front yard of the Lot.  Sheds / garden sheds / or any outbuildings must be positioned behind the dwelling and/or to the rear of the Lot. Any part of the shed significantly visible from the road at the front of the premises must be constructed of external walls similar to the dwelling or of materials otherwise approved by the Seller.

	<p>Satellite dishes / antennae, and air conditioning units are to be kept out of sight when viewed from the front of the Lot.</p> <p>Caravan's / RV vehicles and the like are not to be parked in the front yard of the Lot.</p>
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### **6.3 Deed of Covenant on Sale of the Land**

- (1) The Buyer must not sell, assign transfer or otherwise dispose of the Land or an interest in the land without obtaining a deed of covenant from the incoming buyer, assignee or disponee agreeing to be bound by the terms of this Deed including this clause.
- (2) The deed of covenant must be in a form satisfactory to the Seller acting reasonably. The Seller must on request by the Buyer provide a precedent deed of covenant.

### **6.4 No Benefits to Third Parties**

- (1) It is acknowledged and agreed by the Seller and the Buyer that it is not their intention by this Special Condition to create any legal duty enforceable by the third party pursuant to Section 55 of the Property Law Act.

### **6.5 Variations and Waivers**

- (1) The Buyer may request the Seller vary or waive any of the requirements in this Special Condition 6. The Seller may agree or refuse the Buyer's request in the Seller's absolute discretion. The request and response must be in writing.
- (2) The Seller may choose to:
  - (a) Sell other land in the estate comprising the base parcel described as Lot 3 on SP265736, Title Reference 50965123 or any subdivided parts of it,
  - (b) Waive or not enforce the terms of similar deeds against other the owners of other land in the estate.
- (3) The Buyer may not object, make any claim nor seek any compensation if the Seller exercises discretion pursuant to Special Condition 6.5(1) or 6.5(2).

### **6.6 Seller's Remedies**

- (1) The Seller and the Buyer acknowledge that in the event that the Buyer breaches any of its obligations in this Special Condition 6, the Seller will suffer loss, however, there is a genuine difficulty in calculating that amount of that loss.
- (2) The Buyer agrees, if the Buyer breaches any of the Buyer's obligations in this Special Condition 6, to pay the Seller \$300.00 per day as liquidated damages in respect of each breach from the date of breach until the breach is remedied, in addition to any other remedy the Seller may have.
- (3) The Seller and the Buyer agree that this sum is a genuine pre-estimate of the damages suffered by the Seller arising from the Buyer's breach.
- (4) The Buyer consents to the imposition of any injunction that may be sought by the Seller in any court proceeding to prevent the Buyer from engaging in conduct that is in breach of the Buyer's obligations in this Special Condition 6.

**6.7 No Merger**

- (1) The obligations of the Buyer in this Special Condition 6, do not merge with and continue to be enforceable after the settlement of the transfer of the Property to the Buyer.

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**7. Land Tax**

- 7.1 Clause 2.6 (4) in the Terms of Contract is amended to read, "Land Tax must be adjusted on the basis of the Land Tax paid by the Seller for the Property or if the Office of State Revenue does not have a separate valuation for the Property, the Seller may apportion an unimproved valuation for land which includes the Property based on area.

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**8. GST – Margin Scheme**

- 8.1 The Seller and Buyer agree that the Margin Scheme applies to the Contract for GST purposes.

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Buyer

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Witness

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Buyer

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Witness

*Keith Brian Stanley Messer by his duly constituted Attorney Tracey Anne Messer, under registered Power of Attorney No. 716306110 who certifies that such Power has not been revoked*

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Seller

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Witness