

24 June 2010

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BY COURIER

Mr Mark Sallis  
Wallmans Lawyers  
Level 5, 400 King William Street  
ADELAIDE SA 5000

Dear Mark

**Port Augusta Airport Land - Contract for Sale and Purchase**

Please find enclosed for your client's records an original contract executed by my client.

Yours sincerely



Kathryn Nicolai  
Senior Associate

Contact: Kathryn Nicolai (08) 8233 5485  
Email: [kathryn.nicolai@minterellison.com](mailto:kathryn.nicolai@minterellison.com)  
Partner responsible: Adrian Swale (08) 8233 5525  
Our reference: KAN 76557-1

**INSTRUMENT OF AGREEMENT** dated 18 June 2010

**BETWEEN:**

**PORT AUGUSTA CITY COUNCIL** ABN 73 625 993 182 (the **Vendor**)

**AND:**

**BOWHILL PROPERTIES PTY LTD** ACN 138 724 517 for itself and the Nominee (the **Purchaser**)

**INTRODUCTION**

- A. At settlement under the Agreement the Vendor will own the Land.
- B. In the Agreement, the parties provide for the Purchaser to purchase the Land.

**TERMS**

- 1. The Vendor agrees to sell to the Purchaser and the Purchaser agrees to purchase from the Vendor the Land upon and subject to the terms and conditions in the Agreement.
- 2. This and the following documents (and any documents incorporated by reference therein) together comprise the Agreement:
  - 2.1 the terms and conditions in the form of Contract for the Sale and Purchase of Land as published by The Law Society of South Australia Inc. Updated 2006 ISSN 0155-8897, excluding clauses 4, 10, 12.2(b), 14, 15, 16, 26, 29, 31, 32.3, 32.4;
  - 2.2 the Schedule to the above Contract for the Sale and Purchase of Land now annexed;
  - 2.3 the documents listed in item 22 of that Schedule and now annexed.

**EXECUTED** as an agreement

**THE COMMON SEAL** of **PORT AUGUSTA CITY COUNCIL** is fixed by:



.....  
 Chief Executive Officer

.....  
 Mayor

**EXECUTED by BOWHILL** )  
**PROPERTIES PTY LTD** in accordance )  
 with section 127 of the Corporations Act )

.....  
 Director

.....  
 Director

*pad*





## The Law Society of South Australia

### CONTRACT FOR THE SALE AND PURCHASE OF LAND

For the use of Law Society of South Australia members only  
Reprinted 2006

### SCHEDULE

This Schedule is to be read in conjunction with the Contract Terms and Conditions.

The terms opposite the item numbers 1 to 22 have the respective meanings as detailed in the particulars in the Schedule.

**THIS AGREEMENT IS MADE BETWEEN THE VENDOR AND THE PURCHASER NAMED AND DESCRIBED IN THE SCHEDULE.**

**THE VENDOR AND THE PURCHASER AGREE as follows:**

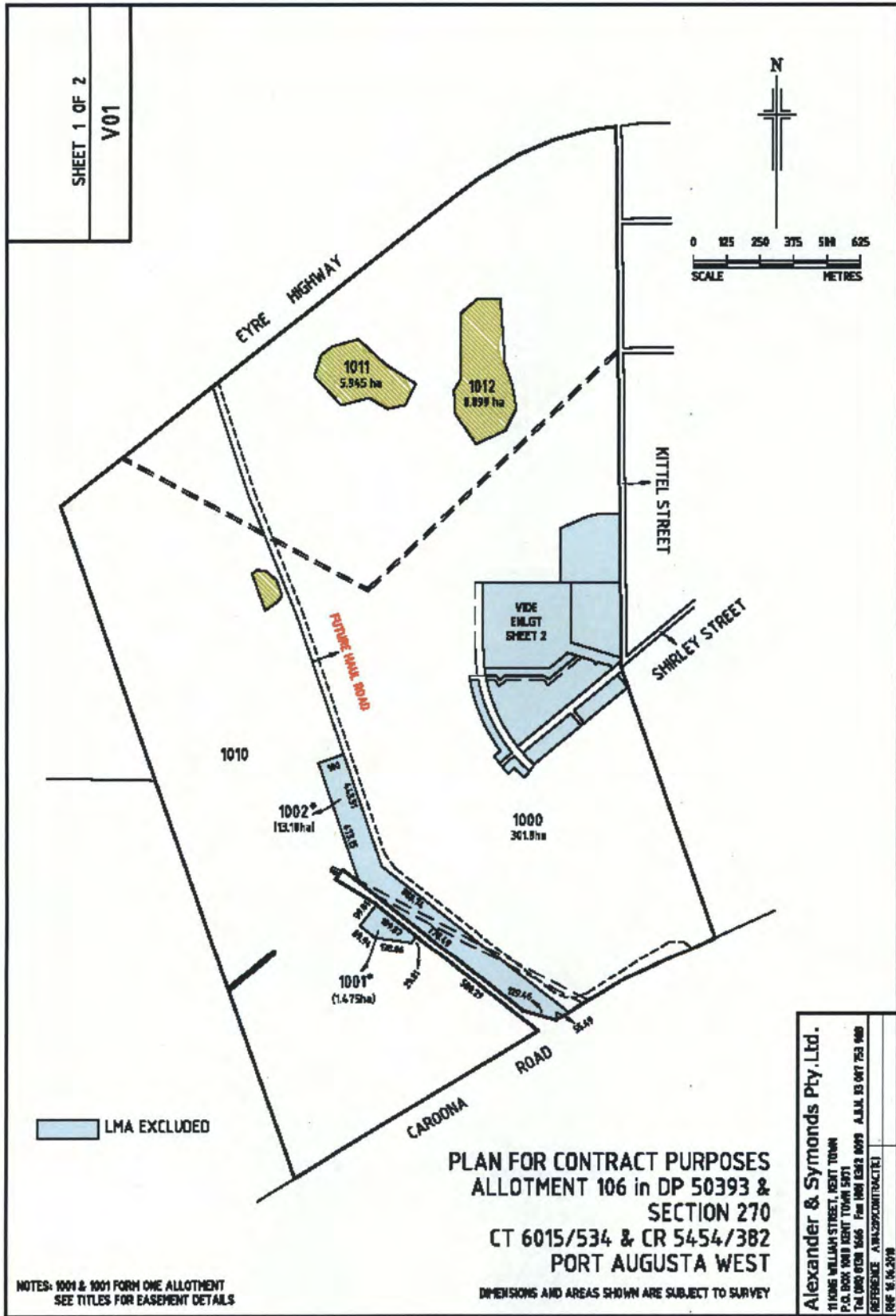
Item	Term	Particulars
1	<b>Vendor</b> (Name, address and description)	<b>PORT AUGUSTA CITY COUNCIL</b> ABN 73 625 993 182 of 4 Mackay Street, Port Augusta SA 5700 Ph: (08) 8641 9100 Fax: (08) 8641 0357 Email: greg.perkin@portaugusta.sa.gov.au
2	<b>Purchaser</b> (Name, address and description)	<b>BOWHILL PROPERTIES PTY LTD</b> ACN 138 724 517 of 4 Everglade Court, Golden Grove SA 5125 for itself and / or the Nominee  Ph: 0412 945 644 Fax: 82887563 Email: <a href="mailto:pat@ilkt.com.au">pat@ilkt.com.au</a>
3	<b>The Land</b> (Description of the Land) (Clause 2)  Property address:	(a) An estate in fee simple in the Crown Land, plus  (b) Subject to the Special Conditions, an estate in fee simple in that portion of the land now comprised in Certificate of Title Register Book Volume 6015 Folio 534 and marked Lot 1000, 1001, 1002, 1011, 1012, 601, 602, 603, 604, 605, 606, 607, 608 and 609 on the (draft) Plan of Division now annexed.  Cnr Eyre Highway and Kittel Street, Port Augusta SA 5700
4	<b>Included Property</b> (Clause 3)	Nil.
5	<b>Included Chattels</b> (Clause 4)	Nil.

6	<b>Chattels on hire etc.</b> (Clause 14)	Nil.
7	<b>Excluded Property</b> (Clause 4)	Nil.
8	<b>Exceptions and reservations</b> (Clause 5)	Nil.
9	<b>Mortgages, encumbrances etc</b> (Clause 5)	Nil.
10	<b>Tenancies and other interests</b> (Clauses 5, 15)	Nil.
11	<b>Purchase Price</b> (Clauses 4, 6)  <b>GST</b> (Clause 32)	See Special Conditions
12	<b>Deposit</b> (Clause 7)	\$250,000.00
13	<b>Balance</b> (Clause 7)	See Special Conditions
14	<b>Deposit Holder</b> (Clause 7)	Wallmans Lawyers of Level 5, 400 King William Street, Adelaide SA 5000
15	<b>Settlement Day</b> (Clause 8)	See Special Conditions
16	<b>Provisions applying to mortgages, tenancies etc.</b> (Clause 8(6))	Nil.
17	<b>Water allowance</b> (Clause 10(4)(d))	Nil.
18	<b>Notices and orders</b> (Clause 13)	(i) Matters to be discharged by the Vendor: Nil. (ii) Matters to be discharged by the Purchaser: Nil.



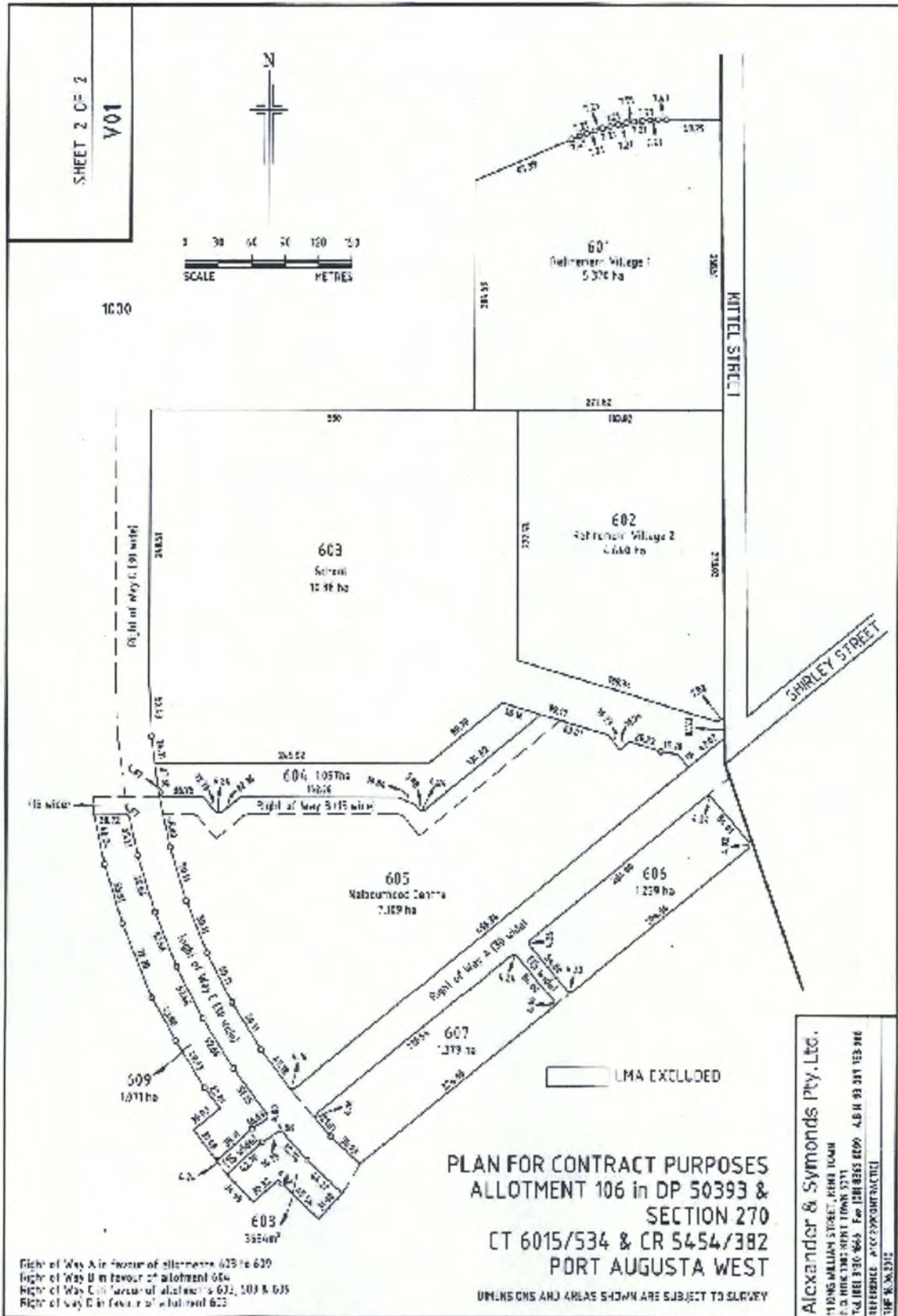
19	<b>Consents</b> (Clause 18)	(i) To be obtained by the Vendor: See Special Conditions Period within which to be obtained: See Special Conditions  (ii) To be obtained by the Purchaser: See Special Conditions Period within which to be obtained: See Special Conditions				
20	<b>Interest Rate</b> (Clause 19)	As per clause 19.				
21	<b>Costs</b> (Clause 26)	As per clause 27 and Special Condition 42.				
22	<b>Annexures</b> Clause 28)	<input checked="" type="checkbox"/> (Draft) Plan of Division <input checked="" type="checkbox"/> Special Conditions <input checked="" type="checkbox"/> LMA and its Annexures A, B and C.				
23	<b>GST</b> (Clause 32) The Land sold by the Vendor to the Purchaser under this Agreement: <table border="1" data-bbox="264 1072 1426 1160" style="width: 100%; margin-top: 10px;"> <tr> <td style="width: 10%; padding: 5px;">(a)</td> <td style="width: 60%; padding: 5px;">comprises a taxable supply and is not subject to the margin scheme (sections 9-5 and 195-1 of the GST Law)</td> <td style="width: 15%; padding: 5px; text-align: center;"><input type="checkbox"/> No</td> <td style="width: 15%; padding: 5px; text-align: center;"><input checked="" type="checkbox"/> Yes</td> </tr> </table>		(a)	comprises a taxable supply and is not subject to the margin scheme (sections 9-5 and 195-1 of the GST Law)	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes
(a)	comprises a taxable supply and is not subject to the margin scheme (sections 9-5 and 195-1 of the GST Law)	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes			
24	<b>GST (Where the Land comprises partly a taxable supply and partly a non-taxable supply)</b> (Item 23(i)) Not applicable.					

ANNEXURE – (Draft) PLAN OF DIVISION



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## ANNEXURE - SPECIAL CONDITIONS

### PART 1 – PRELIMINARY

#### 1. Dictionary

In this Annexure:

**“Aboriginal Heritage Land”** means the land identified as Lot 1011 and 1012 on the draft Plan of Division now annexed to this Agreement.

**“Allotment”** means the whole of the land comprised in a certificate of title issued under the *Real Property Act 1886* except for a community or development lot or common property within the meaning of the *Community Titles Act 1996* or a unit or common property within the meaning of the *Strata Titles Act 1988*.

**“Amendments to the Development Plan”** mean the amendments to the Development Plan under the *Development Act 1993* that are proposed to be prepared by or on behalf of the Vendor to amend the current zoning of the Land and the JLKT Land to allow those properties to be developed for a mix of residential, commercial and light industrial uses and associated development and infrastructure substantially in accordance with the Master Plan.

**“Condition Precedent”** means a condition precedent to settlement of this Agreement stated in Special Condition 17.

**“control”** has its meaning in *Corporations Act 2001* s. 50AA and **“change of control”** means:

- (a) if any person who controls, or any number of persons who together control, an Entity as at the date of this Agreement or the date the entity becomes bound by this Agreement (if not the original Purchaser) subsequently ceases or together cease, to control the Entity; or
- (b) if any person acquires, or any number of persons together acquire, control of the Entity.

**“Crown Land”** means the land comprised in Crown Record Volume 5454 Folio 382.

**“Encumbrance”** means any encumbrance or security interest and includes any legal or equitable mortgage, charge, hypothecation, pledge, lien, lease, caveat or order of Court but ignoring any:

- (a) statutory easement over the Land that relates only to the provision of electricity, gas, water or sewerage to that or other land;
- (b) statutory charge, lien or other security interest over the Land to secure payment of rates or taxes or utilities so long as the liability or debt it secures is not overdue;
- (c) interest noted or registered on the certificate of title to the Land on the day before the date this Agreement was executed by the Purchaser and not by the terms of this Agreement required to be discharged before or at settlement; or
- (d) estate or interest created by this Agreement in favour of the Purchaser.

**“Entity”** means an entity bound by this Agreement and includes a company, partnership or trust.

**“General Conditions”** mean the document titled “Contract for the Sale and Purchase of Land” comprised in the Agreement.



**"Haul Road"** means a corridor on the west boundary of the Land and portion of the south boundary of the Land at about the locations marked "Future Haul Road" on the draft Plan of Division now annexed to this Agreement.

**"Insolvency Event"** means any of these events in relation to the Purchaser or, if at the time the Purchaser comprises more than one person, either of those persons:

- (a) it is or states that it is insolvent;
- (b) it suffers a controller to be appointed over any of its assets, or (except to reconstruct or amalgamate while solvent) becomes an externally-administered body corporate or has a provisional liquidator appointed (all within the meaning of the *Corporations Act 2001*);
- (c) it is the subject of a statutory demand not withdrawn or set aside within 14 days after the demand was served (within the meaning of the *Corporations Act 2001*); or
- (d) it is the subject of an application (not stayed, withdrawn or dismissed within 7 days) to a Court for an order to appoint a receiver, appoint a provisional liquidator or to wind up.

**"JLKT Land"** means the property adjoining the Land at the date of this Agreement owned by JLKT Pty Ltd ACN 120 832 411 and comprised in Certificate of Title Register Book Volume 5725 Folio 172 and known as Lot 103, Shirley Street, Port Augusta West SA 5700.

**"Land"** has its meaning in General Conditions clause 1 and includes any part of the Land.

**"LMA"** means a land management agreement in the form in the Annexure now following or as the parties may agree in writing or as Special Condition 29.1 may require.

**"Master Plan"** means at any time a plan for the development of the whole of the Land prepared by or for the Purchaser in accordance with the specifications in Special Condition 21 and approved in writing by the Vendor acting reasonably.

**"Minister"** means the South Australian Minister for Urban Development and Planning.

**"Nominee"** means JLKT Port Augusta Pty Ltd ACN 132 872 943 and Everglade Services Pty Ltd ACN 138 692 298.

**"Plan of Division"** means a plan of division in respect of the Land under *Real Property Act 1886* Part 19AB as to:

- (a) divide the Land from the balance of the land now comprised in Certificate of Title Register Book Volume 6015 Folio 534; and
- (b) divide the Land into several Allotments;

which plan is in the form or the effect of the draft Plan of Division now annexed to this Agreement or as the parties may agree in writing.

**"Port Augusta (Westside) Structure Plan"** means the plan delineating in broad outline the location of proposed open space, drainage channels, collector roads, neighbourhood and local centres, school zone, residential zones (of different kinds / density) and light industrial zone upon the whole of the Land and adopted by the Vendor (as a council) on 22 June 2009 with amendments on 27 July 2009.

**"Schedule"** means the Law Society Contract Schedule forming part of this Agreement.

**"Settlement Day"** means the day settlement of this Agreement occurs.



"**Special Conditions**" mean clauses in this Annexure.

Subject to the above, words and expressions in the General Conditions have the same meaning in this Annexure and subject to that, words and expressions in this Annexure have the same meaning as in a provision of the *Real Property Act 1886* that deals with the same matter.

## 2. Interpretation

In this Agreement: neuter includes masculine and feminine; singular includes plural and vice versa; reference to a person includes a body politic or corporate, an individual and a partnership and vice versa; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this Agreement or any portion of it; reference to a party includes a successor to the rights or obligations of that party under this Agreement.

## PART 2 – EXCISION OF HAUL ROAD, ABORIGINAL HERITAGE LAND

### 3. Haul Road

3.1 If at any time before the Minister approves the Amendments to the Development Plan as contemplated in Special Condition 17.5, the Vendor and BHP-Billiton Ltd (or its subsidiary) agree (conditionally or unconditionally) for the Haul Road to proceed (whether before or after settlement of this Agreement) and agree the location of the Haul Road, the Haul Road shall be excised from the Land now agreed to be sold by the Vendor giving to the Purchaser all of the following:

- 3.1.1 written notice of the application of this provision; and
- 3.1.2 a scaled plan prepared by a licensed surveyor that delineates the boundaries of the Haul Road and its position in relation to the balance of the Land now agreed to be sold; and
- 3.1.3 a written statement by that same surveyor as to the total area of the Haul Road in hectares.

3.2 If the Haul Road is so excised, the Purchase Price now stated reduces by \$10,000.00 for each hectare comprised in the Haul Road and *pro rata* \$10,000.00 for any part of a hectare, by reference to the written statement given under Special Condition 3.1.3.

### 4. Aboriginal Heritage

4.1 The Aboriginal Heritage Land is to be excised from the Land now agreed to be sold.

4.2 The parties acknowledge and agree:

- 4.2.1 as at the date of this Agreement negotiations with an Aboriginal heritage group affiliated with the Land are still proceeding; and
- 4.2.2 if as a result of those negotiations it is agreed that a portion of the Land is to be set aside as a reserve at any time prior to completion of the process described in Special Condition 4.3, the Purchaser may notify the Vendor in writing that the land to be set aside as a reserve (or any portion of it) and identified on a plan prepared by the Purchaser ("**Reserve Land**") is to be excised from the Land now agreed to be sold on the terms contained in this Special Condition 4.





- 4.3 Before the Minister approves the Amendments to the Development Plan as contemplated in Special Condition 17.5, the Aboriginal Heritage Land and the Reserve Land shall be excised from the Land now agreed to be sold by the Vendor, and the Vendor shall give to the Purchaser the following:
- 4.3.1 a survey plan prepared by a licensed surveyor that delineates the boundaries of the Aboriginal Heritage Land and the Reserve Land to be excised and its location in relation to the balance of the Land now agreed to be sold; and
  - 4.3.2 a written statement by that same surveyor as to the total area of the Aboriginal Heritage Land and the Reserve Land to be excised in hectares.
- 4.4 The Purchase Price now stated reduces by \$10,000.00 for each hectare comprised in the Aboriginal Heritage Land and the Reserve Land and *pro rata* \$10,000.00 for any part of a hectare, by reference to the written statement given under Special Condition 4.3.2.

**5. Crown Land**

- 5.1 The Crown Land is included in the Land now agreed to be sold.
- 5.2 Before settlement, the Vendor shall give to the Purchaser the following:
- 5.2.1 a survey plan prepared by a licensed surveyor that delineates the boundaries of the Crown Land; and
  - 5.2.2 a written statement by that same surveyor as to the total area of the Crown Land in hectares.
- 5.3 The Purchase Price now stated increases by \$10,000.00 for each hectare comprised in the Crown Land and *pro rata* \$10,000.00 for any part of a hectare, by reference to the written statement given under Special Condition 5.2.2.

**PART 3 – PURCHASE PRICE & DEPOSIT**

**6. Purchase Price**

Subject to Special Conditions 3.2, 4.4 and 5.3, the Purchase Price is \$13,200,000.00.

**7. Form of the deposit**

The deposit specified in Item 12 of the Schedule shall be provided as immediately available funds.

**8. Investment of the deposit**

- 8.1 The Deposit Holder shall invest the deposit in the joint names of the Vendor and the Purchaser with a bank or other authorised deposit-taking institution (within the meaning of the *Banking Act 1959 (Cth)*) at a commercial rate of interest.
- 8.2 The Deposit Holder shall pay from the deposit and interest thereon, any costs or expenses incurred in investing the deposit.

- 8.3 Subject to the above, the Deposit Holder shall pay the interest accrued on the deposit:
- 8.3.1 if the Vendor determines this Agreement under General Conditions clause 20 or 21, to the Vendor;
  - 8.3.2 if the Purchaser determines this Agreement under General Conditions clause 20 or 21, to the Purchaser;
  - 8.3.3 if the deposit is repaid to the Purchaser, to the Purchaser;
  - 8.3.4 if the Vendor determines this Agreement under Special Conditions 19 or 24, to the Vendor;
  - 8.3.5 if either party determines this Agreement under Special Condition 18.9, to the Purchaser; or
  - 8.3.6 at settlement, to the Vendor.
- 8.4 Each party releases the Deposit Holder from all claims in respect of any loss (including loss of interest) arising from the investment of the deposit.
- 8.5 On or as soon as practicable after the date of this Agreement, each party shall provide its Australian tax file number or Australian business number to the Deposit Holder.

#### **PART 4 – WARRANTIES & EXCLUSIONS**

##### **9. Warranties as to title**

The Vendor warrants that immediately before settlement:

- 9.1 the Vendor shall have an indefeasible title as proprietor of the Land; and
- 9.2 the Land shall not be subject to any Encumbrance.

##### **10. Condition of the Land**

- 10.1 Without derogating from General Conditions clause 5, the Land is sold subject to:
  - 10.1.1 any restrictions under planning, development or heritage laws; and
  - 10.1.2 any estates or interests by force of statute affecting the Land.
- 10.2 The Purchaser admits the Land as offered for sale and inspected by the Purchaser is the same as that described in **Item 3** of the Schedule.
- 10.3 General Conditions clause 12.2.2 is excluded from the Agreement. The Purchaser releases the Vendor from any claim in respect of any misdescription of the Land or deficiencies in the area or measurements or title of the Land.





**11. Other warranties are excluded**

To avoid doubt, but subject to the express terms of this Agreement, the Vendor does not in connection with this transaction warrant or represent:

- 11.1 the accuracy or completeness of any information provided to the Purchaser or its advisers by the Vendor or a person for whom the Vendor is responsible in investigations or negotiations leading to this Agreement;
- 11.2 the dimensions, area, state, condition or suitability of the Land;
- 11.3 that any fences are on the true boundaries of the Land;
- 11.4 the presence, extent or location of any hazardous substance or contamination on or under the Land or in any improvements on the Land; or
- 11.5 the compliance by the Vendor or its predecessors in title with any law concerning ownership or use of the Land, improvements on the Land or services to the Land; or
- 11.6 anything else.

**12. Purchaser's due diligence**

Prior to its execution of this Agreement, the Purchaser had:

- 12.1 inspected the Land;
- 12.2 full knowledge of the dimensions, area, boundaries, nature, quality and condition of the Land;
- 12.3 examined all information reasonably obtainable relevant to the risks, contingencies and other circumstances having an effect on its purchase of the Land;
- 12.4 satisfied itself as to the nature and effect of laws restricting the use or enjoyment or development of the Land; and
- 12.5 satisfied itself as to the value of the Land from its own independent valuations and reports.

**13. Reliance**

The Purchaser relies solely on its own judgment, investigations and evaluation in relation to any information that was provided to the Purchaser or its advisers by the Vendor or a person for whom the Vendor is responsible before the execution of this Agreement.

**14. Waiver**

The Purchaser shall not make a requisition or objection, claim for compensation (from the Vendor or a person for whom the Vendor is responsible) or an abatement of the Purchase Price, determine the sale or delay settlement in connection with a matter not expressly the subject of a warranty by the Vendor stated in this Agreement.





15. **Disclaimer**

Any information, promise or representation (of fact or opinion or intention) in connection with the Land or its sale given or made (orally, in writing or by conduct) to the Purchaser or its advisers (each a "promisee") by or on behalf of the Vendor or a person for whom the Vendor is responsible (each a "promisor") in the period before execution of this Agreement and not expressly set out in this Agreement is, immediately before execution of this Agreement:

- 15.1 withdrawn unconditionally by the promisor;
- 15.2 not relied upon for any purpose (including estoppel) by the promisee; and
- 15.3 released from all claims that the promisee might otherwise have in connection with it.

16. **Indemnity**

Both before and after settlement the Purchaser shall indemnify and keep harmless the Vendor from and against all costs, expenses, claims, demands, losses and damages which the Vendor may incur or be liable for arising out of or resulting from a claim by the Purchaser or a claim by a person claiming through the Purchaser inconsistent with another provision of this Part.

**PART 5 – CONDITIONS PRECEDENT, INSOLVENCY**

17. **Conditions Precedent**

Settlement of this Agreement is conditional upon satisfaction or waiver of each following Conditions Precedent:

- 17.1 prior to the satisfaction of Special Condition 17.8, the Vendor obtaining agreement that the Haul Road, if it is to proceed, will be located in substantially the same position as indicated on the (draft) Plan of Division annexed to this Agreement;
- 17.2 by 30 June 2010, at the Vendor's expense, the Vendor reaching agreement with the Minister on a Statement of Intent (within the meaning of *Development Act 1993* s. 25(1)) for a proposal for the Amendments to the Development Plan;
- 17.3 by 30 June 2010, at the Purchaser's expense, the Purchaser preparing or having prepared a provisional Master Plan which the Vendor in writing and acting reasonably approves;
- 17.4 by 31 July 2010, at the Vendor's expense, the Vendor preparing for public exhibition a Development Plan Amendment (within the meaning of *Development Act 1993* s. 25(3)) leading to the Amendments to the Development Plan;
- 17.5 by 30 April 2011, at the Vendor's expense, the Minister approving the Amendments to the Development Plan (within the meaning of *Development Act 1993* s. 25(15));
- 17.6 by 30 April 2011, at the Purchaser's expense, the Vendor having prepared a proposed Plan of Division that (after operation of Special Conditions 3 and 4) accords with the draft Plan of Division annexed to this Agreement;
- 17.7 by 31 May 2011, at the Purchaser's expense, the Purchaser making application for development consent under *Development Act 1993* s. 33 to deposit the Plan of Division under *Real Property Act 1886* Part 19AB;





- 17.8 by 31 August 2011, that above development consent being granted subject only to conditions *Development Act 1993* s. 33(1)(c) requires or conditions acceptable to the parties acting reasonably;
- 17.9 by 30 September 2011, the Development Assessment Commission under the *Development Act 1993* s. 51(1) issuing a certificate in relation to that above development consent;
- 17.10 by 31 December 2011, the Vendor procuring the Crown to transfer the Crown Land to the Vendor;
- 17.11 by 31 December 2011, at the Purchaser's expense, the Vendor causing the final Plan of Division to be deposited by the Registrar General under *Real Property Act 1886* Part 19AB.

**18. About Conditions Precedent**

- 18.1 Each party must use their reasonable endeavours to satisfy each Condition Precedent including that:
  - 18.1.1 a party given responsibility for a Condition Precedent must immediately make all necessary applications and supply all necessary information in support of such applications;
  - 18.1.2 if at any time requested, a party given responsibility for a Condition Precedent must promptly inform the other party of material steps taken for its satisfaction, and, if so requested, copies of those applications and that information;
  - 18.1.3 neither party may hinder the satisfaction of a Condition Precedent;
  - 18.1.4 each party may make submissions to other interested persons, even if the other party makes the application or supplies the information; and
  - 18.1.5 a party must within 2 Business Days notify the other if they become aware that a Condition Precedent is satisfied or becomes incapable of being satisfied in the timeframe specified.
- 18.2 Subject to the party given responsibility for a Condition Precedent having primary carriage of that Condition Precedent, the parties shall diligently work towards satisfaction of all the Conditions Precedent.
- 18.3 Should s. 26 of the *Development Act 1993* apply to the process for the Amendments to the Development Plan contemplated in Special Condition 17 rather than s. 25 as now envisaged:
  - 18.3.1 the Conditions Precedent in Special Conditions 17.2 and 17.4 are waived; and
  - 18.3.2 the text of the Condition Precedent in Special Condition 17.5 is deleted and substituted by the following:

"by 31 March 2011, at the Vendor's expense, the Environment Resources and Development Committee of the Parliament or both Houses of Parliament authorising the Amendments to the Development Plan (within the meaning of *Development Act 1993* s. 27);"
- 18.4 Time is of the essence of any date or period stated in a Condition Precedent.
- 18.5 Each Condition Precedent is for the benefit of both parties.



18.6 Subject to Special Condition 18.8, if there are delays in the satisfaction of a Condition Precedent the parties shall continue to use their reasonable endeavours to concurrently work to satisfy both that Condition Precedent and all other Conditions Precedent not yet satisfied so as to minimise ongoing delays to the settlement of this Agreement.

18.7 At any time, the parties may, in writing, waive in whole or in part a Condition Precedent (except that one in Special Condition 17.11). A waiver is irrevocable.

18.8 The date by which a Condition Precedent must be satisfied:

18.8.1 may be extended as the parties may in writing agree;

18.8.2 is extended by a party giving written notice to the other at any time prior to the date for satisfaction of the Condition Precedent, such notice stating the additional period required to fulfil the Condition Precedent provided that:

(a) the party giving the notice is not in default under this Agreement; and

(b) the additional period does not extend the date for satisfaction beyond 31 December 2012, provided that if at any time prior to 31 December 2012 the Purchaser both:

(i) gives written notice of the operation of this Special Condition 18.8.2(b)(i) to the Vendor; and at the same time

(ii) pays a fee of \$250,000.00 (before GST) to the Vendor;

the additional period required to satisfy the Condition Precedent may be extended to a date up to and including 31 December 2013.

A fee so paid need only be paid once in relation to all Conditions Precedent collectively, and is not refundable, not included in the deposit nor counted towards the Purchase Price.

18.9 If a Condition Precedent is not satisfied or waived on or before the later of:

18.9.1 the date for its satisfaction stated in Special Condition 17; or

18.9.2 if the date for its satisfaction was extended pursuant to Special Condition 18.8, the date made operative by that provision;

a party not in default in using their reasonable endeavours to fulfil each Condition Precedent may terminate the sale of the Land by written notice to that effect to the other party and in that case:

18.9.3 the Deposit Holder shall release the deposit to the Purchaser within 14 days after the determination of the sale; and

18.9.4 neither party has further rights against the other party in connection with this Agreement, except in respect of prior default under this Agreement and provided that proceedings for the recovery of any damages must be commenced within 12 calendar months after the termination or otherwise are absolutely barred.



**19. Termination upon an Insolvency Event**

If before settlement an Insolvency Event occurs in relation to the Purchaser, the Vendor may terminate the sale by written notice to that effect given to the Purchaser and in that case:

- 19.1 the deposit shall be forfeited to the Vendor absolutely; and
- 19.2 neither party has further rights against the other party in connection with this Agreement, except in respect of prior default under this Agreement and provided that proceedings for the recovery of any damages must be commenced within 12 calendar months after the termination or otherwise are absolutely barred.

**PART 6 – BEFORE SETTLEMENT**

**20. Insurance by the Purchaser**

- 20.1 On and from the date of this Agreement up to and including the Settlement Day the Purchaser shall insure:
  - 20.1.1 against public liability in respect of the Land for at least \$20,000,000.00 per claim; and
  - 20.1.2 against any other risks a prudent owner of the Land would require.
- 20.2 Any insurance policy required under this Special Condition shall note the Vendor as an "insured" for its interest in the Land and contain terms to the effect that the insurer agrees:
  - 20.2.1 the expression "insured" applies to each person comprising the insured as if a separate policy of insurance had been issued to each of them (subject always to the overall sum insured not being increased thereby);
  - 20.2.2 not to require the Vendor to contribute to any premium or deductible or excess;
  - 20.2.3 that a notice of claim given to the insurer by any insured is accepted by the insurer as a notice of claim given by every insured;
  - 20.2.4 not to cancel, suspend or otherwise prejudice the insurance cover without first giving each insured at least 7 days prior written notice.
- 20.3 If at any time the Vendor requires, the Purchaser shall, within 7 days, produce to the Vendor a certificate of currency of any insurance policy this clause requires.

**21. Master Plan**

- 21.1 To satisfy Special Condition 17.3, the provisional Master Plan prepared by the Purchaser shall:
  - 21.1.1 be substantially consistent with the Port Augusta (Westside) Structure Plan except to the extent that variations are required by a relevant authority;
  - 21.1.2 delineate proposed Allotments and open space proposed to be created over time by one or more plans of division;
  - 21.1.3 provide for sites for a school (or schools), mothers and babies facility, childcare, pre-school, recreation centre and community facilities in a location approximately delineated in the Port Augusta (Westside) Structure Plan and comprising a combined area of at least 10 hectares;



- 21.1.4 provide a site for a neighbourhood centre in a location approximately delineated in the Port Augusta (Westside) Structure Plan and comprising an area of at least 4 hectares;
  - 21.1.5 provide a site or sites for a local centre/s in a location approximately delineated in the Port Augusta (Westside) Structure Plan and comprising an area of at least 4,000m<sup>2</sup>;
  - 21.1.6 be consistent with the Fundamental Design Principles (as defined in the LMA).
- 21.2 At any time prior to settlement under this Agreement, the Purchaser may upon notice to the Vendor (giving reasonable details) amend the Master Plan so far as necessary to take account of the results of any fauna and flora survey, geotechnical surveys, Aboriginal Heritage negotiations, or the findings of the Purchaser's infrastructure, engineering and/or traffic investigations provided that at all times the Master Plan remains consistent with the Fundamental Design Principles.

## 22. Land Division

The parties acknowledge and agree that:

- 22.1 a number of the Allotments delineated on the draft Plan of Division do not currently have direct road access and that in order to provide access to those Allotments and to obtain the approvals contemplated in Special Conditions 17.7, 17.8 and 17.9 rights of way, service easements and licences may be required;
- 22.2 the parties shall do all things necessary and sign all documents, instruments and consents required in order to grant any such rights of way, easements or licences required to obtain the approvals under Special Conditions 17.7, 17.8 and 17.9.

## 23. Caveat

- 23.1 The parties agree that at any time prior to settlement of this Agreement the Purchaser may lodge under the *Real Property Act 1886* a permissive caveat to protect the interest of the Purchaser in connection with this Agreement.
- 23.2 Except with the Purchaser's prior written consent, the Vendor must not take any step to bring about the removal of such caveat.
- 23.3 If at any time the Vendor is to make application for deposit of a Plan of Division pursuant to the provisions of this Agreement, and the Purchaser has lodged a caveat under this clause, the Purchaser must, upon request, promptly execute a certificate of consent in the requisite form.

## 24. Readiness to perform

- 24.1 If at any time the Vendor requires it to do so (not before 31 December 2010 or within 120 days after the last certificate given under this clause), the Purchaser shall (and where a Nominee has been nominated and notified to the Vendor under Special Condition 26, the Nominee shall also) procure there to be given to the Vendor a certificate that conforms to this clause, such certificate to be provided within 14 days of a request (as to which time is of the essence).
- 24.2 A certificate under this clause shall:
  - 24.2.1 be in writing, addressed to the Vendor, and dated and signed by an individual then a director of the Purchaser or Nominee (as applicable); and





24.2.2 state that after diligent enquiry there are reasonable grounds to believe, and that the then directors of the Purchaser or Nominee (as applicable) do so believe, that:

- (a) the Purchaser or Nominee (as applicable) will be able to pay its debts as and when they become due and payable; and
- (b) at settlement the Purchaser or Nominee (as applicable) will be able to pay to the Vendor the moneys this Agreement requires the Purchaser (or that Nominee) to so pay at settlement;
- (c) there are no circumstances existing or anticipated that would materially prevent the Purchaser or Nominee (as applicable) at settlement entering into the LMA or thereafter observing and performing the LMA according to its terms.

24.3 If before settlement a certificate is not given as this clause requires, the Vendor may terminate the sale by written notice to that effect given to the Purchaser and in that case:

24.3.1 the deposit shall be forfeited to the Vendor absolutely; and

24.3.2 neither party has further rights against the other party in connection with this Agreement, except in respect of prior default under this Agreement and provided that proceedings for the recovery of any damages must be commenced within 12 calendar months after the termination or otherwise are absolutely barred.

## 25. Assignment of the Agreement

25.1 Except under Special Condition 25.2 or with the Vendor's prior written consent, the Purchaser shall not assign the Agreement. Any other purported assignment is void at the Vendor's election.

25.2 At any time at least 7 days before settlement, by notice given to the Vendor but without consent, the Purchaser may assign the Agreement in whole or in part to either:

25.2.1 an Entity under the sole control of the Nominee;

25.2.2 an Entity under the sole control of the Purchaser;

25.2.3 Pat Cheetham or his relative (within the meaning of *Corporations Act 2001*) to hold beneficially; or

25.2.4 an Entity under the joint control of only the Purchaser and the Nominee.

25.3 For these purposes, the Purchaser "**assigns**" the Agreement if:

25.3.1 before the Settlement Day, the Purchaser disposes in favour of a third party any of their legal or beneficial interest in the Agreement or in the Land; or

25.3.2 there is after now and prior to the Settlement Day, a change of control as applied to the Purchaser that in the Vendor's reasonable opinion is likely to affect adversely and materially the Purchaser's ability to observe or perform its obligations under this Agreement or its obligations under the LMA.



- 25.4 In this Special Condition, "**Purchaser**" means, as applicable:
- 25.4.1 the Purchaser now named in the Schedule;
  - 25.4.2 either Nominee;
  - 25.4.3 any assignee mentioned in Special Condition 25.2 who has taken an assignment.
- 25.5 In support of the above, the Purchaser warrants:
- 25.5.1 the original Purchaser enters into the Agreement solely on its own behalf and as nominee for the Nominee;
  - 25.5.2 the names of all persons who now control the Purchaser have been disclosed in writing to the Vendor in the 7 days before the date of the Agreement;
  - 25.5.3 the names of all persons who now control the Nominee have been disclosed in writing to the Vendor in the 7 days before the date of the Agreement;
  - 25.5.4 if any matter warranted as above should change after the date of this Agreement, within 14 days after the change the Purchaser or the Nominee shall notify the Vendor of the particulars of the change.
- 25.6 Subject to Special Condition 25.2 the Vendor shall be entitled to withhold consent to an assignment of the Agreement in any of the following circumstances (and is not entitled to withhold consent in any other circumstances):
- 25.6.1 if the proposed assignee is unlikely to be able to meet the financial obligations of the Purchaser under this Agreement or under the LMA;
  - 25.6.2 if the proposed assignee's property development skills are inferior to those of the Purchaser now named;
  - 25.6.3 if as a result of a person ceasing to control the Purchaser either:
    - (a) the Purchaser is unlikely to be able to meet the financial obligations of the Purchaser under this Agreement or under the LMA; or
    - (b) the Purchaser is unlikely to have available at least as good property development skills as immediately before such person ceased control; or
  - 25.6.4 if and so long as the Purchaser fails to provide the Vendor with information the Vendor reasonably requires about the financial standing and property development skills of the proposed assignee or (as applicable) the financial standing and property development skills of a person acquiring control of the Purchaser.
- 25.7 The Vendor's consent under this clause:
- 25.7.1 must be requested in writing;
  - 25.7.2 may be refused or not be considered unless and until the Purchaser pays to the Vendor a reasonable sum (as estimated by the Vendor) for legal or other costs or expenses incurred or to be incurred in connection with such request for consent, whether or not consent is given or the request is withdrawn.





**26. Nominee**

- 26.1 The Purchaser may by notice given to the Vendor not later than 7 days before settlement, nominate the Nominee as purchaser of the whole or any part of the Land under this Agreement but still remains liable (as a principal) to the Vendor for the observance and performance of a purchaser's obligations under this Agreement.
- 26.2 If the Vendor issues to the Nominee a notice of default under General Condition clause 20 or issues to the Nominee a notice to complete under General Conditions clause 21:
- 26.2.1 no later than the next Business Day, the Vendor must give a copy of the notice to the Purchaser; and
- 26.2.2 if the Nominee fails to remedy the default the subject of a notice of default or fails to carry out observe and perform the obligations on its part to be observed and performed at settlement at the time appointed in a notice of completion – the Purchaser may in the next 5 Business Days remedy the default and / or observe and perform those obligations.

**27. Access to the Land pending settlement**

- 27.1 On and from the date of this Agreement and pending the earlier of termination of the sale or settlement, the Vendor shall allow the Purchaser, its contractors and agents access to the Land at any time during business hours on at least 48 hours notice to:
- 27.1.1 inspect the Land;
- 27.1.2 survey the Land;
- 27.1.3 carry out geotechnical investigations of the Land (conditional upon work being carried out in conformity with applicable laws and codes of practice);
- 27.1.4 obtain measurements and quotes for any work to be done on the Land after settlement; and / or
- 27.1.5 take reasonable samples of soil, groundwater (if any) and vegetation upon or under the Land.
- 27.2 When accessing the Land under this clause, the Purchaser shall, and shall ensure its contractors and agents shall:
- 27.2.1 hold insurance against public liability in respect of the Land for at least \$20,000,000 per event;
- 27.2.2 not interfere with any operations on the Land; and
- 27.2.3 if the Vendor so requires, be accompanied by a representative of the Vendor.
- If at any time the Vendor requires, within 7 days the Purchaser shall produce for inspection a certificate of currency of any insurance policy this Special Condition requires.
- 27.3 Both before and after settlement, the Purchaser shall indemnify and keep harmless the Vendor from and against all costs, expenses, claims, demands, losses and damages which the Vendor may incur or be liable for arising out of or resulting from a claim by the Purchaser or a claim by a person claiming through the Purchaser in connection with the Purchaser, its contractor or agent accessing the Land under this Special Condition except to the extent that the costs, expenses,





claims, demands, losses or damages are caused or contributed to by the negligence of the Vendor.

27.4 The right of access now granted:

27.4.1 is in contract only and not in the nature of a lease, tenancy or other estate or interest in land;

27.4.2 is not exclusive against the Vendor;

27.4.3 may be suspended or revoked by the Vendor so notifying the Purchaser if the Purchaser, its contractor or agent materially breaches a provision of this Special Condition.

## 28. Preliminary works

If the Purchaser performs or has performed any works or installs any property upon any of the Land but settlement does not occur for reasons other than the Vendor's default:

28.1 the Purchaser shall at its own cost, if reasonably requested by the Vendor, within 40 Business Days remove from the Land and make good any damage to the Land so caused all property (including signage) of the Purchaser or of its supplier or contractor as has not become a fixture of the Land, and in default the Vendor may within a reasonable time thereafter elect:

28.1.1 that the Purchaser has conveyed all or some of that property to the Vendor free of encumbrances and for no compensation (despite any rule of common law or equity to the contrary); and / or

28.1.2 at the Purchaser's cost, to remove and store at some convenient place any balance of that property and make good any damage to the Land so caused;

28.2 within 15 Business Days of a request by the Vendor, the Purchaser shall, at its own cost procure the discharge of any lien or other security interest under the *Worker's Liens Act 1893* or the *Personal Property Securities Act 2009* registered or that becomes registered against the Land in connection with those works or against property to which Special Condition 28.1.1 applies, and in default the Vendor may procure such discharge and recover those costs from the Purchaser as a debt; and

28.3 if the deposit paid is otherwise repayable to the Purchaser, the Vendor may set off against that deposit a cost recoverable from the Purchaser under this clause upon provision of details and invoices for the costs incurred by the Vendor under this clause.

## 29. LMA

29.1 If prior to settlement the Purchaser satisfies the Vendor acting reasonably that the road traffic likely to be generated by the future development of the Land is able to be accommodated on other road routes or managed in other ways that are more appropriate than as now contemplated in paragraphs (b)(ii)(B) and (C) of the definition of Fundamental Design Principles in clause 1 of the draft form of LMA now annexed to this Agreement, those paragraphs (b)(ii)(B) and (C) shall be amended accordingly and before settlement.

29.2 At settlement the parties shall enter into a land management agreement in the form of the LMA.

29.3 Not less than 7 days before the Settlement Day, or within such shorter period as the Purchaser may allow, the Vendor shall cause to be prepared, execute (without dating) and deliver to the Purchaser or the Purchaser's agent, for execution by the Purchaser:



- 29.3.1 3 originals of the LMA; and
- 29.3.2 an Application to Note Development Act 1993 Land Management Agreement under the Real Property Act 1886 (the "**Application**").
- 29.4 At least 2 days before the Settlement Day, the Purchaser shall execute (without dating) and return to the Vendor the LMA (all originals) and the Application.
- 29.5 Pending settlement, the LMA and the Application are both deemed to be subject to a condition that it is not effective unless and until settlement occurs.
- 29.6 Each party authorises the Vendor or the Vendor's solicitor or registered conveyancer to complete and / or amend the LMA and / or the Application as executed by:
  - 29.6.1 annexing thereto the Master Plan as it then stands;
  - 29.6.2 inserting the Settlement Day as the date of commencement of the LMA;
  - 29.6.3 inserting the relevant title description for the Land described in the LMA and the Application as "the Land";
  - 29.6.4 inserting any other details necessary to complete the LMA or the Application first approved by the Purchaser;
  - 29.6.5 making any amendments as may be necessary to register the LMA against the title to the Land under the *Real Property Act 1886*.

In Special Condition 29.6.3, "**Land**" means so much of the Land as is not either:

- (a) a public road or other public space vested in the Vendor (as a council) by force of the deposit of the Plan of Division;
  - (b) an Allotment created by deposit of the Plan of Division and now marked "**LMA excluded**" on the draft Plan of Division now annexed to this Agreement.
- 29.7 The Vendor is liable for the costs and expenses of preparing and registering the LMA and the Application.
  - 29.8 Each party shall comply so far as it is reasonable with any requisitions that may be made by the Lands Titles Registration Office in relation to the LMA or the Application.
  - 29.9 If only a Nominee is to take a transfer of the Land to be the subject of the LMA, in the above provisions of this Special Condition references to "the Purchaser" mean that Nominee.

### 30. **Memorandum of transfer**

Without derogating from General Conditions clause 8:

- 30.1 If the Purchaser so requests in writing, the Vendor shall release the memorandum of transfer of the Land to the Purchaser's solicitor or registered conveyancer before settlement for stamping only.
- 30.2 Before settlement, that solicitor or registered conveyancer holds the memorandum of transfer on trust for the Vendor.



- 30.3 A memorandum of transfer of the Land to the Purchaser is sufficient for the purposes of this Agreement if it refers to the Land as an Allotment in the deposited Plan of Division.

## **PART 7 – SETTLEMENT**

### **31. Settlement**

Settlement shall take place at the Lands Titles Registration Office at Adelaide, 10 Business Days after the Plan of Division is deposited.

The Vendor is not obliged to settle on any of the Land unless settlement then occurs for the whole of the Land.

### **32. Certificate of title**

If at settlement the certificate of title to the Land has not then issued to the Vendor, at settlement the Purchaser shall accept from the Vendor or the Vendor's solicitor or registered conveyancer in lieu of the certificate:

- 32.1 a written authority to the Registrar-General to deliver the certificate to the Purchaser or its agent; and
- 32.2 a written undertaking that if the certificate is delivered to the Vendor or the Vendor's solicitor or registered conveyancer, the certificate shall be promptly delivered to the Purchaser or its agent.

### **33. Payment of the Purchase Price**

Without derogating from General Conditions clause 7 but deleting from this Agreement General Conditions clause 29, the Vendor may require the Purchase Price (less the Deposit paid) to be paid at settlement:

- 33.1 by a Bank Cheque/s in favour of the Vendor; or
- 33.2 by electronic funds transfer/s in immediately available funds to an account (with a bank in Australia or with Local Government Finance Authority) as the Vendor may in writing direct the Purchaser not less than 1 Business Day before settlement.

### **34. Order of registrations**

Unless otherwise agreed in writing, the instruments to be registered on the certificate of title to the Land to give effect to the dealings and transactions provided for in this Agreement shall immediately after settlement be lodged for registration at the Lands Titles Registration Office in this order of priority:

- 34.1 discharge of existing Encumbrances (if any);
- 34.2 withdrawal of any caveat previously lodged by the Purchaser or a person claiming through the Purchaser;
- 34.3 memorandum of transfer of the Land to the Purchaser;
- 34.4 the Application, unless the LMA or Application is not completed by settlement by reason of the Vendor's default.





**PART 8 – AFTER SETTLEMENT**

**35. Notice of sale**

As soon as practicable after settlement, the Purchaser shall notify government and suppliers of utilities of the sale of the Land.

**PART 9 – LOCAL GOVERNMENT**

**36. Local Government Act**

The Vendor gives no assurance that minutes of the Vendor concerning this Agreement would be kept from public inspection under *Local Government Act 1999* s. 91.

**37. Freedom of Information Act**

The Vendor gives no assurance this Agreement, or any document exchanged in the performance of this Agreement would qualify as an exempt document under *Freedom of Information Act 1991*.

**38. Vendor as a regulator**

The Vendor enters into this Agreement as owner of the Land and not in any other capacity. This Agreement does not fetter or evidence the exercise of any regulatory function or power the Vendor has now or in the future. When the Vendor exercises a regulatory function or power, the Vendor will be taken to be a third party to this Agreement.

**39. Exercise of the Vendor's powers**

The chief executive officer or city manager for the time being of the Vendor (or a person acting in that position) or his or her delegate may exercise a right or power of the Vendor under this Agreement for and on behalf of the Vendor.

**PART 10 – GENERAL PROVISIONS**

**40. No duty of care for Master Plan**

The Vendor giving any approval or advice in connection with the preparation or implementation of the Master Plan:

- 40.1 does not give rise to a duty of care or other liability to the Purchaser or any third party;
- 40.2 does not make the Vendor liable to contribute to any costs of implementing or not implementing the Master Plan whether before or after settlement.

**41. About this Agreement**

- 41.1 This Agreement records the entire contract between the parties as to its subject and:
  - 41.1.1 this Agreement supersedes any prior contract or obligation between the parties about its subject;
  - 41.1.2 there is now no contract between the parties collateral to this Agreement.
- 41.2 This Agreement may be amended only by written agreement of the Vendor and the Purchaser.
- 41.3 A party waives a right under this Agreement only in writing signed by or for the party.



41.4 This Agreement may be executed by the parties in separate counterparts, but is not effective until each party has executed at least one counterpart. Each counterpart of this Agreement constitutes an original of this Agreement but the counterparts together constitute one and the same instrument.

41.5 The laws of South Australia govern this Agreement. Each party irrevocably submits to the exclusive jurisdiction of the courts of South Australia in connection with this Agreement.

**42. Costs**

A party shall bear its own costs in relation to the negotiation, preparation and execution of this Agreement and any further document required.

**43. Further acts**

The parties shall do all things reasonably required to facilitate the performance of the transactions contemplated by this Agreement.

**44. Default costs**

If:

44.1 a party defaults under this Agreement; and

44.2 the other party gives to the first party notice of default under the General Conditions or notice of completion under the General Conditions;

the first party shall pay the second party's costs in respect of that default and that notice. The default is not remedied until the first party pays those costs.

**45. No merger**

Without derogating from General Conditions clause 30, the rights and obligations of the parties shall not merge on completion of any transaction under this Agreement.

**46. Publicity**

The parties jointly are to control all publicity from either party about the making of this Agreement.

**47. Legal relationship**

The legal relationship between the parties constituted by this Agreement is that of vendor and purchaser of the Land and not that of partners, joint venturers, principal and agent, trustee and beneficiary for any purpose. Neither party may hold out any of its agents, employees or contractors to be the agent, employee or contractor of the other. Neither party may pledge the credit of the other, nor purport to enter into obligations on its behalf.

**48. Notices**

48.1 General Conditions clause 26 is excluded from this Agreement.

48.2 To be effective, a notice from a party in connection with this Agreement must be in writing, signed by the party or their agent and given to the recipient either by hand delivery, registered mail to the recipient's address stated in this Agreement or as last notified or fax to the recipient's fax number stated in this Agreement or as last notified.



Handwritten text, possibly a date or reference number, located in the upper middle section of the page.

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- 48.3 Proof of posting by registered mail in accordance with this clause is proof of receipt of such notice on the second clear Business Day after posting.
- 48.4 Proof of transmission by fax of a notice in accordance with this clause is proof of receipt on the date of transmission, but if a fax transmission is not made on a Business Day or not made before 4.00 pm, then it is proof of receipt at 10.00 am on the next Business Day after transmission.

A handwritten signature in blue ink, consisting of a stylized 'P' followed by a cursive flourish and a small circle at the end.



## ANNEXURE - LMA

LAND MANAGEMENT AGREEMENT dated

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BETWEEN:

PORT AUGUSTA CITY COUNCIL ABN 73 625 993 182 (*Council*)

AND:

[insert name of purchaser] [insert ABN of purchaser] (*Developer*)

### INTRODUCTION

- A. The Developer is or is entitled to be the registered proprietor of an estate in fee simple in the whole of the land now comprised in Certificate of Title Register Book Volume [insert] Folio [insert] (the **Original Parcel**, which expression includes any part of such land).
- B. The Original Parcel is within the area of the Council.
- C. In this document, the parties agree certain matters relating to the management, preservation or conservation of the Original Parcel (within the meaning of s. 57(2) of the Act) and in brief:
- (i) for the Developer to cause the division, subdivision or re-subdivision of the Original Parcel in conformity with the Master Plan;
  - (ii) for the Developer to be Actively Marketing for sale New Residential Allotments;
  - (iii) for the Developer to procure transferees of New Residential Allotments to grant Residential Encumbrances in favour of the Council;
  - (iv) for the Developer to procure transferees of Superlots to grant Superlot Encumbrances in favour of the Council;
  - (v) for the Developer to grant an option to purchase Balance Land to the Council in the event the Developer is unwilling or unable to comply with its obligations under this deed.

### TERMS

#### PART 1 – PRELIMINARY

1. **Dictionary:** In this document:

**Act** means the *Development Act 1993 (SA)*.

**Allotment** means the whole of land comprised in a certificate of title issued under the *Real Property Act 1886*.

**Balance Land** means at any time the Original Parcel less every:

- (a) public road or other public space vested in the Council by force of a Plan of Division;
- (b) Allotment then held in fee simple by any of:
  - (i) the Crown;
  - (ii) an instrumentality of the Crown;
  - (iii) South Australian Water Corporation;



- (iv) a person holding a licence under the *Electricity Act 1996* authorising the operation of a transmission or distribution network or a person exempted from the requirement to hold such a licence;
  - (v) a person holding a carrier licence under the *Telecommunications Act 1997*;
  - (vi) an emergency services organisation under the *Fire and Emergency Services Act 2005*;
  - (vii) a non-Government school registered under the *Education Act 1972* or a Government school within the meaning of that Act;
  - (viii) a child-care centre licensed under the *Children's Services Act 1985*; or
  - (ix) the Council;
- (c) Allotment then exempt from rates or taxes by virtue of the *Recreation Grounds Rates and Taxes Exemption Act 1981*;
  - (d) Allotment in respect of which the Council has given a release in writing from the operation of this document – provided that where the release is expressed to be conditional it is not effective until those conditions are satisfied;
  - (e) New Residential Allotment that by reference to its dimensions on its certificate of title has an area of 2,000 metres<sup>2</sup> or less and over which a Residential Encumbrance is or was at any time previously registered;
  - (f) Superlot and over which a Superlot Encumbrance is or was at any time previously registered.

**Business Day** means a day that is not a Saturday, Sunday or public holiday in South Australia.

**Developer** means at any time a person who is registered as the proprietor of an estate in fee simple of an Allotment comprised in the Balance Land and if at any time more than one person is comprised in that description means each of them jointly and severally.

**Fundamental Design Principles** mean:

- (a) Dwellings - any dwellings to be constructed within 100 metres of the west boundary of the Original Parcel to have noise remediation measures to ensure compliance with AS2021-2000 Acoustics - Aircraft noise intrusion - Building siting and construction (or the equivalent Australian Standard in force at the time of construction) – and state a legal means by which this requirement would be enforced against third party developers of such dwellings;
- (b) Roads
  - (i) provide for a landscaped buffer of at least 20 metres width to the west boundary of the Original Parcel and, if the Haul Road is constructed or likely to be constructed, the same kind of buffer on that portion of the south boundary of the Original Parcel adjacent to the Haul Road – the buffer should include noise attenuation barriers of compacted soil at least 1.5 metres high;
  - (ii) proposed public roadways upon the Original Parcel must assume full development of the Original Parcel over time and take into account the location and capacity of public roads adjacent to the Original Parcel as now existing, always including:





- (A) construction of a major collector road to Carroona Road;
- (B) construction of a major collector road (linking to the major collector road in (A) above) along the alignment of Shirley Street and Baluch Road to Carroona Road;
- (C) construction of an intersection of Baluch Road and Carroona Road;
- (D) construction of Kittel Street;

and the Council and the Developer now agree that:

- construction of the major collector road mentioned in paragraph (b)(ii)(B) above must substantially commence no later than 12 months after 500 New Residential Allotments have been sold, and thereafter must be diligently completed;
- upon the traffic use of Carroona Road reaching capacity, the Developer shall contribute once only funding towards the staged upgrade of Carroona Road proportional to the Original Parcel's generation of traffic relative to total road usage over and above the road's capacity; and
- the question of when the capacity of Carroona Road is reached and the proportion of traffic generated by the Original Parcel will be referred to and determined by an independent traffic engineer agreed between the parties, or in absence of agreement appointed by the Institute of Engineers Australia, South Australian Division. The engineer shall consider written materials and submissions presented by the parties, but the decision of the engineer shall be that of an expert and binding on both parties. Costs and necessary disbursements of the independent expert will be shared equally between the parties.

(iii) minimum widths as below:

Minimum road reserve width of a public road likely to be used regularly and extensively by commercial vehicles	20m
Minimum road reserve width of other public roads, excluding rear laneways and local places serving no more than 6 dwellings	15m
Minimum road pavement width	7.4m
Minimum rear access lane road reserve width	6.5m
Minimum rear access road pavement width	6m

(c) Stormwater

- (i) proposed management of stormwater falling within or traversing the Original Parcel must assume full development of the Original Parcel over time and take into account stormwater infrastructure on properties adjacent to the Original Parcel as then existing;



- (ii) so far as practicable, stormwater falling within or traversing the Original Parcel must be harvested (using retention basins and / or, depending on geological conditions, aquifer storage) for later use by:
  - (A) the Council (as a council) on open space during dry periods;
  - (B) residents for garden irrigation and toilet flushing - via an installed 3<sup>rd</sup> pipe system installed throughout the Original Parcel;
- (iii) stormwater run off (if any) from the Original Parcel must be of quality and flow not exceeding then current rural standard and flow rates;
- (d) Potable water - proposed supply of potable water to and within the Original Parcel must assume full development of the Original Parcel over time and take into account potable water infrastructure on properties adjacent to the Original Parcel as then existing;
- (e) Sewage - proposed management of sewage created within or traversing the Original Parcel must assume full development of the Original Parcel over time and take into account sewage infrastructure on properties adjacent to the Original Parcel as then existing;
- (f) Electricity
  - (i) proposed supply of electricity to and within the Original Parcel must assume full development of the Original Parcel over time and take into account electricity infrastructure on properties adjacent to the Original Parcel as then existing;
  - (ii) poles for public street lighting must be of aluminium construction;
- (g) Telecommunications - assume fibre-optic cable is laid as able to connect all Allotments for telephone and other telecommunications services;
- (h) Services generally - so far as practicable, infrastructure for stormwater, potable water, sewage, electricity and telecommunications must be underground and located in common services trenches under public road verges;
- (i) Landscaping
  - (i) provide landscaping to all public reserves comprising a combination of trees, shrubs, grasses and ground covers of predominantly indigenous species suited to arid lands, irrigated turf, active recreation spaces and, where practicable, landscaping utilising captured stormwater in selected locations and buffer planting to Eyre Highway, Caroon Road and the Haul Road;
  - (ii) provide a sealed pedestrian / cycle network with a minimum width of 1.2 metres which traverses the open space system and links key education, community and commercial facilities;
  - (iii) provide for surface stormwater drainage and detention and / or retention basins within the public reserves;
  - (iv) provide for street planting, comprising a minimum of 1 tree per Allotment frontage;
  - (v) provide for sealed footpaths of a minimum width of 1.2 metres to both sides of all collector roads and to at least 1 side of all local roads.





**GST, taxable supply and tax invoice** have their meaning in *A New Tax System (Goods and Services Tax) Act 1999*.

**Haul Road** means the Haul Road on the west boundary of the Original Parcel and portion of the south boundary of the Original Parcel indicated on the Master Plan now annexed and if no such road is shown it can be taken that it has been agreed that the Haul Road will not proceed in the proposed location.

**Master Plan** means a plan for the successive division of the Original Parcel as now annexed in Annexure A to this document or as amended from time to time in accordance with this document.

**New Residential Allotment** means an Allotment:

- (a) after the date of this document created by a Plan of Division deposited by the Registrar-General under the *Real Property Act 1886 Part 19AB*;
- (b) of which before its transfer any person comprised in the expression the Developer is the registered proprietor of an estate in fee simple;
- (c) which under the applicable development plan under the Act is able to be put to residential use.

**Plan of Division** means a plan of division under *Real Property Act 1886 Part 19AB*.

**Residential Encumbrance** means an encumbrance for the benefit of the Council in substantially the same terms as the form of encumbrance in Annexure C to this document.

**Superlot** means an Allotment:

- (a) that by reference to its dimensions on its certificate of title has an area of between 2,001 to 80,000 metres<sup>2</sup>;
- (b) after the date of this document created by a Plan of Division deposited by the Registrar-General under the *Real Property Act 1886 Part 19AB*;
- (c) which under the applicable development plan under the Act is able to be put to residential use.

**Superlot Encumbrance** means an encumbrance for the benefit of the Council in substantially the same terms as the form of encumbrance in Annexure B to this document.

2. **Interpretation:** The Introduction is correct and forms part of this document. In this document: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of a party because that party put forward this document or any portion of it; another grammatical form of a defined word has a corresponding meaning; reference to a party includes a successor to the rights or obligations of that party under this document; reference to legislation includes the legislation as amended and any substituted legislation.





3. **Severance:** If a provision of this document would, but for this clause, be unenforceable:
- 3.1 the provision must be read down to the extent necessary to avoid that result; and
  - 3.2 if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this document.

## PART 2 – FUTURE DIVISIONS OF THE BALANCE LAND

4. **Divisions of the Balance Land:** The Developer agrees at its cost and risk to over time cause the division, subdivision or re-subdivision of the Balance Land by successive Plans of Division so as to create separate Allotments of the number, at the locations and for the future uses then stated in the Master Plan.
5. **Applications under the Act:** When the Developer makes application under the Act for consent to any proposed division of any of the Balance Land:
- 5.1 such application must not be inconsistent with the Master Plan;
  - 5.2 the Developer must not object to any conditions attaching to such consent that compliance with the Master Plan requires;
  - 5.3 the Developer agrees that a binding agreement under s. 51(1) of the Act may require such above conditions (in addition to prescribed conditions) to be supported by adequate security as a pre-requisite to the issue of a certificate from the Development Assessment Commission.
6. **Development after settlement:** The Developer acknowledges that any proposed development (within the meaning of the *Development Act 1993*) undertaken in relation to any of the Original Parcel must have the consents s. 33 of that Act requires, and those consents:
- 6.1 must be separately applied for by, and the usual fees paid by, the applicant;
  - 6.2 if granted, are likely to be subject to conditions.

The Council (as a relevant authority within the meaning of that Act) gives no assurance as to:

- (a) whether any such consents would be granted, or would be granted within a time the applicant desires;
  - (b) any conditions upon which any such consent might be granted;
  - (c) the terms and conditions of any binding agreement as might be entered into between the applicant and the Council (as a council) for the purpose of s. 51 of that Act.
7. **Variation of the Master Plan:**
- 7.1 At any time, the Council and the Developer may in writing agree to vary the Master Plan.
  - 7.2 The Council is not obliged to consider a proposed variation of the Master Plan unless and until the Developer:
    - 7.2.1 has provided to the Council a document setting out in reasonable detail the effect of the proposal on such of the Master Plan as remains to be carried out; and





7.2.2 if demanded, pays to the Council a reasonable sum (as estimated by the Council) for legal or other costs or expenses incurred or to be incurred in connection with investigating the proposed variation, whether or not the proposal is later withdrawn.

7.3 The Council:

7.3.1 must not unreasonably withhold its agreement to a proposed amendment to the Master Plan; and

7.3.2 must agree to any reasonable amendment where the amendment will not alter the Fundamental Design Principles.

Despite the above, the Council may withhold agreement to a proposal if and to the extent the proposal provides for additional commercial, industrial or aged care facilities and the Council is of the opinion such additional facilities are likely to either:

7.3.3 adversely affect the economic viability of such kinds of facilities at the time provided for in the Master Plan; or

7.3.4 reduce by more than 10% the total number of New Residential Allotments that could be created from the Original Parcel as delineated on the original Master Plan as the date of this document.

7.4 At any time, the Developer may vary the Master Plan by notice to but without consent of the Council:

7.4.1 to comply with the terms of any endorsement, approval, consent, certificate, permit, licence or other authority required by law; or

7.4.2 to comply with applicable laws or mandatory codes of practice.

7.5 If and when the Master Plan is varied, within 5 Business Days the Developer must provide to the Council a consolidated up-to-date copy of the Master Plan, showing all amendments.

7.6 The Council must keep at its principal office a consolidated up-to-date copy of the Master Plan as then in force and allow any member of the public to inspect the Master Plan and, on payment of a fee (if any) fixed to the Council, obtain a copy or extract of the Master Plan.

8. **No duty of care:** If the Council or a person for whom the Council is responsible gives any recommendation, approval or consent or makes any inspection for the purposes of this document:

8.1 that is not an assumption of a duty of care nor implies the exercise by or on behalf of the Council or a person for whom it is responsible of any care or skill;

8.2 that does not relieve the Developer from their obligations under this document.



**PART 3 – MARKETING**

9. **Marketing:** Except during an Exception Event, at all times commencing 6 calendar months after the date this document bears the Developer must be Actively Marketing a minimum of total 30 New Residential Allotments at the time comprised in the Balance Land for sale on the open market for fair market prices. The Developer bears the burden of proof as to its compliance with this clause.

For these purposes:

(a) **Actively Marketing** means:

- (i) erecting and maintaining prominent signage on or about the Original Parcel advertising the Allotments for sale; and
- (ii) advertising the Allotments for sale on a recognised Internet real estate website (whether it be the website of a particular land agent or of multiple agents) that regularly advertises land or residences for sale in the Port Augusta area.

(b) **Exception Event** means the discovery during infrastructure works on the Original Parcel of an Aboriginal site object or remains (within the meaning of the *Aboriginal Heritage Act 1988*) that requires infrastructure works to stop or be substantially delayed. An Exception Event applies for a period of 6 months from the date of discovery of the Aboriginal site object or remains;

(c) treat 2 or more New Residential Allotments comprised in the same community plan or strata scheme (within the meaning of the *Community Titles Act 1996*) or in comprised in the same strata plan (within the meaning of the *Strata Titles Act 1988*) as only 1 New Residential Allotment;

(d) an Allotment is not "for sale" if then subject to a sale contract not yet completed.

10. **Report on marketing:** At any time, but not more frequently than every 6 months, the Council may require the Developer to within 28 days report to the Council on a confidential basis its activities in marketing of New Residential Allotments since the last report under this provision, including as to:

- 10.1 asking prices;
- 10.2 the name/s of the land agent/s having carriage of marketing;
- 10.3 the number of sale contracts written but not yet completed;
- 10.4 the number of ~~the~~ number of sale contracts completed;
- 10.5 if a sale contract was terminated before its completion.

11. **Subsequent transfer conditions:** If at any time the Developer proposes to transfer any of the Balance Land, the transfer or a contract leading to that transfer must contain a written acknowledgement by the transferee:

- 11.1 Port Augusta Airport is located in close proximity to that land and, so far as practicable, open on a 24/7 basis to commercial, emergency or leisure aircraft of all kinds and sizes;
- 11.2 past utilisation of the Airport is not a reliable indicator of future utilisation, however;



- 11.3 if an occupier is likely to be adversely affected by aircraft movements (especially at night), the transferee should consider noise attenuation measures in their building design.

#### PART 4 – RESIDENTIAL ENCUMBRANCES

12. **Grant of Residential Encumbrances:** When the Developer transfers an estate in fee simple in a New Residential Allotment, the Developer must procure the transferee to grant in favour of the Council a Residential Encumbrance, which Residential Encumbrance is lodged for registration under the *Real Property Act 1886* after the memorandum of transfer of the fee simple of the New Residential Allotment to that transferee and before any mortgage, encumbrance, lease or other estate or interest in that New Residential Allotment granted by the Developer or by that transferee.
13. **Exception where a dwelling exists:** Clause 12 does not apply where on the date of the transfer of the New Residential Allotment:
- 13.1 there has been lawfully constructed and completed a permanent dwelling upon the New Residential Allotment; or
- 13.2 the construction of a permanent dwelling upon the New Residential Allotment has lawfully commenced by substantial work upon the New Residential Allotment.

For these purposes, **dwelling** has its meaning in Schedule 1 of *Development Regulations 2008* as at 30 June 2010 and **substantial work** has the same meaning as in *Development Regulations 2008* regulation 48(1)(b)(i) as at 30 June 2010.

14. **Release of this document:** This document is terminated as to a New Residential Allotment and the Council promptly must comply with clause 29 in relation to that New Residential Allotment where either:
- 14.1 the Council holds the benefit of a registered Residential Encumbrance over that New Residential Allotment as clause 12 requires; or
- 14.2 on inspection, the Council is satisfied clause 13 would then apply to that New Residential Allotment.

#### PART 5 – SUPERLOT ENCUMBRANCES

15. **Grant of Superlot Encumbrances:** When the Developer transfers an estate in fee simple in a Superlot, the Developer must procure the transferee to grant in favour of the Council a Superlot Encumbrance, which Superlot Encumbrance:
- 15.1 before its execution by the transferee has inserted in its definition of Master Plan the registration number allocated to this present document by the Lands Titles Registration Office; and
- 15.2 is lodged for registration under the *Real Property Act 1886* after the memorandum of transfer of the fee simple of the Superlot to that transferee and before any mortgage, encumbrance, lease or other estate or interest in that Superlot granted by the Developer or by that transferee.
16. **Release of this document:** This document is terminated as to a Superlot and the Council promptly must comply with clause 29 in relation to that Superlot where the Council holds the benefit of a registered Superlot Encumbrance over that Superlot as clause 15 requires.



**PART 6 – OPTION TO BUY-BACK BALANCE LAND**

17. **Grant of the Option:** The Developer grants to the Council who accepts a right but not an obligation to purchase an estate in fee simple in the whole or any of the Balance Land (the **Option**) on and subject to the terms and conditions of this Part.
18. **Option Period:** The Option endures for the period (the **Option Period**) starting on the date this document bears and expires at 5.00 pm (Adelaide time) on 30 June 2030.
19. **Pre-conditions to exercise:** An exercise of the Option is only effective if on the date the Option is exercised the Developer either:
  - 19.1 is in breach of clause 4, 9, 10 or 15; or
  - 19.2 has on at least total 5 occasions breached clause 12.
20. **Exercise:** An exercise of the Option is only effective if the Council gives a written notice to the Developer concerned that:
  - 20.1 refers to this document by name;
  - 20.2 is signed by or for the Council;
  - 20.3 is for one or more Allotments within the Balance Land held by that Developer;
  - 20.4 identifies by certificate of title the Allotment/s for which the Option is then exercised (each a **Contracted Allotment**); and
  - 20.5 is received in fact by that Developer before expiry of the Option Period (as to which time is of the essence).
21. **Exercise over portion of an Allotment:** If on the date the Option is exercised an Allotment within the Balance Land is of 5 hectares or more, then despite clause 20.3 the Council may exercise the Option over part only of such Allotment (such part being delineated in a scaled drawing of the whole of the Allotment attached to the notice exercising the Option) and:
  - 21.1 treat that part of an Allotment as a Contracted Allotment;
  - 21.2 the Sale Agreement for that part (see clause 25) includes terms that:
    - 21.2.1 the transfer or conveyance does not have effect until a plan of division to divide that part from the balance of the Allotment is deposited by the Registrar General under *Real Property Act 1886* Part 19AB and at the Council's cost;
    - 21.2.2 the Council (with reasonable cooperation from the vendor, if requested) bears the responsibility and costs of obtaining any consents required under *Development Act 1993* for the deposit of that plan of division;
    - 21.2.3 if that plan of division is not deposited within 120 Business Days after the date of exercise of the Option, either party may determine the sale by notice to the other party to that effect;
    - 21.2.4 settlement must occur at the Lands Titles Registration Office at 2.00 pm (Adelaide time) on the 10<sup>th</sup> Business Day after the later of:





- (a) the date the Purchase Price was determined in accordance with clause 26.1; or
- (b) the date that plan of division was deposited;

21.2.5 if the certificate of title to the Contracted Allotment has not then issued, settlement will occur if at settlement the vendor authorises the Registrar-General to deliver that certificate to the Council or its agent.

22. **Repeat exercise:** Any time or times during the Option Period, the Council may exercise the Option until exercised over the whole of the Allotments within the Balance Land.
23. **Nature of the Option:** The parties agree the Option gives the Council an interest in each Allotment within the Balance Land, contingent upon the exercise of the Option in respect of that Allotment.
24. **Caveat:**
- 24.1 In addition to noting this document as a land management agreement under the Act, at any time the Council may lodge under the *Real Property Act 1886* a permissive caveat to protect the interest of the Council in connection with the Option.
  - 24.2 Except with the Council's prior written consent, the Developer must not take any step to bring about the removal of such caveat.
  - 24.3 If at any time the Developer is to make application for deposit of a Plan of Division in respect of any of the Original Parcel or any of the Balance Land, and the Council has lodged a caveat under this clause, upon request the Council promptly must execute a certificate of consent in the requisite form.
25. **Sale Agreement:** If and when the Option is exercised a contract (**Sale Agreement**) forms between the relevant Developer (as vendor) and the Council (as purchaser) for that Developer to sell and the Council to purchase the entire legal and beneficial ownership in fee simple of the Contracted Allotment/s concerned.
26. **Terms of a Sale Agreement:** Unless agreed otherwise and in writing, a Sale Agreement has these terms and conditions:
- 26.1 the price of a Contracted Allotment (before GST) is the sum of:
    - 26.1.1 the market value of that Contracted Allotment (on the date it became a Contracted Allotment) as agreed in writing between the vendor and the purchaser or, if they cannot agree within 7 days after the exercise of the Option over that Contracted Allotment, as conclusively determined in writing (and for reasons given) by a licensed valuer acting as an expert and appointed by the person for the time being holding or acting in the office of President of the Australian Institute of Valuers and Land Economists (SA Division) (or successor organisation) and for whose costs the vendor and the purchaser are liable in equal shares;
    - 26.1.2 minus 20% of the market value as determined above;
  - 26.2 in addition to the price, the vendor may recover from the purchaser any GST for which the vendor may be liable on sale, conditional upon the vendor giving a tax invoice for the sale to the purchaser;



- 26.3 the price is payable by the purchaser at settlement of the sale in exchange for the vendor providing both:
- 26.3.1 a memorandum of transfer of the Contracted Allotment in form registrable under the *Real Property Act 1886* and signed by the vendor; and
  - 26.3.2 the certificate of title of the Contracted Allotment;
- 26.4 pending settlement, a Contracted Allotment is at the risk of the vendor and not the purchaser;
- 26.5 the vendor warrants that at settlement of the sale:
- 26.5.1 the vendor will have an indefeasible title as registered proprietor of an estate in fee simple of the Contracted Allotment;
  - 26.5.2 the purchaser will obtain vacant possession of the Contracted Allotment;
  - 26.5.3 the Contracted Allotment will not be subject to any legal or equitable mortgage, charge, hypothecation, lien, lease, easement, *profit à prendre*, caveat or order of Court but ignoring any:
    - (a) statutory easement that relates only to the provision of electricity, gas, water or sewerage to that or other land; or
    - (b) statutory charge, lien or other security interest to secure payment of rates or taxes so long as the liability or debt it secures is not overdue;
  - 26.5.4 no government notice, order, direction or requirement in connection with the Contracted Allotment, the use or enjoyment of the Contracted Allotment or in connection with an owner or occupier of the Contracted Allotment (as such) will be unsatisfied;
  - 26.5.5 any fences are on the true boundaries of the Contracted Allotment;
  - 26.5.6 nothing has been done to, on or under the Contracted Allotment that if done at the date of settlement would require an environmental authorisation under the *Environment Protection Act 1993*;
- 26.6 the sale terminates without liability for compensation if before settlement the vendor provides credible evidence to the purchaser acting reasonably that the Developer:
- 26.6.1 has made good the breach of clause 4 or 9, 10, 12 or 15 as entitled the vendor to exercise the Option that formed that Sale Agreement;
  - 26.6.2 is not otherwise in breach of clause 4 or 9, 10, 12 or 15;
- 26.7 settlement must occur at the Lands Titles Registration Office at 2.00 pm (Adelaide time) on the later of:
- 26.7.1 the 20<sup>th</sup> Business Day after the date the Purchase Price was determined;
  - 26.7.2 if clause 21 was applied in the exercise of the Option, the date that clause 21.2.4 would require; or





- 26.7.3 as the parties may agree in writing;
- 26.8 the purchaser is liable for any stamp duty on the sale;
- 26.9 the Sale Agreement is otherwise on the terms and conditions of the Law Society of South Australia Contract for the Sale and Purchase of Land then current.

#### PART 7 – RELEASE OF ALLOTMENTS

- 27. **Mandatory release:** If a portion of the Original Parcel will be excluded from the Balance Land on deposit of a Plan of Division, then:
  - 27.1 upon request the Council promptly must execute a certificate of consent in the requisite form;
  - 27.2 this document terminates in relation to the portion of the Original Parcel, effective upon that Plan of Division being deposited.
- 28. **Voluntary release:** At any time, the Council may terminate this document in relation to any portion of the Original Parcel or any portion of the Balance Land by so notifying the Developer for the time being registered as holding an estate in fee simple of the portion concerned.
- 29. **Effecting a release:** If and when this document is terminated as to any land (including by operation of clause 14, 16, 27 or 28) the Council promptly must execute and lodge at the Lands Titles Registration Office as concerns the land released:
  - 29.1 a partial rescission of this document as a land management agreement; and
  - 29.2 a partial withdrawal of any caveat lodged by the Council under this document.

#### PART 8 – OTHER

- 30. **Authority to complete:** The Council may without further notice to or consent of the Developer, complete, fill in any blanks in, date, stamp and / or make application to the Registrar-General under the s. 57(5) of the Act to note this document against the instrument of title of the Original Parcel.
- 31. **Notation against the title:** It is intended to register this document under the *Real Property Act 1886* as a note against the instrument of title of the Original Parcel and in priority to any estate or interest in the Original Parcel, except the estate and interest of the Developer as proprietor of an estate in fee simple. A failure to note this document against the instrument of title of the Original Parcel at all, or within any time or with any priority does not affect the obligations of the parties. A party must promptly comply so far as they are able with any requisitions that may be made by the Lands Titles Registration Office in relation to this document. This document takes effect as a land management agreement under s. 57(2) of the Act upon a note being made against the instrument of title of the Original Parcel. Pending that notation, this document is effective as a deed between parties.
- 32. **Transaction taxes:** The Developer is liable for:
  - 32.1 any stamp duty on this document;
  - 32.2 any State Government charge or fee payable in respect of the registration or withdrawal of this document as a land management agreement.





33. **About the Council:** The Council enters into this document as a council acting under s. 57(2) of the Act and not in any other capacity whether under the Act or otherwise. This document does not preclude or pre-empt the exercise by the Council of any other regulatory function or power. When the Council exercises a regulatory function or power, the Council acts as a third party to this document.
34. **About the Developer:** If at any time more than one person comprises the Developer:
- 34.1 a right or power in this document vested in the Developer may only be exercised jointly by all such persons;
  - 34.2 in applying clause 9, aggregate the New Residential Allotments being marketed by all of those persons comprising the Developer;
  - 34.3 in applying clause 10, a report by any of the persons comprising the Developer is sufficient if it reports on the activities of all those persons collectively;
  - 34.4 in applying clause 19.2, aggregate breaches by any one or more of the persons comprising the Developer;
  - 34.5 the right to enforce an obligation of the Developer in this document may be exercised by the Council against all or any of such persons;
  - 34.6 the Option may be exercised against any of the persons comprising the Developer, whether or not that person personally is in breach of any of clause 4, 9, 10, 12 or 15.
35. **Remedies:** If a Developer fails to observe or perform this document or a Sale Agreement, the Council may (without limiting its other remedies) obtain an order for specific performance of this document or that Sale Agreement (as applicable) and it is now agreed that an award of damages to the Council may not be an adequate remedy.
36. **Other acts:** Each party must, at its expense, promptly do all things reasonably necessary to give full effect to this document.
37. **GST:** If a party (**Provider**) is liable to pay GST in respect of a taxable supply it makes to the other party (**Recipient**) under this document, then the consideration payable by the Recipient to the Provider for that taxable supply must be increased by an amount equal to the amount of the GST imposed or to be imposed in respect of that taxable supply, which additional amount must be paid at the same time as when the consideration for the relevant taxable supply is required to be paid by the Recipient conditional upon the Provider giving to the Recipient a tax invoice for the taxable supply.
38. **Costs:** Except as may be stated in this document otherwise, a party bears its own costs in relation to the negotiation, preparation, execution and performance of this document.
39. **Notices:** To be effective, a notice under this document must be in writing and given either:
- 39.1 if the recipient is a body corporate, in a manner permitted by the statute under which the recipient is constituted; or
  - 39.2 if the recipient is an individual, by personal delivery or by registered post to the recipient's address then stated on the certificate of title of their property comprised in the Balance Land.
40. **Amendment:** This document can be amended only by written agreement of the Council and the Developer.





41. **Waiver:** The Council may waive compliance by a Developer with the whole or any of the Developer's obligations (past or future) under this document. To be effective, a waiver must be in writing signed by or for the Council. A waiver is limited to the specific instance to which it relates, the specific purpose for which it is given and the party to whom it is given.

42. **Proper law:** The laws in South Australia govern this document.

**EXECUTED** as a deed

**THE COMMON SEAL of PORT  
AUGUSTA CITY COUNCIL** is fixed by: )  
)  
)

.....  
Signature

.....  
Signature

.....  
Name

.....  
Name

.....  
Position

.....  
Position

**EXECUTED by [insert] by being signed** )  
by: )  
)

.....  
Signature

.....  
Signature

.....  
Name

.....  
Name

.....  
Position

.....  
Position



## ANNEXURES TO THE LMA

A handwritten signature in blue ink, consisting of a stylized 'A' followed by a flourish and a circled mark below it.



**ANNEXURE A - MASTER PLAN**

A handwritten signature in blue ink, appearing to be 'Pd.' followed by a flourish.



**ANNEXURE B – SUPERLOT ENCUMBRANCE**

Form M2

**MEMORANDUM OF ENCUMBRANCE**

CERTIFICATE(S) OF TITLE BEING ENCUMBERED	
ESTATE AND INTEREST	ENCUMBRANCES
ESTATE IN FEE SIMPLE	NIL
ENCUMBRANCER (Full Name and Address)	
ENCUMBRANCEE (Full Name and Address and Mode of Holding)	
PORT AUGUSTA CITY COUNCIL of Port Augusta Airport, Caroon Road, Port Augusta SA 5700	
OPERATIVE CLAUSE	The Encumbrancer (" <b>Owner</b> ") encumbers the estate and interest in the land above described (" <b>Land</b> ") for the benefit of the Encumbrancee subject to the encumbrances and other interests as shown hereon with an annuity or rent charge of:
(a) Insert the amount of the annuity or rent charge	(a) Ten cents (10c).
(b) State the term of the annuity or rent charge. If for life use the words "during his or her lifetime"	(b) To be paid to by the Owner to the Encumbrancee annually as a yearly rent charge for a term of 25 years from the date this instrument bears.
(c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted on page 2.	(c) If demanded, on 30 June in each and every year, the first of such payments to be made (if demanded) on the 30 June next occurring after the date this instrument bears.





And the Owner also encumbers the estate and interest in the Land for the benefit of the Encumbrancee with the performance and observance of the covenants by the Owner herein contained ("**covenants**") (the burden on proving the performance and observance of which shall be borne by the Owner).

*Provided that* the Encumbrancee shall not demand payment of the rent charge if and so long as the Owner and the Owner's successors in title shall duly perform and observe all of the covenants.

*And provided further that* none of the foregoing provisions for or in respect of the payment of the rent charge shall in any way prejudice the rights of the Encumbrancee to an injunction to prevent or restrain any breach of the covenants or to damages for such breach.

The Owner for itself and its successors in title hereby covenants with the Encumbrancee that the burden of the covenants shall be binding on the Land and each and every part thereof and of all successive owners, occupiers, transferees and tenants thereof.

IT IS COVENANTED BETWEEN THE OWNER AND ENCUMBRANCEE as follows:

1. Covenants: The Owner covenants with the Encumbrancee that:
  - 1.1 If and when the Owner makes an application under *Development Act 1993* for consent to any proposed division of the Land: (a) such application shall not be inconsistent with the Master Plan, as if the Master Plan applied to the Land; (b) the Owner shall not object to any conditions attaching to such consent that compliance with the Master Plan would require if the Master Plan applied to the Land; and (c) the Owner shall not object if a binding agreement under s. 51(1) of the above Act requires such above conditions (in addition to prescribed conditions) to be supported by adequate security as a pre-requisite to the issue of a certificate from the Development Assessment Commission.
  - 1.2 The Owner shall not at any time allow the Land to be used other than for residential purposes.
  - 1.3 The Owner shall not allow the Land to stand Vacant on or at any time after the Sunset Date.
  - 1.4 Except with the Encumbrancee's prior written consent, if the Land is then Vacant the Owner shall not allow the Land to be transferred, such consent not to be withheld if clause 1.5 is complied with.
  - 1.5 If the Land is then Vacant the Owner shall not allow the Land to be transferred without first obtaining from the intending transferee their execution of an encumbrance in registrable form in favour of the Encumbrancee and on the same terms and conditions as this instrument except that the Sunset Date shall be that calendar day originally fixed under this instrument, which encumbrance is prepared at the Owner's cost and lodged for registration after the memorandum of transfer of the fee simple of the Land to that transferee and before any mortgage, encumbrance, lease or other estate or interest in the Land granted by the Owner or by that transferee.
  - 1.6 If either: (a) at any time after the Sunset Date the Land stands Vacant in breach of clause 1.2; or (b) on the Sunset Date the lawful construction of a permanent dwelling upon the Land had been commenced by substantial work on the Land but such construction is not completed within 12 calendar months after the Sunset Date – then the Encumbrancee may give to the Owner notice in writing to make good such default by commencing and diligently proceeding with or completing (as the case may require) the lawful construction of such dwelling in accordance with the building plans and specifications consented to under the *Development Act 1993*. If for at least 1 calendar month after service of such notice the Owner fails to comply with such notice, the Encumbrancee may at any time whilst such default continues and without prejudice to any other power, right or remedy exercise of its power of sale over the Land in such manner and for such price and upon such terms and conditions as the Encumbrancee may think fit.
  - 1.7 The Owner shall pay to the Encumbrancee on demand all costs (including legal costs) and expenses incurred by the Encumbrancee, its agents or contractors in respect of any breach by the Owner of its obligations under this instrument and any action taken to remedy the same. The Owner shall pay to the Encumbrancee on demand, any reasonable costs or expenses the Encumbrancee may incur in the discharge of this instrument.



2. **Powers:** The Encumbrancee shall be entitled to all the powers, rights and remedies given to encumbrancees by the *Real Property Act 1886* or other law. If the Encumbrancee exercises power of sale under this instrument, the Encumbrancee may require the purchaser of the Land to accept the transfer of the Land subject to an encumbrance in the same terms as this instrument.
3. **Waiver:** At any time, the Encumbrancee may in writing modify, waive or release any of the Covenants and other stipulations herein.
4. **Notices:**
  - 4.1 A notice or demand to be given to or made upon the Owner may be given or made by:
    - (a) hand delivery; or
    - (b) by registered mail to the Owner's address stated in this instrument or as last notified to the Encumbrancee; or
    - (c) leaving such notice on the Land or at the usual or last known place of abode in South Australia of the Owner.Proof of posting by registered mail in accordance with this clause is proof of receipt of such notice on the third clear day after posting.
  - 4.2 To be effective, a notice to the Encumbrancee must be marked "Attention: City Manager" and given to the Encumbrancee in a manner the *Local Government Act 1999* allows for service of notices to the Encumbrancee as a council.
5. **Dictionary:** In this instrument:

**"Master Plan"** means at any time the Master Plan as then applicable under Land Management Agreement no. ....

**"Owner"** means:

  - (a) the Encumbrancer now named so long as the registered proprietor of an estate in fee simple in the Land; and
  - (b) each successive registered proprietor of an estate in fee simple in the Land;

and if at any time the Owner is more than one person, means each of them jointly and severally.

**"Sunset Date"** means the day before the 7<sup>th</sup> anniversary of the date this instrument bears or such later date as the Encumbrancee may in writing allow the Owner.

**"Vacant"** means either:

  - (a) the Land by reference to its dimensions on its certificate of title has an area of 2,000 metres<sup>2</sup> or more; or
  - (b) the lawful construction of a permanent dwelling upon the Land has not been completed nor lawfully commenced by substantial work on the Land – where "**dwelling**" has its meaning in Schedule 1 of *Development Regulations 2008* as at 30 June 2010 and "**substantial work**" has the same meaning as in *Development Regulations 2008* regulation 48(1)(b)(i) as at 30 June 2010.
6. **Interpretation:** In this instrument: singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of the Encumbrancee because the Encumbrancee put forward this instrument; another grammatical form of a defined word has a corresponding meaning; reference to a party includes the a successor to the rights or obligations of that party under this instrument; if a provision of this instrument would, but for this clause, be unenforceable: (a) the provision must be read down to the extent necessary to avoid that result; and (b) if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this instrument.



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DATED ..... 20

**EXECUTION**

.....  
Signature of the ENCUMBRANCER

.....  
Signature of the ENCUMBRANCER

.....  
Signature of WITNESS – Signed in my presence by the ENCUMBRANCER who is either personally known to me or has satisfied me as to his or her identity.\*

.....  
Print Full name of Witness (BLOCK LETTERS)

.....  
Address of Witness

.....  
Business Hours Telephone Number: .....

\* NB A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing









## ANNEXURE C – RESIDENTIAL ENCUMBRANCE

Form M2

## MEMORANDUM OF ENCUMBRANCE

CERTIFICATE(S) OF TITLE BEING ENCUMBERED	
ESTATE AND INTEREST	ENCUMBRANCES
ESTATE IN FEE SIMPLE	NIL
ENCUMBRANCER (Full Name and Address)	
ENCUMBRANCEE (Full Name and Address and Mode of Holding)	
PORT AUGUSTA CITY COUNCIL of Port Augusta Airport, Caroon Road, Port Augusta SA 5700	
OPERATIVE CLAUSE	The Encumbrancer (" <b>Owner</b> ") encumbers the estate and interest in the land above described (" <b>Land</b> ") for the benefit of the Encumbrancee subject to the encumbrances and other interests as shown hereon with an annuity or rent charge of:
(a) Insert the amount of the annuity or rent charge	(a) Ten cents (10c).
(b) State the term of the annuity or rent charge. If for life use the words "during his or her lifetime"	(b) To be paid to by the Owner to the Encumbrancee annually as a yearly rent charge for a term of 25 years from the date this instrument bears.
(c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted on page 2.	(d) If demanded, on 30 June in each and every year, the first of such payments to be made (if demanded) on the 30 June next occurring after the date this instrument bears.



And the Owner also encumbers the estate and interest in the Land for the benefit of the Encumbrancee with the performance and observance of the covenants by the Owner herein contained ("**covenants**") (the burden on proving the performance and observance of which shall be borne by the Owner).

*Provided that* the Encumbrancee shall not demand payment of the rent charge if and so long as the Owner and the Owner's successors in title shall duly perform and observe all of the covenants.

*And provided further that* none of the foregoing provisions for or in respect of the payment of the rent charge shall in any way prejudice the rights of the Encumbrancee to an injunction to prevent or restrain any breach of the covenants or to damages for such breach.

The Owner for itself and its successors in title hereby covenants with the Encumbrancee that the burden of the covenants shall be binding on the Land and each and every part thereof and of all successive owners, occupiers, transferees and tenants thereof.

IT IS COVENANTED BETWEEN THE OWNER AND ENCUMBRANCEE as follows:

1. Covenants: The Owner covenants with the Encumbrancee that:
  - 1.1 The Owner shall not at any time allow the Land to be used other than for residential purposes.
  - 1.2 The Owner shall not allow the Land to stand Vacant on or at any time after the Sunset Date.
  - 1.3 Except with the Encumbrancee's prior written consent, if the Land is then Vacant the Owner shall not allow the Land to be transferred, such consent not to be withheld if clause 1.4 is complied with.
  - 1.4 If the Land is then Vacant the Owner shall not allow the Land to be transferred without first obtaining from the intending transferee their execution of an encumbrance in registrable form in favour of the Encumbrancee and on the same terms and conditions as this instrument except that the Sunset Date shall be that calendar day originally fixed under this instrument, which encumbrance is prepared at the Owner's cost and lodged for registration after the memorandum of transfer of the fee simple of the Land to that transferee and before any mortgage, encumbrance, lease or other estate or interest in the Land granted by the Owner or by that transferee.
  - 1.5 If either:
    - (a) at any time after the Sunset Date the Land stands Vacant in breach of clause 1.2; or
    - (b) on the Sunset Date the lawful construction of a permanent dwelling upon the Land had been commenced by substantial work on the Land but such construction is not completed within 12 calendar months after the Sunset Date;then the Encumbrancee may give to the Owner notice in writing to make good such default by commencing and diligently proceeding with or completing (as the case may require) the lawful construction of such dwelling in accordance with the building plans and specifications consented to under the *Development Act 1993*. If for at least 1 calendar month after service of such notice the Owner fails to comply with such notice, the Encumbrancee may at any time whilst such default continues and without prejudice to any other power, right or remedy exercise of its power of sale over the Land in such manner and for such price and upon such terms and conditions as the Encumbrancee may think fit.
  - 1.6 The Owner shall pay to the Encumbrancee on demand all costs (including legal costs) and expenses incurred by the Encumbrancee, its agents or contractors in respect of any breach by the Owner of its obligations under this instrument and any action taken to remedy the same. The Owner shall pay to the Encumbrancee on demand, any reasonable costs or expenses the Encumbrancee may incur in the discharge of this instrument.





2. **Powers:** The Encumbrancee shall be entitled to all the powers, rights and remedies given to encumbrancees by the *Real Property Act 1886* or other law. If the Encumbrancee exercises power of sale under this instrument, the Encumbrancee may require the purchaser of the Land to accept the transfer of the Land subject to an encumbrance in the same terms as this instrument.
3. **Waiver:** At any time, the Encumbrancee may in writing modify, waive or release any of the Covenants and other stipulations herein.
4. **Notices:**
- 4.1 A notice or demand to be given to or made upon the Owner may be given or made by:
- (a) hand delivery; or
  - (b) by registered mail to the Owner's address stated in this instrument or as last notified to the Encumbrancee; or
  - (c) leaving such notice on the Land or at the usual or last known place of abode in South Australia of the Owner.
- Proof of posting by registered mail in accordance with this clause is proof of receipt of such notice on the third clear day after posting.
- 4.2 To be effective, a notice to the Encumbrancee must be marked "Attention: City Manager" and given to the Encumbrancee in a manner the *Local Government Act 1999* allows for service of notices to the Encumbrancee as a council.
5. **Dictionary:** In this instrument:
- "Owner"** means:
- (a) the Encumbrancer now named so long as the registered proprietor of an estate in fee simple in the Land; and
  - (b) each successive registered proprietor of an estate in fee simple in the Land;
- and if at any time the Owner is more than one person, means each of them jointly and severally.
- "Sunset Date"** means the day before the 3<sup>rd</sup> anniversary of the date this instrument bears or such later date as the Encumbrancee may in writing allow the Owner.
- "Vacant"** means the lawful construction of a permanent dwelling upon the Land has not been completed nor lawfully commenced by substantial work on the Land – where **"dwelling"** has its meaning in Schedule 1 of *Development Regulations 2008* as at 30 June 2010 and **"substantial work"** has the same meaning as in *Development Regulations 2008* regulation 48(1)(b)(i) as at 30 June 2010.
6. **Interpretation:** In this instrument: singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, an individual and a partnership and *vice versa*; headings do not affect construction; no rule of construction applies to the disadvantage of the Encumbrancee because the Encumbrancee put forward this instrument; another grammatical form of a defined word has a corresponding meaning; reference to a party includes the a successor to the rights or obligations of that party under this instrument; if a provision of this instrument would, but for this clause, be unenforceable: (a) the provision must be read down to the extent necessary to avoid that result; and (b) if the provision cannot be read down to that extent, it must be severed without affecting the validity and enforceability of the remainder of this instrument.



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A handwritten signature in blue ink, appearing to be 'PCL' with a circular flourish at the end, located in the bottom right corner of the page.



DATED ..... 20

**EXECUTION**

.....  
Signature of the ENCUMBRANCER

.....  
Signature of the ENCUMBRANCER

.....  
Signature of WITNESS – Signed in my presence by the ENCUMBRANCER who is either personally known to me or has satisfied me as to his or her identity.\*

.....  
Print Full name of Witness (BLOCK LETTERS)

.....  
Address of Witness

.....  
Business Hours Telephone Number: .....

\* NB A penalty of up to \$2000 or 6 months imprisonment applies for improper witnessing





LANDS TITLES REGISTRATION  
OFFICE  
SOUTH AUSTRALIA

**MEMORANDUM OF ENCUMBRANCE**

FORM APPROVED BY THE REGISTRAR-GENERAL

**BELOW THIS LINE FOR OFFICE & STAMP DUTY PURPOSES ONLY**

Prefix
<b>E</b>
Series No.
<b>2</b>

**BELOW THIS LINE FOR AGENT USE ONLY**

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886  <hr style="width: 50%; margin: 0 auto;"/> Solicitor/Registered Conveyancer/Encumbrancee
--

AGENT CODE

Lodged by:

Correction to:

TITLES, CROWN LEASES, DECLARATIONS ETC. LODGED WITH INSTRUMENT (TO BE FILLED IN BY PERSON LODGING)

1. ....
2. ....
3. ....
4. ....

PLEASE ISSUE NEW CERTIFICATE(S) OF TITLE AS FOLLOWS

1. ....
2. ....
3. ....
4. ....

**DELIVERY INSTRUCTIONS** (Agent to complete)  
PLEASE DELIVER THE FOLLOWING ITEM(S) TO THE UNDERMENTIONED AGENT(S)

ITEM(S)	AGENT CODE

CORRECTION	PASSED
REGISTRAR-GENERAL	

