Early arrangement

Proponent-Driven Offset

Between the Administering Agency, the Entity and the Offset Landowner

Instructions to the Entity:

1. This agreement is an Early Arrangement.
2. This agreement is for a Proponent-Driven Offset only and not a Financial Settlement Offset.
3. Electronically complete ‘Schedule 1 – Agreement details’ on pages 1 and 2 of this agreement.
4. Print three copies of this agreement. If the Entity and/or Offset Landowner is more than one entity, print additional copies so that there are enough copies to distribute to each entity (for example, if the Offset Landowner consists of two entities, print four copies of the agreement).
5. Sign each copy on the Signing Pages on page 16 (and page 17 if there is more than one entity who is the Entity) in accordance with the Instructions to the Entity on pages 16 and 17.
6. Liaise with the Offset Landowner to have the Offset Landowner sign each copy on page 18 (and page 19 if there is more than one entity who is the Offset Landowner) in accordance with the Instructions to the Offset Landowner on pages 18 and 19.
7. Deliver all the signed copies of this agreement to the officer named at the top of the Notice of Decision.

Schedule 1 – Agreement details (for the Entity to complete)

Item 1  Early Arrangement
          Application Number

          Insert the environmental offset application number shown on the Notice of Agreement.

Item 2  Entity

          Insert the name/s of the entity/entities. This is the entity that made the Application by way of being described in the ‘contact details’ panel of the Application. If the Entity comprises of more than one entity, each entity must be listed.
<table>
<thead>
<tr>
<th>Item 3</th>
<th>Entity’s Notice Details</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Insert the notice details of the Entity/Entities. For a corporation, this will be the corporation’s registered office. For an individual, this will be the individual’s residential street address. If the Entity comprises of more than one entity, each Entity’s notice details must be listed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item 4</th>
<th>Notice of Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Insert the date of the notice of agreement given by the Administering Agency for the Early Arrangement Application Number.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item 5</th>
<th>Offset Landowner</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Insert the name/s of the offset landowner(s). This is the entity/entities that own the Offset Land. If the offset landowner comprises of more than one entity, each entity must be listed.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Item 6</th>
<th>Offset Landowner’s Notice Details</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Insert the notice details of the Offset Landowner(s). For a corporation, this will be the corporation’s registered office. For an individual, this will be the individual’s residential street address. If the Offset Landowner comprises of more than one entity, each Offset Landowner’s notice details must be listed.</td>
</tr>
</tbody>
</table>
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Details

Date
If executed in counterparts, the date of this Agreement is the date of latest execution.

Parties
The parties to this agreement are the Entity, the Administering Agency and the Offset Landowner.

Notice details
A The notice details of the Entity are the notice details in Item 3 of Schedule 1.
B The notice details of the Offset Landowner are the notice details in Item 6 of Schedule 1.
C Unless otherwise specified in this agreement, the notice details of the Administering Agency are as follows:

135 Bundall Road, Bundall Qld 4217
Attention: Chief Executive Officer

Background
A The Entity has given the Administering Agency the Application which requests that an Early Arrangement be entered into and which includes the Offset Delivery Plan.
B The Administering Agency has given the Notice of Decision to the Entity which gives notice that the Administering Agency agrees to enter into an Early Arrangement as described in the Notice of Decision.
C Pursuant to the Notice of Decision all/part of the Environmental Offset is to be delivered on land owned by the Offset Landowner.
D This is the Early Arrangement.
Agreed terms

1. Defined terms & interpretation

1.1 Defined terms

In this agreement:

**Administering Agency** means Council of the City of Gold Coast.

**Agreed Proponent-Driven Offset** means the *Proponent-Driven Offset* described in the *Notice of Decision*.

**Application** means the application made by the **Entity** to the **Administering Agency** requesting that an **Early Arrangement** be entered into, which includes:

(a) Environmental Offsets Delivery Form 1 – Notice of Election and Advanced Offset Details;

(b) Environmental Offsets Delivery Form 2 – Offset Delivery Plan Details; and

(c) Environmental Offsets Delivery Form 3 – Offset Area Details

which is specified in the *Notice of Decision*.

**Assessable Development** has the meaning given under *Planning Act*.

**Assignee** means the person being assigned the agreement pursuant to clause 8.

**Authority** has the meaning given under the *EO Act*.

**Business Day** has the meaning given in the *Acts Interpretation Act 1954* for the **Administering Agency's** local government area.

**Chief Executive Officer** means the Chief Executive Officer of the **Administering Agency** or delegate.

**Commencement Date** means the commencement of this agreement pursuant to clause 2.3.

**Development Application** has the meaning given under *Planning Act*.

**Development Permit** has the meaning given under *Planning Act*.

**Early Arrangement** has the meaning given under the *EO Act*.

**Early Arrangement Application Number** is the number described in **Item 1 of Schedule 1**.

**Entity** means the person described in **Item 2 of Schedule 1**.

**Environmental Offset** has the meaning given under the *EO Act*.

**EO Act** means the *Environmental Offsets Act 2014*.

**Financial Settlement Offset** has the meaning given by the *EO Act*.

**Force Majeure** means an event:

(a) being a decree of the Commonwealth Government or the State Government, an act of God, industrial disturbance, act of public enemy, war, international blockade, public riot, lightning,
flood, earthquake, fire, storm or other event whether of a kind herein specified or otherwise; and

(b) which is not within the control of the party claiming Force Majeure; and

(c) which could not have been prevented by the exercise by that person of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances.

Identified Impact Area means the impact area identified in the Application, subject to any variation by the Notice of Decision.

Identified Prescribed Environmental Matter means the Prescribed Environmental Matter identified in the Application for the Identified Impact Area, subject to any variation by the Notice of Decision.

Land means the land specified in the ‘Property description’ and ‘Property location’ in the Notice of Decision.

Material Change of Use has the meaning given under Planning Act.

Notice of Decision means the notice given by the Administering Agency to the Entity which states that:

(a) the Administering Agency agrees to entering into an Early Arrangement; and

(b) the way in which the Entity is required to deliver the Environmental Offset for the Identified Prescribed Environmental Matter is by way of a Proponent-Driven Offset

which is identified in Item 4 of Schedule 1.

Offset Condition has the meaning given in the EO Act.

Offset Delivery Plan means the offset delivery plan specified in the Notice of Decision, subject to any requirements in the Notice of Decision.

Offset Land means the land specified in the ‘Offset land description’ and ‘Offset land address’ in the Notice of Decision.

Offset Landowner means the entity that owns the Offset Land.

Operational Work has the meaning given under Planning Act.

Owner has the meaning given under Planning Act.

Planning Act means the Planning Act 2016.

Prescribed Activity has the meaning given by the EO Act.

Prescribed Environmental Matter has the meaning given by the EO Act.

Proponent-Driven Offset has the meaning given by the EO Act.

Reconfiguring a Lot has the meaning given under Planning Act.

Significant Residual Impact has the meaning given in the EO Act.

Sell includes transfer, lease, licence, part with possession, dispose of, or alienate and "Sale" has the corresponding meaning.
1.2 Interpretation

In this agreement, unless a contrary intention appears, reference to:

(a) A clause is to a clause in this agreement.
(b) The singular includes the plural and vice versa.
(c) Any gender includes all other genders.
(d) A person includes a firm, a corporation, an association and a body, whether incorporated or not and a government or statutory body or authority.
(e) Legislation (including subordinate legislation) includes:
   (i) statutory instruments under the legislation; and
   (ii) consolidations, amendments, re-enactments or replacements of the legislation; and
   (iii) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmission; and
   (iv) this or any other agreement includes the agreement as varied or replaced and is not affected by any change in the identity of the parties; and
   (v) a day is to a business day.
(f) The clause headings appearing in this agreement are inserted for convenience of reference and do not affect the construction of this agreement.
(g) If any words are italicised or otherwise printed differently, this has been done for convenience only and does not affect the construction of this agreement.
(h) Whenever more persons than one constitute a party all the covenants, agreements, conditions, restrictions and provisos on the part of that party contained or implied in this agreement bind those persons jointly and each of them severally.
(i) This agreement is in all respects to be interpreted in accordance with the laws of the State of Queensland, and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state and any courts which have jurisdiction to hear appeals from them, and waive any right to object to proceedings being brought in those courts.
(j) Nothing contained in this agreement affects, prejudices or derogates from the requirements of any statute or from the rights, powers and authorities of the Administering Agency under the provisions of any statute or under any declared policy of the Administering Agency.
(k) An inclusive definition, or an example or particularisation of a provision, does not limit but may extend that definition or provision.
(l) Where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have a corresponding definition.
(m) All schedules to this agreement form part of this agreement and a reference to an item is a reference to an item in the schedule.

1.3 Other expressions

If a term is not defined in this agreement it shall unless the context otherwise requires, have the meaning given to it by:
(a) the EO Act; or
(b) the Macquarie Dictionary in the absence of a definition in the EO Act.

2. Acknowledgments

2.1 Application of the EO Act
This agreement is intended to constitute an Early Arrangement under section 19(5) of the EO Act.

2.2 Authority attaching to the Land
(a) The parties acknowledge that this agreement gives effect to an agreement reached between the Administering Agency and the Entity about the delivery of an Environmental Offset for the Identified Prescribed Environmental Matter.

(b) Upon an Authority being given, the parties acknowledge that the Authority will attach to the Land and will be binding on the Owner of the Land and the successors in title of the Owner of the Land and any occupier of the Land pursuant to section 73 of Planning Act.

2.3 Commencement
This agreement commences on the date the last party executes this agreement.

2.4 Future Offset Conditions
The parties acknowledge and agree that:
(a) the Agreed Proponent-Driven Offset (required to be paid by the Entity pursuant to this agreement) is in respect of the Identified Impact Area; and

(b) in the event that an Authority is granted that includes an Offset Condition for the Identified Prescribed Environmental Matter to which there is a change to the impact on the Identified Prescribed Environmental Matter (including a change to the Identified Impact Area), then the Administering Agency may issue a notice under section 19A(3) of the EO Act.

2.5 Not a Development Permit or Authority
The parties acknowledge and agree that this agreement:
(a) is not a Development Permit for Assessable Development and does not approve a Prescribed Activity; and

(b) does not fetter the Administering Agency’s decision in respect of any application made for an Authority that will impact the Identified Prescribed Environmental Matter, or any other Development Application for the Land.

3. Obligations of the parties

3.1 Entity’s obligations
The Entity must:
(a) deliver the Agreed Proponent-Driven Offset in accordance with clause 4; and

(b) otherwise comply with the terms of this agreement.

3.2 Administering Agency’s obligations
The Administering Agency must comply with the terms of this agreement.
3.3 Offset Landowner’s obligations

The Offset Landowner must:

(a) allow the Agreed Proponent-Driven Offset to be delivered on the Offset Land in accordance with clause 5; and

(b) if clause 6 applies, make the application referred to in clause 6(b); and

(c) otherwise comply with the terms of this agreement.

4. Delivery of the Proponent-Driven Offset

(a) The parties acknowledge and agree that pursuant to section 19A(2)(a) of the EO Act, the Entity may start to deliver the Agreed Proponent-Driven Offset before an Authority is granted for a Prescribed Activity that includes an Offset Condition for the Identified Prescribed Environmental Matter.

(b) The Entity must carry out all necessary actions and work to deliver the Agreed Proponent-Driven Offset in the way specified in the Offset Delivery Plan.

(c) The parties acknowledge and agree that the Entity is responsible for all costs and ongoing responsibilities for the delivery of the Agreed Proponent-Driven Offset pursuant to the Offset Delivery Plan.

5. Consent to using Offset Land for the Agreed Proponent-Driven Offset

(a) The Offset Landowner acknowledges that the Offset Delivery Plan specifies actions and work to be carried out on the Offset Land by the Entity to allow the Agreed Proponent-Driven Offset to be delivered in accordance with this agreement.

(b) The Offset Landowner agrees:

(i) to allow the actions and work specified in the Offset Delivery Plan to be carried out on the Offset Land by the Entity in accordance with the terms of this agreement, so that the Agreed Proponent-Driven Offset can be delivered;

(ii) to comply with and carry out any actions or work required to be carried out by the Offset Landowner in the Offset Delivery Plan; and

(iii) that it will not seek to restrain, prevent or hinder the Entity from carrying out the actions and work specified in the Offset Delivery Plan on the Offset Land.

6. Dealing with advanced offsets

(a) This clause applies in the event that the Offset Land is registered as an advanced offset in the register kept by the Administering Agency under section 90 of the EO Act.

(b) Within 10 Business Days of the Commencement Date, the Offset Landowner must make an application pursuant to section 14(6) of the Environmental Offsets Regulation 2014 to the Administering Agency (as decision-maker) for the Offset Land to no longer be identified as an advanced offset and to be removed from the register.
7. When obligation to deliver the Agreed Proponent-Driven Offset ceases

The parties agree that the obligation on the Entity in clause 4 to deliver the Agreed Proponent-Driven Offset will cease to have effect once the Chief Executive Officer of the Administering Agency has given written notification that:

(a) the actions and obligations of the Offset Delivery Plan have been completed in full; and
(b) the Agreed Proponent-Driven Offset has been secured for at least the same duration as the impact on the Prescribed Environmental Matter arising from the Prescribed Activity.

8. Assignment by Entity and novation of agreement

8.1 Restriction on assignment

The Entity shall not, either absolutely or by way of security, assign its interests, rights or obligations under this agreement prior to the performance and fulfillment of the Entity’s obligations under this agreement without:

(a) the prior consent of the Administering Agency in writing signed by the Chief Executive Officer of the Administering Agency; and
(b) the Assignee having entered into a deed of novation of this document with the Administering Agency, on terms reasonably acceptable to the Administering Agency, whereby the Assignee becomes contractually bound to the Administering Agency to perform and fulfill the provisions of this document or such of them as remain unperformed or unfulfilled by the Entity at the time of such assignment.

8.2 Restriction on the right to refuse

The Administering Agency may, in its absolute discretion, withhold its consent to the assignment.

8.3 Conditions of the consent

If the Administering Agency grants its consent, the Administering Agency may impose conditions for the giving of such consent which are not inconsistent with the provisions of this agreement.

8.4 Entity to remain liable

In the event of an assignment being made other than in accordance with this clause 8, then the Entity shall perform and fulfill such of its obligations under this document as have not been performed in accordance with any necessary timeframes in this agreement.

9. Assignment by Offset Landowner and novation of agreement

9.1 Restriction on the right to sell the Offset Land

The Offset Landowner shall not Sell the Offset Land prior to the performance and fulfillment of the Entity’s obligations and the Offset Landowner’s obligations under this agreement except subject to the condition that the purchaser shall enter into a deed of novation of this document with the Administering Agency, on terms reasonably acceptable to the Administering Agency, whereby the purchaser becomes contractually bound to the Administering Agency to perform and fulfill the provisions of this agreement or such of them as remain unperformed or unfulfilled by the Entity’s obligations and the Offset Landowner’s obligations at the time of such Sale.
9.2 Restriction on assignment

Subject to clause 9.1, the Offset Land Owner shall not, either absolutely or by way of security, assign its interests, rights or obligations under this agreement without the prior consent of the Administering Agency in writing signed by the Chief Executive Officer of Administering Agency.

9.3 Restriction on the right to refuse

The Administering Agency may, in its absolute discretion, withhold its consent to the assignment.

9.4 Conditions of the consent

If the Administering Agency grants its consent, the Administering Agency may impose conditions for the giving of such consent which are not inconsistent with the provisions of this agreement.

10. Default

10.1 Rights of the Administering Agency on default

(a) If the Entity has breached clauses 3.1, 4 or 8 of this agreement, the Administering Agency may elect, in its absolute discretion and without limiting any other rights, to do one or more of the following:

(i) pursue contractual remedies for breach of this agreement; or

(ii) exercise any of its powers pursuant to Chapters 5 and 6 of Planning Act.

(b) If the Offset Landowner has breached clauses 3.3, 5, 6 or 9 of this agreement, the Administering Agency may elect, in its absolute discretion and without limiting any other rights, to do one or more of the following:

(i) pursue contractual remedies for breach of this agreement; or

(ii) exercise any of its powers pursuant to Chapters 5 and 6 of Planning Act.

11. Mediation

11.1 Negotiation and good faith

If a dispute arises between the parties, then prior to initiating any court action, the parties must meet and in good faith attempt to resolve the dispute.

11.2 Parties to mediate

(a) If the parties fail to resolve the dispute within 10 Business Days of the dispute arising, then the parties must submit to the mediation of the dispute by a mediator appointed by the President for the time being of the Queensland Law Society.

(b) The mediator's fees shall be borne equally by the parties.

12. Service

12.1 Service by prepaid post

A notice is sufficiently made, given or served by a party if left at or forwarded by prepaid post in an envelope addressed to the other party or any of them (where there are more persons than one person comprising the other party) at the address of that party shown specified in the Notice details clause.
13. Miscellaneous

13.1 Payment of costs
Each party bears its own costs.

13.2 Time
Time is, in all cases, of the essence.

13.3 Joint and severable liability
(a) If the Entity is more than one entity, then the provisions of this agreement bind the entities that are the Entity jointly and severally.
(b) If the Offset Landowner is more than one entity, then the provisions of this agreement bind the entities that are the Offset Landowner jointly and severally.

13.4 Waiver
No waiver by the Administering Agency of any breach by the other parties of any of the provisions of this agreement shall be implied against the Administering Agency or be otherwise effective unless it is in writing under the hand of the Chief Executive Officer.

13.5 Laches and delay
No laches or delay by the Administering Agency at any time or times in enforcing any of its rights, powers and the like under this agreement prejudice or affect those rights or powers.

13.6 Severance
If any provision of this agreement cannot be given effect or full force and effect by reason of statutory invalidity that provision shall be severed or read down but so as to maintain and uphold so far as possible the remaining provisions of this agreement.

13.7 Warranty of authority
Any person signing this agreement:
(a) as attorney of any party warrants to the other parties that at the date of execution that person has not received any notice or information of the revocation of the power of attorney appointing that person; and
(b) as an authorised officer, agent or trustee of any party warrants to the other parties that at the date of execution that person has full authority to execute this agreement in that capacity.

13.8 Counterparts
This agreement may be executed in counterparts. All executed counterparts constitute one document.

13.9 Further assurances
Each party agrees at its cost to do everything reasonably necessary to give effect to this agreement.

13.10 Force Majeure
(a) If a party is unable by reason of an event of Force Majeure to carry out its obligations under this agreement, that party must give a notice to the other party advising of the event of the Force Majeure as soon as it is reasonably practicable after the event of a Force Majeure.
(b) If a party gives a notice advising of an event of Force Majeure, that party’s obligations will be suspended during the period for which the event of Force Majeure or its effect extends.
(c) Where the obligations of the Administering Agency are dependent upon the occurrence of specified circumstances, then the Administering Agency will be relieved of its obligations for so long as there is a change or deviation or nonoccurrence of those circumstances arising from a matter beyond the Administering Agency’s control.

13.11 Amendment of agreement

(a) Despite any other provision of this agreement, the parties may at any time agree to vary the terms of this agreement or the Offset Delivery Plan pursuant to:

(i) section 19(7) of the EO Act; or
(ii) section 20(2) of the EO Act.

(b) If the parties agree to amend the terms of this agreement or the Offset Delivery Plan in accordance with clause 13.11(a)(ii) the parties acknowledge that any amendment to this agreement is subject to:

(i) the Administering Agency having regard to the matters mentioned in section 19(1)(a) and (b) of the EO Act (pursuant to section 20(3) of the EO Act); and
(ii) the Offset Delivery Plan complying with the requirements of section 18(4) and (5) of the EO Act (pursuant to section 20(4) of the EO Act).

(c) No modification, variation or amendment of this agreement is of any force or effect unless:

(i) it is in the form of an amendment agreement and has been signed by the parties; and
(ii) where relevant the amendment agreement complies with the requirements of the EO Act.
Signing pages

EXECUTED as a deed.

Signed for and on behalf of COUNCIL OF THE CITY OF GOLD COAST by ______________ (name) pursuant to delegated authority number ______ on the ______ day of ______ (month) ______ (year) in the presence of:

Signature ________________ Witness ________________

Full Name ________________ Print full name ________________
Instructions to the Entity:

1. If the Entity is only one entity, please sign in accordance with steps 4 and 5 on this page 16. Please do not sign on page 17.

2. If the Entity comprises two entities, please have the second entity sign on page 17 in accordance with steps 4 and 5.

3. If the Entity comprises more than two entities, please print out page 17 the number of times required so that each entity signs in accordance with steps 4 and 5.

4. If the Entity is a corporation (and not an individual) please sign Entity Signing Clause – corporation. Please do not sign Entity Signing Clause - individual.

5. If the Entity is an individual (and not a corporation) please sign Entity Signing Clause – individual. Please do not sign Entity Signing Clause – corporation.

Entity Signing Clause – corporation

Signed for the Entity under section 127 of the Corporations Act 2001 on the _____ day of ________ (month) _______ (year) in the presence of:

________________________________________  _______________________________________
Signature of director  Signature of director/company secretary
(Please delete as applicable)

________________________________________  _______________________________________
Name of director (print)  Name of director/company secretary (print)

Entity Signing Clause – individual

Signed for the Entity on the _____ day of ________ (month) _______ (year) in the presence of:

________________________________________  _______________________________________
Signature  Witness

________________________________________  _______________________________________
Full name  Print full name
This page only needs to be signed if the Entity is more than one entity.

Entity Signing Clause – corporation

Signed for the Entity under section 127 of the Corporations Act 2001 on the ___ day of _______ (month) _____ (year) in the presence of:

Signature of director

Name of director (print)

Signature of director/company secretary (Please delete as applicable)

Name of director/company secretary (print)

Entity Signing Clause – individual

Signed for the Entity on the ___ day of _______ (month) _____ (year) in the presence of:

Signature

Witness

Full name

Print full name
**Instructions to the Offset Landowner:**

1. If the Offset Landowner is only one entity, please sign in accordance with steps 4 and 5 on this page 18. Please do not sign on page 19.
2. If the Offset Landowner comprises two entities, please have the second entity sign on page 19 in accordance with steps 4 and 5.
3. If the Offset Landowner comprises more than two entities, please print out page 19 the number of times required so that each entity signs in accordance with steps 4 and 5.
4. If the Offset Landowner is a corporation (and not an individual) please sign **Offset Landowner Signing Clause – corporation**. Please do not sign Offset Landowner Signing Clause - individual.
5. If the Offset Landowner is an individual (and not a corporation) please sign **Offset Landowner Signing Clause – individual**. Please do not sign Offset Landowner Signing Clause – corporation.

---

**Offset Landowner Signing Clause – corporation**

Signed for _____________________________
(insert the name of the entity who is the Offset Landowner) under section 127 of the Corporations Act 2001 on the _____ day of _____ (month) _____ (year)
in the presence of:

<table>
<thead>
<tr>
<th>Signature of director</th>
<th>Signature of director/company secretary</th>
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</thead>
<tbody>
<tr>
<td></td>
<td>(Please delete as applicable)</td>
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</table>

Name of director (print) | Name of director/company secretary (print)

---

**Offset Landowner Signing Clause – individual**

Signed for _____________________________
(insert the name of the entity who is the Offset Landowner) on the _____ day of _____ (month) _____ (year) in the presence of:

<table>
<thead>
<tr>
<th>Signature</th>
<th>Witness</th>
</tr>
</thead>
</table>

Full name | Print full name
This page only needs to be signed if the Offset Landowner is more than one entity.

**Offset Landowner Signing Clause – corporation**

Signed for _____________________________
(insert the name of the entity who is the Offset Landowner) under section 127 of the
Corporations Act 2001 on
the _____day of ________ (month) ________ (year)
in the presence of:

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**Offset Landowner Signing Clause – individual**

Signed for _____________________________
(insert the name of the entity who is the Offset Landowner) on the _____day of ________ (month)
______ (year) in the presence of:

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