

# CONFIDENTIAL REPORT



**PortAugusta**  
CITY COUNCIL

REPORT FOR:	<b>Strategic Management Committee</b>		
MEETING DATE:	19 May 2014		
REPORT FROM:	City Manager		
REPORT TITLE:	<b>Airport Land Development - Staged Sale Agreement</b>		
FILE NAME:	F10/610	RECORD NO:	AR14/7580

## COMMUNITY VISION & STRATEGIC PLAN OUTCOMES

### **1 We Thrive**

- 1.1 Identify and support new opportunities for our city to change and grow through bold and innovative projects including alternative energy and infrastructure.
- 1.2 Continue to promote Port Augusta as a great location to live, learn, work and visit.
- 1.3 We use and manage our financial and physical resources in the best interests of our community, now and for the future.
- 1.4 Develop partnerships to attract investors in business proposals and new developments that contribute to a diversified and robust economy.

### **4 We Care**

- 4.3 Value, protect and enhance the quality of our natural and built environment.

## **PURPOSE**

To seek a Council decision on a revised process for achieving the Airport Land Development.

## **RECOMMENDATION**

### **Council:**

1. Approves the Sale Agreement and associated memorandum of Encumbrance at Appendix 2 of this report (AR14/7580).
2. Authorises the Mayor and City Manager to sign and Seal the documents in Appendix 2 (AR14/12280).
3. On receipt of the payment for settlement of stage 1 of the Airport Land, uses these funds to repay outstanding loans with LGFA.

## **BACKGROUND**

For a number of years Council has been negotiating with Bowhill Properties Pty Ltd to develop Council owned land in Port Augusta West commonly referred to as the "Airport Land." Major delays were caused by a convoluted rezoning process and uncoordinated input from State Government agencies. When the rezoning was finally achieved the global financial crisis had caused funding bodies to be very cautious in funding speculative ventures. Accordingly Bowhill Properties came back to Council in late 2012, to seek a staged sale of the land to enable it to better cope with funding issues.

At its meeting on 22 October 2012 Council resolved:

“That Council

1. Receives and notes the report (AR12/23783) dated 15 October 2012, submitted by the City Manager, concerning “Request to Vary Agreement for Port Augusta Airport Land – Contract for Sale and Purchase”.
2. Advises Mr Cheetham that the settlement price for stage 1 would be \$11,300,000 calculated in accordance with the in-globo valuation on which the original total valuation was based.
3. Should Mr Cheetham wish to proceed in light of the above information, authorises the City Manager to negotiate a varied Agreement with Bowhill Properties Pty Ltd for consideration by Council with a focus on achieving the following outcomes:
  - 3.1 Bowhill Properties Pty Ltd being able to settle stage 1 of the land as identified in the plan of attachment 1 (AR12/23786 to report AR12/23783)
  - 3.2 Settlement of stage 1 occurs in line with the requirements embodied in the existing Contract for Sale and Purchase dated 18 June 2010.
  - 3.3 The development of any retail facilities in stage 1 to be scaled proportionately to the then existing catchment population.
  - 3.4 The purchase price for settlement of stages 2 and 3 be subject to valuation and negotiation at the time of settlement.
  - 3.5 Bowhill Properties Pty Ltd be required to transfer to Council the intellectual property contained within the Master Plan required by Clause 21 of the existing Sale and Purchase Agreement in the event that Bowhill Properties Pty Ltd does not proceed with the purchase of stages 2 and 3 of the land.
  - 3.6 Out of date timelines in the current Contract for Sale and Purchase and other amendments to reflect the current situation with the project also being addressed.
  - 3.7 Requires Mr Cheetham to contribute 50% of Council's legal fees in having the Agreement amended.

CARRIED

Mr Cheetham responded to the high value of \$11.3m for stage 1 and subsequently sought a revised approach to reduce the size of stage 1 and its subsequent cost. A discussion was held with Elected Members at a Strategic Management Committee meeting on 10 December 2012 and it was agreed that a revised agreement should:

1. Enable settlement at stages on current valuation provided % of development has occurred and compensation is paid.
2. Where % of development has not been reached and settlement not occur provision be made for a first right of refusal to purchase at a later date subject to achieving % of development and based on market value.

The Power Point presented to that meeting is included in Appendix 1 (AR12/28420)

On 19 December 2012 a revised agreement addressing the changes agreed to on 10 December 2012 was sent to Bowhill Properties Pty Ltd. Negotiations have continued since then to finalise the agreement in Appendix 2 (AR14/12280).

## **DISCUSSION**

Mr Mark Sallis of Wallmans Lawyers who has assisted in the development of this agreement will be in attendance at the meeting to outline the agreement and address any questions of Elected Members.

In broad terms the agreement enables the land to be purchased in 3 stages with the value of each settlement being \$4.1m, \$4.8m and \$4.3m. The settlements are further to be escalated by a payment of \$10,500 per month from 1 July 2014 to recognise the cost of delayed settlement.

There is a requirement for development to be achieved prior to the next stage of settlement being able to occur and if this is not achieved in the time allowed there is still a right to purchase at the then market value.

In order to protect businesses on the Westside a supermarket is not allowed to be developed on the Airport Land until at least 1000 dwellings have been developed on the land.

Intellectual property in the Master Plan is granted to Council on settlement of stage 1. This ensures that Council is able to use that plan to guide development if the developer ceases to fulfil that role.

In view of the extended settlement requested by Mr Cheetham he has justified this in his emails of 24 and 25 March 2014 in Appendix 3.

While Council will need to wait longer for the cash flow from the staged sale of the land, the real benefit achieved by this project is the increased rate payments and economic activity generated by development of this land.

## **CONFIDENTIALITY PROVISIONS**

Pursuant to Section 90(3)(d) of the Act, the information to be received, discussed or considered in relation to this Agenda Item is commercial information of a confidential nature (not being a trade secret) the disclosure of which could reasonably be expected to prejudice the commercial position of the person who supplied the information, or to confer a commercial advantage on a third party.

It is considered necessary to discuss this report in confidence and that the principle that the meeting be conducted in a place open to the public has been outweighed in the circumstances because the disclosure of this information may result in a competitor receiving the information to the detriment of the developer.

**It is recommended** that Council maintain the confidential provisions as outlined above **until settlement of stage 1 of this development.**

## **RISK MANAGEMENT**

### **1: Financial/Budget**

The project will provide Council with a capital inflow that can immediately retire outstanding loans in accordance with Council's debt management strategy.

**2: Legal**

The process has been undertaken with ongoing advice and assistance from Mark Sallis of Wallmans Lawyers.

**3: Environment**

The proposed development addresses the environmental requirements of the Development Plan.

**4: Community**4.1 General

The project enables unused land assets to be liquidated and the capital reinvested in community assets. The proposed development provides further choice for those wishing to settle in Port Augusta.

4.2 OPAL Program

The proposed development provides for cycle and walking paths and adequate reserve e land to encourage physical activity.

**GREG PERKIN****01/05/2014**



# AIRPORT LAND DEVELOPMENT

- Advise Mr Cheetham that the settlement price for stage 1 would be \$11,300,000 calculated in accordance with the in-globo valuation on which the original total valuation was based.
- Should Mr Cheetham wish to proceed in light of the above information, authorises the City Manager to negotiate a varied Agreement with Bowhill Properties Pty Ltd for consideration by Council with a focus on achieving the following outcomes:
  - Bowhill Properties Pty being able to settle stage 1 of the land as identified in the plan of Attachment 1 (AR12/23786) notated as Parcel 1.
  - Settlement of stage 1 occurs in line with the requirements embodied in the existing Contract for Sale and Purchase dated 18 June 2010.

- The development of any retail facilities in stage 1 to be scaled proportionately to the then existing catchment population.
- The purchase price for settlement of stages 2 and 3 be subject to valuation and negotiation at the time of settlement.
- Bowhill Properties Pty Ltd be required to transfer to Council the intellectual property contained within the Master Plan required by Clause 21 of the existing Sale and Purchase Agreement in the event that Bowhill Properties Pty Ltd does not proceed with the purchase of stages 2 and 3 of the land.
- Out of date timelines in the current Contract for Sale and Purchase and other amendments to reflect the current situation with the project also be addressed.
- Require Mr Cheetham to contribute 50% of Council's legal fees in having the agreement amended.

Issues raised by Mr Cheetham:

1. He has made substantial investments based on the expected sale price and feels he would be disadvantaged not knowing what the final figure maybe given Council's proposal is to seek valuations at each stage of settlement.
2. Proposes a reduced size of stage 1 to reduce initial settlement cost.
3. Retain current total valuation with him paying compensation for later payments of stages 2 and 3.

Proposing to structure agreement to :

1. Enable settlement at stages on current valuation provided % of development has occurred and compensation is paid.
2. Where % of development has not been reached and settlement not occur provision be made for a first right of refusal to purchase at a later date subject to achieving % of development and based on market value.

**PORT AUGUSTA CITY COUNCIL**

Vendor

and

**BOWHILL PROPERTIES PTY LTD**

Purchaser

**SALE AGREEMENT**

**SALE AGREEMENT** dated 2014

**BETWEEN:**

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

**AND:**

**BOWHILL PROPERTIES PTY LTD** ACN 138 724 517 and / or nominee (the **Purchaser**)

**TERMS**

1. The Vendor agrees to sell an estate in fee simple in the land/s referred to in Item 3 of the Schedule to the Purchaser and the Purchaser agrees to purchase the same on the terms in this Agreement.
2. This Agreement is comprised of this document, and these following documents:
  - 2.1 the General Conditions of the form of *Contract for the Sale and Purchase of Land* issued by The Law Society of South Australia Inc. ISSN 0155-8897, Updated 2010, excluding its clauses 4, 10, 12.2(b), 14, 15, 16, 17, 26, 29, 31, 32.3, 32.4;
  - 2.2 the Schedule to that above form now annexed; and
  - 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: )  
 )  
 )

.....  
City Manager

.....  
Mayor

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

.....  
Sole Director & Secretary

**Identity requirements for registration at the LTO**

An *Electronic Conveyancing National Law (South Australia) (EC Law)* is expected to operate in the near future and will require lawyers / conveyancers to verify the identity of their clients when lodging documents under the *Real Property Act 1886*. Pending that EC Law coming into full operation, there is in force a *Registrar-General's Verification of Identity Policy (RG Policy)* broadly to the same effect as above.

It is a term of this Agreement that, in relation to the memorandum of transfer or other registrable instrument this Agreement requires, each party to this Agreement shall in a timely manner:

- comply with the RG Policy, and / or if the EC Law then operates, the EC Law; and
- provide such evidence of compliance with the above requirement/s as the other party to this Agreement may reasonably require in order to ensure full compliance with the RG Policy / EC Law.

.....



## 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  
Updated 2010

#### 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.**

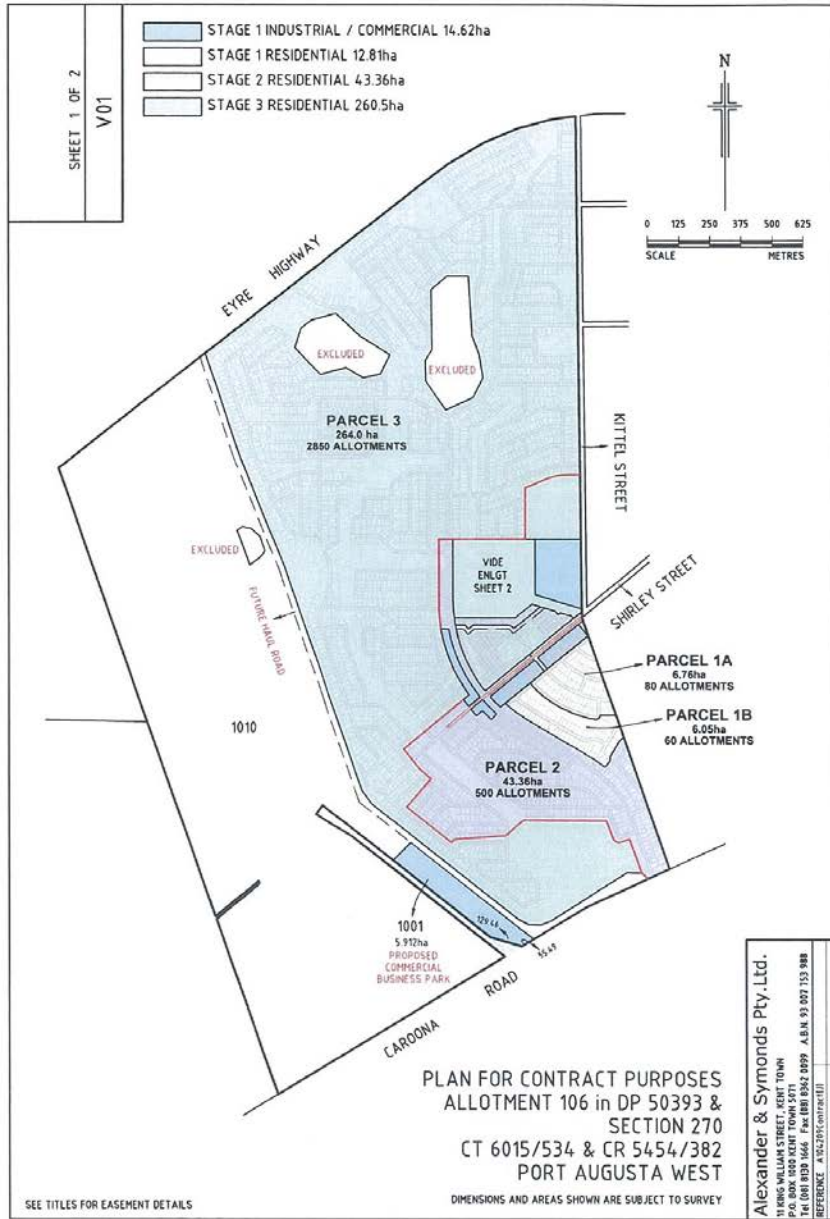
**THE VENDOR AND THE PURCHASER AGREE as follows:**

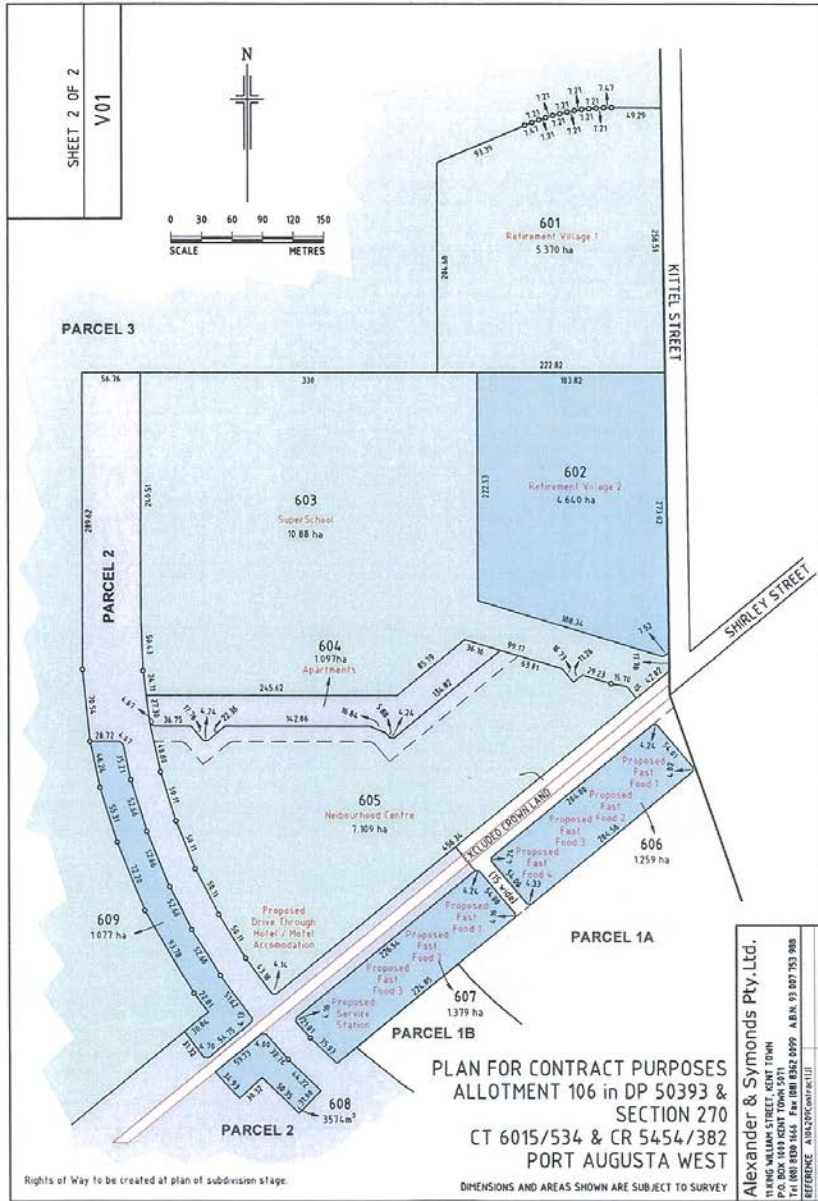
Item	Term	Particulars
1	<b>Vendor</b>	<b>PORT AUGUSTA CITY COUNCIL</b> ABN 73 625 993 182 of 4 Mackay Street, Port Augusta SA 5700  P: 08 8641 9100, F: 08 8641 0357 E: greg.perkin@portaugusta.sa.gov.au
2	<b>Purchaser</b>	<b>BOWHILL PROPERTIES PTY LTD</b> ACN 138 724 517 of 4 Everglade Court, Golden Grove SA 5125 for itself and / or nominee  P: 0412 945 644, F: 08 8288 7563 E: augustadevelopment@bigpond.com
3	<b>The Land</b>	Stage 1, Stage 2 and Stage 3 as defined in the Special Conditions  Proximate Corner Shirley Street and Kittel Street, Port Augusta SA 5700.
4	<b>Included Property</b>	Nil.
5	<b>Included Chattel</b>	Nil.
6	<b>Chattels on hire etc.</b>	Nil.
7	<b>Excluded Property</b>	Nil.

8	<b>Exceptions and reservations</b>	Nil.
9	<b>Mortgages, encumbrances etc</b>	See the Special Conditions
10	<b>Tenancies and other interests</b>	Nil.
11	<b>Purchase Price</b>	See the Special Conditions
	<b>GST</b>	
12	<b>Deposit</b>	\$250,000.00
13	<b>Balance</b>	See the Special Conditions
14	<b>Deposit Holder</b>	Wallmans Lawyers of Level 5, 400 King William Street, Adelaide SA 5000, who shall hold as stakeholder
15	<b>Settlement Day</b>	See the Special Conditions
16	<b>Provisions applying to mortgages, tenancies etc.</b>	Nil.
17	<b>Water allowance</b>	Nil.
18	<b>Notices and orders</b>	(i) Matters to be discharged by the Vendor: Nil. (ii) Matters to be discharged by the Purchaser: Nil.
19	<b>Consents</b>	See the Special Conditions
20	<b>Interest Rate</b>	As per clause 19.
21	<b>Costs</b>	As per clause 27 and the Special Conditions.
22	<b>Annexures</b> Clause 28)	<input checked="" type="checkbox"/> Annexure A - (Draft) Plan of Division <input checked="" type="checkbox"/> Annexure B - Special Conditions <input checked="" type="checkbox"/> Annexure C - Memorandum of Encumbrance
23	<b>GST:</b>	The Land sold by the Vendor to the Purchaser under this Agreement comprises a taxable supply and is not subject to the margin scheme (sections 9-5 and 195-1 of the GST Law).
24	<b>GST</b> <b>(Where the Land comprises partly a taxable supply and partly a non-taxable supply)</b>	Not applicable.



**ANNEXURE A - (Draft) PLAN OF DIVISION**





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## ANNEXURE B - SPECIAL CONDITIONS

### PART 1 – PRELIMINARY

1. **Overview:** This Agreement provides for the Vendor to sell and the Purchaser to purchase:
  - 1.1 subject to satisfaction of Conditions Precedent in Special Condition 15 no later than the Stage 1 Sunset Date, Stage 1;
  - 1.2 subject to satisfaction of Conditions Precedent in Special Condition 16 no later than the Stage 2 Sunset Date, Stage 2; and
  - 1.3 subject to satisfaction of Conditions Precedent in Special Condition 17 no later than the Stage 3 Sunset Date, Stage 3.

Upon settlement of the sale of a (each) Stage, the Purchaser is to grant a Purchaser Encumbrance over that Stage in favour of the Vendor.

Additionally, and subject to some conditions:

- 1.4 if the Purchaser purchases Stage 1 under this Agreement, but settlement of Stage 2 under this Agreement does not occur, for a period the Purchaser may have a first right of refusal to purchase Stage 2 at fair market value;
  - 1.5 if the Purchaser purchases Stage 1 under this Agreement and (whether under this Agreement or as result of exercise of its first right of refusal) also purchases Stage 2, but settlement of Stage 3 under this Agreement does not occur, for a period the Purchaser may have a first right of refusal to purchase Stage 3 at fair market value.
2. **Dictionary:** In this Agreement:
    - Approval** means an endorsement, approval, consent, certificate, permit, licence or other authority for the Deposited Plan required to be issued by government or a utility supplier or an adjoining landowner.
    - Bank Cheque** means a cheque drawn by an authorised deposit-taking institution (within the meaning of the *Banking Act 1959*) upon itself.
    - Business Day** means a day other than:
      - (a) a Saturday Sunday;
      - (b) a day which is a public holiday in South Australia (within the meaning of the *Holidays Act 1910*); or
      - (c) a day that falls between Christmas and New Year's Day.
    - Condition Precedent** means a condition precedent to settlement of a sale under this Agreement stated in Special Condition 15, 16 or 17 respectively.
    - Deposit** means a deposit of an amount stated as the deposit in the Schedule.
    - Deposited Plan** means a plan of division in respect of the Land deposited in the Lands Titles Registration Office by the Registrar-General under *Real Property Act 1886* Part 19AB, which plan is in the form or the effect of the draft Plan of Division in Annexure A to this Agreement or as the parties may agree in writing. The effect of the Deposited Plan would be to divide the land

now comprised in Certificate of Title Register Book Volume 6015 Folio 534 into super lots Stage 1, Stage 2 and Stage 3, with a residual balance left to the Vendor.

**DPTI Contract** means a *Road Infrastructure Design and Delivery Deed* dated 15 October 2012 made between the original Purchaser, Augusta Developments Pty Ltd, Minister for Transport and Infrastructure, and the Commissioner of Highways.

**Dwelling** has the meaning given in the Purchaser Encumbrance.

**Encumbrance** means any encumbrance or security interest (includes any legal or equitable mortgage, charge, hypothecation, pledge or lien), lease, restrictive covenant, licence to occupy, *profit à prendre*, easement, memorial, caveat or order of Court but ignoring any:

- (a) that is:
  - (i) required to be granted by the Vendor as a condition of, or pre-requisite to, the grant of an Approval; and
  - (ii) at least 10 Business Days before the Settlement Day for Stage 1 in writing notified by the Vendor to the Purchaser, and to which the Purchaser does not object in writing given to the Vendor within 5 Business Days after receipt of that notice;
- (b) statutory easement in favour of government (other than the Vendor) or a public utility;
- (c) statutory charge or lien to secure payment of rates or taxes so long as the liability or debt it secures is not overdue;
- (d) 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
- (e) created by this Agreement in favour of the Purchaser.

**General Condition** means a clause in the form of *Contract for the Sale and Purchase of Land* issued by The Law Society of South Australia Inc, ISSN 0155-8897, Updated 2010.

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

- (a) a natural person becomes an insolvent under administration (within the meaning of *Corporations Act 2001*);
- (b) a company suffers the appointment of a provisional liquidator, suffers the appointment of a controller over any of its assets, (other than for the purposes of solvent reconstruction) becomes an externally-administered body corporate (all within the meaning of *Corporations Act 2001*), or action is taken that could result in either event not stayed, withdrawn or dismissed within 5 Business Days.

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

**Old Contract** means an *Instrument of Agreement* dated 18 June 2010 between these same parties for the sale and purchase of certain lands within Certificate of Title Register Book Volume 6015 Folio 534.

**Purchase Price** (before GST) means:

- (a) in respect of Stage 1, \$4,114,500.00, plus \$10,500.00 for each calendar month or part of a calendar month in the period starting 1 July 2014 and ending on the Settlement Day of Stage 1;
- (b) in respect of Stage 2, \$4,840,800.00 plus \$10,500.00 for each calendar month or part of a calendar month in the period starting 1 July 2014 and ending on the Settlement Day of Stage 2;
- (c) in respect of Stage 3, \$4,357,600.00 plus \$10,500.00 for each calendar month or part of a calendar month in the period starting 1 July 2014 and ending on the Settlement Day of Stage 3.

**Purchaser Encumbrance** means a memorandum of encumbrance in the form in Annexure C to this Agreement at settlement of a Stage to be granted by the Purchaser in favour of the Vendor.

**Schedule** means the schedule to the General Conditions.

**Settlement Day** means the day settlement of the sale of a Stage under this Agreement occurs.

**Special Condition** means a clause in this Annexure.

**Stage** means all or any of Stage 1, Stage 2 and Stage 3 as applicable.

**Stage 1** means 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 as Stage 1 on the (draft) Plan of Division in Annexure A.

**Stage 1 Sunset Date** means 1 July 2015, or as the parties may agree in writing.

**Stage 2** means 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 as Stage 2 on the (draft) Plan of Division in Annexure A.

**Stage 2 Sunset Date** means 1 July 2017, or as the parties may agree in writing.

**Stage 2 Window** means the period starting on the day after the Stage 2 Sunset Date and ending on the earlier of:

- (a) the date a Termination Event occurs;
- (b) the day before the 2<sup>nd</sup> anniversary of the Stage 2 Sunset Date.

**Stage 3** means 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 as Stage 3 on the (draft) Plan of Division in Annexure A.

**Stage 3 Sunset Date** means 1 July 2020, or as the parties may agree in writing.

**Stage 3 Window** means the period starting on the day after the Stage 3 Sunset Date and ending on the earlier of:

- (a) the date a Termination Event occurs;
- (b) the day before the 2<sup>nd</sup> anniversary of the Stage 3 Sunset Date.

**Substantial Commencement** has the meaning given in the Purchaser Encumbrance.

**Termination Event** means any of these events:

- (a) an Insolvency Event occurs;
- (b) a sale of land under this Agreement (or under a contract as results from an offer made under Special Condition 38) terminates by reason of, or for reasons that include, the default of the Purchaser;
- (c) if in respect of the DPTI Contract (as such document may at any time be amended or replaced):
  - (i) the Commissioner of Highways exercises, or becomes entitled to exercise, step-in rights under clause 10 of the DPTI Contract; or
  - (ii) the memorandum of encumbrance (to be) granted by the original Purchaser to that Minister in support of the original Purchaser's obligations becomes enforceable;
- (d) the Purchaser for at least 10 Business Days fails to remedy its breach of this Agreement after written notice from the Vendor specifying the breach, requiring its remedy and stating that it would be a Termination Event under this Agreement if the breach is not remedied during that above period;
- (e) any future contract between the Vendor (as a local government body) and the Purchaser (whether for the sale of any land, a binding agreement under *Development Act 1993* s. 51, or otherwise) terminates by reason of, or reasons that include, the default or insolvency of the Purchaser;
- (f) an encumbrance in favour of the Vendor at any time granted by the Purchaser or successor owner over any property within Stage 1 or Stage 2 or Stage 3 becomes enforceable.

Subject to the above, words and expressions these Special Conditions have the same meaning as in the General Conditions.

- 3. **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, a natural person 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 permitted successor to the rights or obligations of that party under this Agreement.
- 4. **Old Contract:** The execution of this Agreement is effective to terminate the Old Contract and to release absolutely each party from all claims (in common law, equity or under statute) the other party might otherwise have in connection with negotiations for, or observance or performance of, the Old Contract.

## PART 2 – DEPOSIT

- 5. **About the Deposit:** The deposit paid by the Purchaser (and accrued interest thereon) under the Old Contract is taken to be a Deposit paid (and accrued interest thereon) under this Agreement.

6. **Investment of the Deposit:**

- 6.1 The Deposit Holder shall continue investment of the Deposit in the joint names of the parties with National Australia Bank at a commercial rate of interest.
- 6.2 The Deposit Holder shall pay from the Deposit and interest thereon, any costs or expenses incurred in investing the Deposit.
- 6.3 Subject to the above, the Deposit Holder shall pay the interest accrued on the deposit:
- 6.3.1 if a party determines this Agreement under General Conditions clause 20 (default prior to settlement) or 21 (default at settlement) - to that party;
  - 6.3.2 if the Deposit is repaid to the Purchaser - to the Purchaser;
  - 6.3.3 if either party determines the sale of Stage 1 under Special Condition 18.2 - to the Purchaser; or
  - 6.3.4 at settlement of Stage 1 - to the Vendor.
- 6.4 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.

**PART 3 – ACKNOWLEDGMENTS**

7. **Statutory disclosure:** For the purposes of the *Land and Business (Sale and Conveyancing) Act 1994* s.18(2), if it applies:
- 7.1 the Vendor's details are set out in the Schedule;
  - 7.2 at the date of this Agreement, the Vendor owns the Land;
  - 7.3 the Land is identified as Stage 1, Stage 2 and Stage 3 in Special Condition 2 and the (draft) Plan of Division in Annexure A to this Agreement; and
  - 7.4 the person to whom all money falling due under this Agreement may be paid is the Deposit Holder (for the Deposit) and the Vendor (all other money).
8. **Title matters:** Without derogating from General Condition clause 5 (encumbrances), the Land is sold subject to:
- 8.1 any restrictions under planning, development or heritage laws;
  - 8.2 anything excluded from the definition of **Encumbrance** in Special Condition 2.
9. **Description:** The Purchaser admits the Land as offered for sale and inspected by the Purchaser is the same as that referred to in Item 3 of the Schedule. General Condition clause 12.2(b) is excluded from this Agreement.
10. **Claims barred:** 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 a Purchase Price, determine a sale, refuse or delay a settlement in connection with a matter not expressly stated in this Agreement to be the subject of a warranty or representation by the Vendor.



11. **Indemnity:** After a settlement, as a continuing obligation, the Purchaser shall indemnify and keep harmless the Vendor and a person for whom the Vendor is responsible from and against all costs, expenses, claims, demands, losses and damages which the Vendor or such person 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 a provision of this Agreement.

#### PART 4 – VENDOR WARRANTIES

12. **Vendor warranties as to title:** The Vendor warrants that immediately before a settlement:
- 12.1 the Vendor shall have an indefeasible title as registered proprietor of the Stage concerned; and
  - 12.2 the Stage concerned shall not be subject to any Encumbrance.
13. **Exclusions:** To avoid doubt, but subject to the express terms of this Agreement, the Vendor does not in connection with this transaction warrant or represent:
- 13.1 the accuracy or completeness of any information provided to the Purchaser by the Vendor in investigations or negotiations leading to this Agreement;
  - 13.2 the state, condition or suitability of any Stage at settlement;
  - 13.3 the presence or location of any hazardous substance or contamination on or under any Stage;
  - 13.4 the location of any services (if any) underground;
  - 13.5 satisfaction of any of the Conditions Precedent;
  - 13.6 that the Purchaser would at some future time obtain a profit on any Stage;
  - 13.7 anything else not expressly stated in this Agreement as being warranted by the Vendor.
14. **Disclaimer:** Any information, promise or representation (of fact or opinion or intention) given or made (orally, in writing or by conduct) to the Purchaser by or for the Vendor in the period before execution of this Agreement and not expressly set out in this Agreement is, immediately before execution of this Agreement:
- 14.1 withdrawn unconditionally by the Vendor;
  - 14.2 not relied upon for any purpose (including estoppel) by the Purchaser; and
  - 14.3 released absolutely from all claims which the Purchaser might otherwise have in connection with it.

#### PART 5 – BEFORE SETTLEMENTS

15. **Conditions Precedent to Stage 1:** The sale and purchase of Stage 1 is conditional upon satisfaction or waiver of each following Condition Precedent no later than the Stage 1 Sunset Date:
- 15.1 the DPTI Contract remains in good standing, and the Commissioner of Highways in writing advises that Vendor that either:



- 15.1.1 no amendments to the DPTI Contract as first executed are required by reason of the substitution of this Agreement for the Old Contract; or
- 15.1.2 the DPTI Contract as first executed has been amended to a form satisfactory to the Commissioner of Highways;
- 15.2 at the Purchaser's expense, as regards the Master Plan a copy of which is annexed to the Purchaser's Encumbrance, the Purchaser procures the grant to the Vendor, effective at settlement of the sale of Stage 1:
  - 15.2.1 from the holder/s of copyright in the Master Plan - a non-exclusive, perpetual, royalty-free licence to copy, adapt and exploit the Master Plan for the purposes of the proposed development of lands abutting Port Augusta Airport (of which Stage 1 is portion); and
  - 15.2.2 from the holders of moral rights in the Master Plan - the waiver in favour of the Vendor of those rights for the above purpose;
- 15.3 at the Purchaser's expense, the Vendor having prepared a proposed Plan of Division that accords with the draft Plan of Division in Annexure A to this Agreement or as the parties may agree in writing;
- 15.4 at the Purchaser's expense, the Vendor making application for development consent under *Development Act 1993* s. 33 to deposit the Plan of Division under *Real Property Act 1886* Part 19AB, which development consent is granted subject only to conditions *Development Act 1993* s. 33(1)(c) requires or conditions acceptable to the parties acting reasonably; and
- 15.5 at the Purchaser's expense, the final Plan of Division becomes a Deposited Plan.
- 16. **Conditions Precedent to Stage 2:** The sale and purchase of Stage 2 is conditional upon satisfaction or waiver of each following Condition Precedent no later than the Stage 2 Sunset Date:
  - 16.1 settlement of the sale of Stage 1 under this Agreement occurs;
  - 16.2 the Purchaser Encumbrance in respect of any property within Stage 1 has not become enforceable; and
  - 16.3 Substantial Commencement of at least 40 Dwellings upon Stage 1 (with rules for counting Dwellings the same as stated in the Purchaser Encumbrance).
- 17. **Conditions Precedent to Stage 3:** The sale and purchase of Stage 3 is conditional upon satisfaction or waiver of each following Condition Precedent no later than the Stage 3 Sunset Date:
  - 17.1 settlement of the sales of Stage 1 and Stage 2 under this Agreement both occur;
  - 17.2 the Purchaser Encumbrance in respect of any property within Stage 1 or Stage 2 has not become enforceable; and
  - 17.3 Substantial Commencement of at least 80 Dwellings upon Stage 1 and / or Stage 2 (with rules for counting Dwellings the same as stated in the Purchaser Encumbrance).

18. **About Conditions Precedent:**

- 18.1 Each party shall use their best reasonable endeavours to fulfil each Condition Precedent, including that:
- 18.1.1 if at any time requested, a party given responsibility for a Condition Precedent shall promptly inform the other of material steps taken for its fulfilment;
- 18.1.2 if a party becomes aware that a Condition Precedent is satisfied or becomes incapable of being satisfied, within 2 Business Days that party shall in writing notify the other.
- 18.2 At any time on or before its date for its satisfaction, the Vendor may in writing given to the Purchaser waive in whole or in part all or any of the Conditions Precedent except that in Special Condition 15.5 (deposit of the Deposited Plan). A waiver may be conditional.
- 18.3 If a Condition Precedent is not satisfied or waived on time, a party not in default in using their best reasonable endeavours to fulfil each Condition Precedent may determine the sale of such of the Land as not yet settled by written notice to that effect given to the other party.
19. **Statutory compliance:** Without derogating from General Condition clause 18 (consents), for the purpose of *Real Property Act 1886* s. 223LB(4), the transfer of any Stage pursuant to this Agreement will not have effect until the deposit of the Deposited Plan.
20. **Risk:** A Stage is at the risk of the Vendor until settlement of the sale of that Stage, and from settlement that Stage is at the risk of the Purchaser.
21. **No caveat:** The Purchaser shall not lodge nor allow any person claiming through it or acting on its behalf to lodge under the *Real Property Act 1886* a caveat (absolute or permissive) to protect the interest of the Purchaser in connection with this Agreement or any Stage.
22. **Insolvency of the Purchaser:** If before settlement of the sale of a Stage an Insolvency Event occurs, the Purchaser is in default under this Agreement.
23. **Readiness to perform:** The Purchaser is in default under this Agreement if at any time the Vendor in writing so requires (not before 30 June 2014 or within 20 Business Days after the last certificate given under this Special Condition), within 10 Business Days the Purchaser fails to give the Vendor a certificate which:
- 23.1 is in writing, addressed to the Vendor, dated and signed by a then director of the Purchaser; and
- 23.2 states that after diligent enquiry there are reasonable grounds to believe, and that the then directors of the Purchaser do so believe, that:
- 23.2.1 the Purchaser will be able to pay its debts as and when they become due and payable;
- 23.2.2 if settlement of the sale of Stage 1 has not yet occurred, that at settlement of Stage 1 the Purchaser will be able to pay the balance of the Purchase Price of Stage 1 to the Vendor;

- 23.2.3 if settlement of the sale of Stage 1 has occurred but settlement of the sale of Stage 2 has not yet occurred, that at settlement of the sale of Stage 2 the Purchaser will be able to pay the Purchase Price of Stage 2 to the Vendor;
- 23.2.4 if settlement of the sales of Stage 1 and Stage 2 have occurred but settlement of the sale of Stage 3 has not yet occurred, that at settlement of the sale of Stage 3 the Purchaser will be able to pay the Purchase Price of Stage 3 to the Vendor; and
- 23.2.5 there are no circumstances existing or anticipated that would materially prevent the Purchaser at settlement granting the Purchaser Encumbrance over the Stage next to be purchased or thereafter observing and performing the Purchaser Encumbrance in respect of that Stage according to its terms.
24. **Unwinding this Agreement:** If the sale of any Land is determined before settlement:
- 24.1 and settlement of Stage 1 has not occurred, within 5 Business Days, the Deposit Holder (or failing the Deposit Holder, the Vendor) shall repay the Deposit paid and accrued but unpaid interest thereon to the Purchaser except that the Deposit paid and such interest shall be forfeited to the Vendor absolutely (despite any rule of law or equity to the contrary) if the Vendor determined the sale under General Condition clause 20 (default prior to settlement) or General Condition clause 21 (default at settlement);
- 24.2 otherwise neither party has further rights against the other in connection with this Agreement, except as Part 8 of these Special Conditions may allow or in respect of prior default under this Agreement.
25. **Default costs:** If:
- 25.1 the Purchaser defaults under this Agreement; and
- 25.2 the Vendor gives to the Purchaser notice of default under General Condition clause 20 (default prior to settlement) or notice of completion under General Condition clause 21 (default at settlement);
- the Purchaser shall pay the Vendor's reasonable costs in respect of that default and that notice. The default is not remedied until the Purchaser pays those costs.
26. **Purchaser Encumbrance:** At settlement of the sale of a Stage, the Purchaser shall grant to the Vendor an encumbrance over that Stage in the form of the Purchaser Encumbrance.
27. **Execution of the Purchaser Encumbrance:**
- 27.1 Not less than 10 Business Days before the Settlement Day of a Stage, or within such shorter period as the Purchaser may allow, the Vendor at its cost shall cause to be prepared and given to the Purchaser or the Purchaser's lawyer / conveyancer 2 copies of the Purchaser Encumbrance.
- 27.2 Within 3 Business Days after receipt of the above copies and before settlement, the Purchaser shall execute (without dating) and return those copies to the Vendor or the Vendor's lawyer / conveyancer.

- 27.3 Pending settlement, a Purchaser Encumbrance is subject to a condition that it is not effective unless and until settlement of the Stage concerned occurs under this Agreement.
- 27.4 The Purchaser authorises the Vendor (or its lawyers) to complete and / or amend the Purchaser Encumbrance by:
- 27.4.1 inserting the relevant title description for the Stage concerned and described in the Purchaser Encumbrance as "the Land";
- 27.4.2 inserting the Settlement Day of that Stage as the date of execution; and / or
- 27.4.3 making any amendments as may be necessary to register the Purchaser Encumbrance over that Stage under the *Real Property Act 1886*.
- 27.5 The Purchaser is liable for the costs of registering the Purchaser Encumbrance.
- 27.6 The Purchaser 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 Purchaser Encumbrance.
28. **Memorandum of transfer:** Without derogating from General Conditions clause 8 (settlement):
- 28.1 if the Purchaser so requests in writing, the Vendor shall release the memorandum of transfer of a Stage to the Purchaser's lawyer / conveyancer before settlement of the sale of that Stage for stamping only; and
- 28.2 before that settlement, that solicitor / conveyancer holds that memorandum of transfer on trust for the Vendor.

A memorandum of transfer of Stage 1 to the Purchaser is sufficient for the purposes of this Agreement if it refers to the Land as an allotment or allotments in the Deposited Plan.

#### PART 6 – SETTLEMENT

29. **Settlement:** Settlement of the sale of a Stage shall take place 10 Business Days after the satisfaction or waiver of all Conditions Precedent applicable to that Stage.
30. **Certificate/s of title:** If at the time for settlement of the sale of Stage 1 the certificate/s of title to Stage 1 has not then issued, settlement shall proceed if at that time the Vendor in writing authorises the Registrar-General to deliver the certificate/s to the Purchaser or its agent.
31. **Payment of the Purchase Price:** Without derogating from General Condition clause 7 (payments), the Vendor may require a Purchase Price (in case of Stage 1, less the Deposit paid) to be paid at settlement:
- 31.1 by a Bank Cheque in favour of the Vendor; or
- 31.2 by electronic funds transfer 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.
32. **Priority of registrations:** The instruments to be registered on the certificate of title to a Stage to give effect to the 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:

- 32.1 discharge of any Encumbrance then existing;
  - 32.2 memorandum of transfer of the Stage to the Purchaser;
  - 32.3 Purchaser Encumbrance;
  - 32.4 any mortgage, encumbrance (other than the Purchaser Encumbrance), lease or other estate or interest in any of the Stage granted by the Purchaser.
33. **Notice of sale:** As soon as practicable after settlement of the sale of a Stage, the Purchaser shall notify government and suppliers of utilities of the sale of that Stage.
34. **Marketing:** After settlement of the sale of a Stage, the Purchaser shall actively and diligently market for sale a reasonable number of proposed residential allotments within that Stage, and upon written request by the Vendor periodically report on those marketing activities.

#### PART 7 – POST-SETTLEMENT

35. **Stage 1 roadwork:** Both before and after settlement of the sale of Stage 1, the Vendor shall at its expense take reasonable steps to obtain a licence for the Purchaser to at some future time construct a public road along such of the property comprised in Crown Record Volume 5454 Folio 382 as abuts any of Stage 1, which licence is upon terms and conditions satisfactory to these parties acting reasonably.

#### PART 8 – FIRST RIGHTS OF REFUSAL

36. **Grant of first rights of refusal:**
- 36.1 If and only if:
    - 36.1.1 settlement of the sale of Stage 1 under this Agreement remains pending or has occurred; and
    - 36.1.2 settlement of the sale of Stage 2 under this Agreement does not occur by reason only of the non-satisfaction of Special Condition 16.3 (Substantial Commencement of Dwellings);

then pending the closing of the Stage 2 Window, the Vendor shall not:

    - 36.1.3 allow any Encumbrance to be registered over any of Stage 2 that would not be wholly discharged before any purchase of that land by the Purchaser upon acceptance of an offer under Special Condition 38; or
    - 36.1.4 transfer any of Stage 2 to a third party except after having given the Purchaser an offer under Special Condition 38.
  - 36.2 If and only if:
    - 36.2.1 settlement of the sale of Stage 1 under this Agreement remains pending or has occurred; and
    - 36.2.2 settlement of the sale of Stage 2 (whether under this Agreement, or as the result of the Purchaser's acceptance of an offer made by the Vendor under Special Conditions 36.1 and 38) remains pending or has occurred; and

36.2.3 settlement of the sale of Stage 3 under this Agreement does not occur by reason only of the non-satisfaction of Special Condition 17.3 (Substantial Commencement of Dwellings);

then pending the closing of the Stage 3 Window, the Vendor shall not:

36.2.4 allow any Encumbrance to be registered over any of Stage 3 that would not be wholly discharged before any purchase of that land by the Purchaser upon acceptance of an offer under Special Condition 38; or

36.2.5 transfer any of Stage 3 to a third party except after having given the Purchaser an offer under Special Condition 38.

37. **About the first rights of refusal:** To avoid doubt, the right to one or more offers under Special Conditions 36 and 38:

37.1 is personal to the original Purchaser and may be enjoyed only by the original Purchaser (or if the Vendor gave written consent to each successive assignment pursuant to the provisions of this Agreement) by a successor of the original Purchaser;

37.2 is a personal right resting only in contract, not a right *in rem*, and does not entitle the Purchaser to lodge a caveat over any land;

37.3 does not prevent the Vendor from agreeing to transfer any land to a third party conditional upon the Purchaser not accepting an offer for that land under Special Condition 38.

38. **About an offer:** To be valid, an offer Special Condition 36 requires shall be:

38.1 in case of land in Stage 2, given no earlier than the opening of the Stage 2 Window, and in case of land in Stage 3, given no earlier than the opening of the Stage 3 Window;

38.2 in writing signed by or for the Vendor;

38.3 if not for the whole of land in a Stage then remaining, accompanied by a scaled map of the portion of land in the Stage the subject of the offer;

38.4 accompanied by a written valuation of the fair market value of the land the subject of the offer, which valuation:

38.4.1 was prepared by a valuer 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) Inc. (or successor organisation);

38.4.2 is dated no earlier than 20 Business Days before the making of the offer;

38.4.3 takes account of all the obligations to the Vendor that would be assumed by a purchaser of the subject land, such as the Purchaser Encumbrance;

38.5 an offer to sell the land the subject of the offer at a price not exceeding the fair market value stated in the above valuation;

38.6 be accompanied by 2 originals of a sale contract, signed by the Vendor, that sets out all other terms and conditions of sale the Vendor proposes;

38.7 otherwise on terms and conditions no less favourable to the Purchaser than those the Vendor intends to offer to or accept from a third party, should the Purchaser not accept this offer.

**39. About acceptance of an offer:**

- 39.1 An acceptance of an offer under Special Condition 38 is only valid if:
- 39.1.1 a Termination Event has not occurred;
  - 39.1.2 within 40 Business Days after the Purchaser receives the offer (as to which time is of the essence), the Purchaser:
    - (a) signs and returns to the Vendor (or the Vendor's agent or lawyers) 1 original of that sale contract; and
    - (b) tenders payment to the Vendor of any deposit the sale contract requires.
- 39.2 If the Purchaser is more than one person, any of them may accept the offer.
- 39.3 If the Purchaser accepts the offer, a contract forms the sale and purchase of the land the subject of the offer on the terms and conditions set out in the sale contract submitted or as the parties may otherwise agree in writing.
- 39.4 If the Purchaser does not accept the offer:
- 39.4.1 the Vendor may transfer the land the subject of the offer to a third party on terms and conditions not more favourable to the transferee than those in the offer;
  - 39.4.2 and the Vendor proposes to agree to transfer the land the subject of the offer on terms and conditions taken as a whole materially more favourable to the transferee than those in the offer and a Termination Event has not then occurred, the Vendor shall first re-offer that land to the Purchaser under Special Condition 38.

**PART 9 – LOCAL GOVERNMENT MATTERS**

40. **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.
41. **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*.
42. **Vendor as a regulator:** The Vendor enters into this Agreement in its commercial capacity as an owner of 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.
43. **Exercise of the Vendor's powers:** The 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 – OTHER**

44. **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 Agreement, then (unless this Agreement expressly states that the consideration includes GST) the consideration payable by the Recipient to the Provider for that taxable supply shall be increased by an amount equal to the amount of the GST in respect of that taxable supply, and the additional amount paid at the same time as when the consideration for the relevant taxable supply is required to be paid by the Recipient, provided that the Provider first gives a tax invoice for the taxable supply to the Recipient.
45. **Resolving disputes:** Pending completion of the procedure set out in this Special Condition, and subject to this Special Condition, a dispute (whether under common law, equity or statute) in connection with this Agreement shall not be the subject of legal proceedings:
- 45.1 first, the party raising the dispute shall notify promptly the other:
- 45.1.1 the nature of the dispute, giving reasonable details; and
- 45.1.2 what action (if any) the party giving notice thinks will resolve the dispute;
- but a failure to give such notice does not entitle the other party to damages or give a right to determine a sale under this Agreement;
- 45.2 next, a party who complies with the previous step may at the same time notify the other that the first party requires a meeting at a mutually convenient location in the Adelaide metropolitan area within 10 Business Days – in that case, each party shall send to the meeting an agent with authority to resolve the dispute and at the meeting make a good faith attempt to resolve the dispute.

This clause does not prejudice the right of a party to seek injunctive relief to prevent immediate and irreparable harm nor to determine a sale under this Agreement where the basis for doing so is not in dispute.

**PART 11 – ABOUT THIS AGREEMENT**

46. **Nomination by Purchaser:** If this Agreement states that the Purchaser now named in the Schedule enters into this Agreement for itself and / or nominee, the Purchaser now named may not later than 10 Business Days before settlement of Stage 1 by written notice given to the Vendor nominate another person as purchaser of under this Agreement but remains liable (as a principal) to the Vendor for the observance and performance of a purchaser's obligations under this Agreement.
47. **Assignment by Purchaser:**
- 47.1 Except with the Vendor's prior written consent (not to be unreasonably withheld or delayed, but which may be conditional), the Purchaser or the Purchaser's nominee shall not assign or declare any trust in respect of their benefits or obligations under this Agreement. Any attempted assignment or declaration of trust by the Purchaser or the Purchaser's nominee otherwise is void at the Vendor's election. To avoid doubt, an assignment with the Vendor's consent does not thereby release the assignor from existing or future obligations under this Agreement.
- 47.2 The Vendor's consent under this Special Condition shall be requested in writing and 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.

- 47.3 It is not unreasonable for the Vendor to withhold consent under this Special Condition if and so long as the Vendor has not been given credible evidence the proposed assignee:
- 47.3.1 is reputable;
  - 47.3.2 is likely to be able to meet the financial obligations of a purchaser and developer of land the sale of which under this Agreement has not yet settled or land as may become the subject of an offer under Special Condition 38;
  - 47.3.3 has property development skills and experience at least equal to those of the original Purchaser.
- 47.4 For these purposes, without limiting the usual meaning of assignment, the Purchaser **assigns** this Agreement if:
- 47.4.1 the Purchaser disposes in favour of a third party any of their legal or beneficial interest in this Agreement; or
  - 47.4.2 there is at any time a change of control as applied to the Purchaser, where **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, the Purchaser at the date of this Agreement (or the date a successor becomes bound by this Agreement, if not the original Purchaser) subsequently ceases or together cease, to control the Purchaser; or
    - (b) if any person acquires, or any number of persons together acquire, control of the Purchaser.
- 47.5 In support of the above, the Purchaser warrants:
- 47.5.1 the names of all persons who now control the Purchaser were disclosed in writing to the Vendor in the 5 Business Days before the date of the Old Contract;
  - 47.5.2 if any information warranted under the immediately above paragraph should change after the date of this Agreement, within 5 Business Days after the change the Purchaser shall notify the Vendor of the particulars of the change.
48. **Entire contract:** This Agreement records the entire contract between the parties as to its subject, and:
- 48.1 this Agreement is effective and binding on the parties on execution;
  - 48.2 this Agreement supersedes any prior contract or obligation between the parties about its subject and is effective to release absolutely each party from all claims (in common law, equity or under statute) the other party might otherwise have in connection with that prior contract or obligation; and

- 48.3 at the date of this Agreement, there is no contract between the parties collateral to this Agreement.
49. **Amendment:** This Agreement can be amended only by written agreement of the parties.
50. **Notices:**
- 50.1 To be effective, a notice from a party in connection with this Agreement shall be in writing, signed by the party or their agent, in case of a notice to the Vendor marked "Attention: City Manager" and in case of a notice to the Purchaser marked "Attention: The Directors", and given to the recipient either by hand delivery, registered mail to the recipient's address stated in this Agreement or as last notified, fax to the recipient's fax number stated in this Agreement or as last notified, or by email to the recipient's email address stated in this Agreement or as last notified.
- 50.2 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.
- 50.3 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.
- 50.4 Notice by email is received when taken to be received under the *Electronic Transactions Act 2000* (S.A.).
51. **Time:** Time is of the essence of any date or period stated in this Agreement.
52. **Governing law:** The laws in South Australia govern this Agreement. The courts of South Australia or the Federal Court of Australia (Adelaide Registry) have exclusive jurisdiction in connection with this Agreement.
53. **Waiver:** A party waives a right under this Agreement only by written notice that it waives that right.
54. **Costs:**
- 54.1 The Purchaser shall pay 50% of the Vendor's legal costs (inclusive of GST) in the negotiation and preparation of this Agreement. Despite such contribution, the Vendor's lawyers do not owe a duty of care to the Purchaser in connection with this Agreement.
- 54.2 Otherwise, a party bears its own costs in relation to the negotiation, preparation and execution of this Agreement and any further document required.
55. **Further acts:** The parties shall do all things reasonably required to facilitate the performance of the transactions contemplated by this Agreement.
56. **Publicity:** The parties jointly are to control all publicity from either party about the making of this Agreement.
57. **Legal relationship:** The legal relationship between the parties constituted by this Agreement is that of vendor and purchaser of 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.

58. **Execution:** 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.

**ANNEXURE C – MEMORANDUM OF ENCUMBRANCE**

Form M2  
Guidance Notes  
available

## MEMORANDUM OF ENCUMBRANCE

<b>CERTIFICATE(S) OF TITLE BEING ENCUMBERED</b>	
Title Volume 6015 Folio 534	of Deposited Plan being portion of the land contained in Certificate of
<b>ESTATE AND INTEREST</b>	
In fee simple	
<b>ENCUMBRANCES</b>	
<b>ENCUMBRANCER</b> (Full name and address)	
<b>ENCUMBRANCEE</b> (Full name, address and mode of holding) PORT AUGUSTA CITY COUNCIL ABN 73 625 993 182 of 4 Mackay Street, Port Augusta SA 5700	
<b>OPERATIVE CLAUSE</b>	
	THE ENCUMBRANCER ENCUMBERS THE ESTATE AND INTEREST IN THE LAND ABOVE DESCRIBED 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
(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 THE ENCUMBRANCEE Annually as a yearly rent charge for a term of 100 years from the date of this instrument.
(c) State the times appointed for payment of the annuity or rent charge. Any special covenants may be inserted on page 2.	(c) AT THE TIMES AND IN THE MANNER FOLLOWING On 30 June immediately following the grant of the instrument and each succeeding 30 June during the term of this instrument, together with observance of the rest of the covenants contained in this instrument.

**COVENANTS**

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IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE as follows:

**PART 1 - PRELIMINARY**

1. **Definitions:** In this instrument:

**Allotment** means a Torrens title allotment in the Development Zone.

**Building Work** has its meaning in *Development Act 1993*.

**Business Day** means a day other than:

- (a) a Saturday, Sunday;
- (b) a day which is a public holiday in South Australia (within the meaning of the *Holidays Act 1910*); or
- (c) a day that falls between Christmas and New Year's Day.

**Commercial Land** means at any time such of the Land as not Residential Land.

**Council** means the party described as encumbrancee on page 1 of this instrument and includes its successors and assigns.

**Design Principles** mean at any time the following principles, as may be amended from time to time and published by the Council in respect to the common building scheme that has been or will be adopted and implemented within the Development Zone:

- (a) when on-selling the Land, ensure the sale contract advises that the Port Augusta Airport is located adjacent to the western boundary of the suburb;
- (b) (if applicable) provide a landscaped buffer of compacted soil of at least 20 metres width and at least 1.5 metres high to the east boundary of the Haul Road Corridor shown on the Master Plan;
- (c) (if applicable) ensure that any Dwelling to be constructed within 100 metres of the east boundary of the Haul Road Corridor shown on the Master Plan has noise attenuation measures;
- (d) ensure that new public roads thereafter constructed upon the Land assume full development of the Development Zone over time and take into account the location and capacity of public roads adjacent to the Development Zone as then existing, including if the Council so requires construction of:
  - (i) a major collector road along the alignment of Shirley Street from the Development Zone to Addison Road, with work starting no later than 12 months after total 500 Residential Allotments within the Development Zone have been created and first sold, and thereafter diligently completed;
  - (i) construction of an intersection of Shirley Street and Addison Road;
  - (ii) construction of an intersection of Addison Road and Caroon Road;
  - (iii) construction of Kittel Street;
- (e) upon the traffic use of Caroon Road reaching capacity (as assessed by the Council), a once-only funding contribution towards the staged upgrade of Caroon Road proportional to

the Development Zone's generation of traffic relative to total road usage over and above the road's capacity (as assessed by the Council);

- (f) ensure that any public road created and likely to be used regularly and extensively by commercial vehicles has a minimum road reserve width of 20m;
- (g) ensure that any other public road created (excluding rear laneways and local places serving no more than 6 Dwellings) has a minimum road reserve width of 15m;
- (h) ensure that any new road pavement created has a minimum width of 7.4m;
- (i) ensure that any new rear access lane road reserve created has a minimum width of 6.5m;
- (j) ensure that any new rear access road pavement created has a minimum width of 6m;
- (k) provide sealed footpaths of a minimum width of 1.2m to both sides of all collector roads, and to at least 1 side of all local roads;
- (l) ensure that new infrastructure for stormwater, potable water, recycled water, sewage, electricity, gas or telecommunications is underground, located in common services trenches under public road verges, assumes full development of the Development Zone over time and takes into account relevant infrastructure on properties adjacent to the Development Zone as then existing;
- (m) ensure poles for new public street lighting are of aluminium construction;
- (n) ensure that, insofar as practicable, stormwater falling within or traversing the Development Zone is harvested for use by residents (via an installed purple pipe system) and for use by the Council on open space – to the extent not captured, ensure any stormwater runoff from the Development Zone is of a quality and flow not exceeding the then current rural standard and flow rates;
- (o) provide landscaping to all public reserves created, and / or in other selected locations within the Development Zone;
- (p) provide a sealed pedestrian / cycle network with a minimum width of 1.5 metres which traverses the open space system and links key education, community and commercial facilities;
- (q) provide for surface stormwater drainage and retention basins within the public reserves;
- (r) provide street planting, comprising a minimum of 1 tree per Allotment frontage.

**Development Zone** means that portion of the land formerly comprised in Certificate of Title Volume 6015 Folio 534 delineated in the Master Plan.

**Dwelling** means a building upon land within the Development Zone used as a self-contained residence, and which:

- (a) is a permanent structure i.e., permanently affixed to the land, and none of which is of a portable or transportable nature;
- (b) has a living area (excluding carports, garages, verandahs, porticos, pergolas, balconies and outbuildings) of not less than 90m<sup>2</sup>.

Note: When counting Dwellings for the purposes of this instrument, count as only one Dwelling: (a) all residences within a retirement village (within the meaning of the *Retirement Villages Act 1987*); (b) all residences in a community title scheme (within the meaning of the *Community Titles Act 1996*) insofar as contained in the same building envelope.



**Land** means the land described on page 1 of this instrument, and includes any part of that land and any improvements at the time upon it.

**Owner** means the party described as encumbrancer on page 1 of this instrument and includes its successors in title, permitted assigns and the registered proprietor for the time being of an estate in fee simple of the Land. If at any time there is more than one Owner, references to the Owner mean each of them jointly and severally.

**Master Plan** means at any time a plan providing for the integrated development of the Development Zone as last published by the Council on the website <http://www.portaugusta.sa.gov.au> or replacement website as last notified by the Council. At the date of this instrument, it means the document a copy of which is in Annexure "A" to this instrument.

**Plan of Division** has its meaning in *Real Property Act 1886* Part 19AB.

**Practical Completion** means in respect of a Dwelling:

- (a) its construction is complete, ignoring any minor omissions and minor defects that will not prejudice the lawful use or occupation of the Dwelling; and
- (b) it has had issued a certificate of occupancy under *Development Act 1993* s. 67.

**Rent Charge** means the rent charge described on page 1 of this instrument.

**Residential Land** means at any time land within the Development Zone zoned for residential use under the development plan applicable to that land under the *Development Act 1993*.

**Substantial Commencement** or similar expression means in respect of a proposed Dwelling the lawful completion of:

- (a) all earthworks for that Dwelling; and
- (b) all concrete foundations and concrete footings necessary to support the proposed Dwelling.

Expressions defined elsewhere in this instrument have that meaning.

2. **Interpretation:** In this instrument: neuter includes masculine and feminine; singular includes plural and *vice versa*; reference to a person includes a body politic or corporate, a natural person and a partnership and *vice versa*; no rule of construction applies to the disadvantage of the Council because it put forward this instrument or any portion of it; another grammatical form of a defined word has a corresponding meaning; reference to legislation includes: (a) the legislation as amended; (b) any substituted legislation; and (c) any subordinate legislation under that legislation.
3. **Severance:** If a provision of this instrument would, but for this clause, be unenforceable:
  - 3.1 the provision must be read down to the extent necessary to avoid that result;
  - 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 instrument.

## PART 2 – CHARGE & RENT CHARGE

4. **Charge over the Land:** The Owner charges the Land as security for payment of the Rent Charge and the due performance and observance by the Owner of this instrument.

5. **Payment of the Rent Charge:** The Owner must pay the Rent Charge to the Council:
- 5.1 during the term of this instrument; and
  - 5.2 on 30 June immediately following the grant of this instrument and on each succeeding 30 June;
  - 5.3 if payment is demanded by the Council – the Council may not demand payment of the Rent Charge so long as the Owner duly observes and performs all the other covenants in this instrument.

This clause does not affect or prejudice any remedy the Council might otherwise have for breach by the Owner of this instrument.

#### PART 3 – DIVISION OF THE LAND

6. **Prohibition against subdivision:** Except insofar as the Master Plan may specifically allow in respect of the Land, the Owner must not allow the Land to be divided by a Plan of Division as to create any additional Allotment, ignoring any plan of community division under *Community Titles Act 1996* or a strata plan under *Strata Titles Act 1988*.

#### PART 4 – DEVELOPMENT & USE OF THE LAND

7. **Development:** If the Land is or includes Commercial Land, the Owner must not allow any Building Work upon the Land or other development of the Land other than in accordance with the Design Principles.
8. **Prohibition as to a Supermarket:** Pending the Supermarket Date, if the Land is or includes Commercial Land, the Owner must not allow that Commercial Land to be developed, used or occupied as a Supermarket - for which purpose:

**Supermarket** means a permanent building or buildings upon the Land comprising or including a supermarket, which supermarket has a floor area that exceeds 250m<sup>2</sup> (where **floor area** is calculated as for a shop in section 4(1) of the *Shop Trading Hours Act 1997* as in force on 31 December 2012).

**Supermarket Date** means the date at least total 1,000 Dwellings upon the Development Zone have achieved Substantial Commencement on an equal number of Allotments.

9. **Construction of a Dwelling upon Buildable Residential Land:** If at any time the Land is or includes Buildable Residential Land, the Owner must not allow:
- 9.1 Substantial Commencement of the construction of a Dwelling upon that Buildable Residential Land to be delayed beyond 12 calendar months after the Relevant Date; or
  - 9.2 Practical Completion of a Dwelling upon that Buildable Residential Land to be delayed beyond 24 calendar months after the Relevant Date.

For this purpose:

**Buildable Residential Land** means such of the Land as is:

- (a) Residential Land; and
- (b) the whole of the land comprised in an Allotment, which Allotment is of an area (measured by reference to its certificate of title) not exceeding 900m<sup>2</sup>.

**Relevant Date** means the earlier of:

- (a) the date the Residential Land was transferred to the Owner; or
- (b) the 3<sup>rd</sup> anniversary of the date the relevant Allotment became Buildable Residential Land.

10. **General prohibitions:** The Owner must not allow:

- 10.1 the Land to be developed, used or occupied in contravention of any laws relating to planning, zoning or heritage from time to time in force, or in contravention of any conditions of any relevant approval under *Development Act 1993* in respect of the Land;
- 10.2 improvements on the Land to be other than in good repair and presentable condition;
- 10.3 native vegetation upon the Land to be unduly removed or interfered with;
- 10.4 rubbish or weeds to accumulate on the Land; or
- 10.5 a fire hazard or a hazard to public health on the Land.

11. **Particular prohibited uses:** If the Land is or includes Residential Land, the Owner must not allow:

- 11.1 a transportable building to be upon that Residential Land (ignoring any worker's hut during Building Work upon the Residential Land);
- 11.2 a caravan, tent, shed or other shelter on the Residential Land to be occupied as a place of residence; or
- 11.3 any animals to be kept on the Residential Land except domesticated cats, dogs and birds kept under control at all times.

**PART 5 – CHANGE IN OWNERS**

12. **Notice to the Council of a proposed transfer:**

- 12.1 Except where clause 12.2 applies, the Owner must not agree to transfer, or transfer, the Land except after having notified the Council of that fact.
- 12.2 For clause 12.1, ignore any transfer:
  - 12.2.1 not to be effective until after clause 32 entitles the Land to be discharged from this instrument;
  - 12.2.2 from one person comprising the Owner to another person at the time also comprising the Owner; or
  - 12.2.3 upon the Owner's death, to a person entitled to the Land under the will or intestacy of the Owner.

13. **Notice to the Council of a change in Owner/s:** If an Owner ceases to be a registered proprietor of the Land, the former Owner must notify the name and address of any new Owner to the Council. Upon the Council's receipt of that notice, the former Owner ceases to be liable to pay the Rent Charge and to observe and perform the covenants in this instrument, but without prejudice to the rights of the Council under this instrument against any former registered proprietor in relation to a breach of this instrument which occurred either before the transfer or by reason of the transfer.

14. **Lift & replace:** Without detracting in any way from this instrument being binding on the successors of the Owner, the Owner must not transfer the Land to any third party not at the time already an Owner unless the Owner at their cost first procures the grant by that transferee of an encumbrance:
- 14.1 in the same form and to the same effect as this instrument;
  - 14.2 binding that transferee;
  - 14.3 for the benefit of the Council and for the benefit of every other Allotment and the owners at any time of such Allotments, within the Development Zone; and
  - 14.4 registered on the certificate of title of the Land immediately after the discharge of this instrument and the transfer of the Land to that transferee and before any mortgage, lease or other estate or interest granted by the Owner or that transferee.

#### PART 6 – COMMON BUILDING SCHEME

15. **Common building scheme:** The Owner acknowledges for itself and their successors in title that:
- 15.1 the covenants in this instrument are entered into and undertaken for the purpose of putting into effect the Master Plan and the Design Principles;
  - 15.2 prior to the grant of this instrument, the Owner received the Master Plan annexed to this instrument and was informed of the Design Principles;
  - 15.3 this instrument is imposed as part of a common building scheme for the regulation of development of land within the Development Zone;
  - 15.4 the covenants of this instrument will run with and bind the Land, and also bind anyone who owns the Land after the Owner;
  - 15.5 the covenants of this instrument are for the benefit of the Council and for the benefit of every other Allotment, and the owners at any time of such Allotments, within the Development Zone;
  - 15.6 while the Council has indicated it will likely require each purchaser of land in the Development Zone, as a condition of its purchase, to execute a memorandum of encumbrance (**Other Encumbrances**) for the purpose of putting into effect the Master Plan and the Design Principles, the Council:
    - 15.6.1 does not warrant or represent that the Other Encumbrances will be similar to this instrument or enforceable by either the Council or the Owner or any other owner of land within the Development Zone;
    - 15.6.2 is not obliged to enforce any Other Encumbrance.
16. **Master Plan and Design Principles:**
- 16.1 At any time, after such consultation with the owners for the time being of any Commercial Land within the Development Zone as the Council thinks appropriate, the Council may amend the Master Plan and / or any Design Principles.
  - 16.2 The Council will notify the Owner of any amendment to the Master Plan and / or any Design Principles made at any time after the grant of this instrument by publishing any variation on the website <http://www.portaugusta.sa.gov.au> or replacement website as last notified by the Council.

- 16.3 Any amendment to the Master Plan and / or any Design Principles made at any time after the grant of this instrument and published on that above website (or otherwise notified to the Owner) will bind the Owner.

#### **PART 7 – BUY BACK OPTION**

17. **Grant of an Option to purchase:** The Owner grants an option to purchase the Land to the Council (or nominee) (the *Option*).
18. **Exercise of the Option:**
- 18.1 The Option is exercisable only if either:
- 18.1.1 the Owner attempts to breach, or does breach, clause 6, 7 or 8;
  - 18.1.2 the Land is or includes Buildable Residential Land and clause 9.1 is breached;  
or
  - 18.1.3 the Land is or includes Buildable Residential Land and clause 9.2 is breached.
- 18.2 The Option may be exercised more than once until exercised over the whole of the Land.
19. **Exercise of the Option:** To be effective, an exercise of the option must:
- 19.1 be in writing signed by or for the Council (or nominee);
  - 19.2 if not for the whole of the Land, be accompanied by a scaled map of the portion of the Land for which the Option is exercised;
  - 19.3 be accompanied by a written valuation of the fair market value of the Land (before any GST) for which the Option is exercised, which valuation:
    - 19.3.1 was prepared by a valuer 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) Inc. (or successor organisation);
    - 19.3.2 is dated no earlier than 10 Business Days before the exercise of the Option;
    - 19.3.3 takes account of all the obligations to the Council that would be assumed by a purchaser of the subject land;
  - 19.4 state a purchase price, being an amount not less than 90% of the fair market value of the subject land as stated in the above valuation; and
  - 19.5 be sent to the Owner:
    - 19.5.1 where clause 18.1.1 operates, within 40 Business Days after the Council has actual knowledge of the attempted breach, or breach;
    - 19.5.2 where clause 18.1.2 operates, before Substantial Commencement of a Dwelling upon the Buildable Residential Land;
    - 19.5.3 where clause 18.1.3 operates, before Practical Completion of a Dwelling upon the Buildable Residential Land.

20. **Sale contract on exercise of the Option:** If the Option is exercised, a contract forms for the sale of the subject Land by Owner to the Council (or nominee) on these following terms:
- 20.1 the purchase price (before any GST) is as stated in the notice exercising the option;
  - 20.2 the whole of the purchase price is payable by the purchaser to the Owner on settlement;
  - 20.3 at settlement, the Owner must give vacant possession of the Land and cause the Land to be discharged from any mortgage, lease or other estate or interest granted by the Owner or their predecessor in title (excepting any granted by the Council as prior owner of the subject land or this instrument);
  - 20.4 if the subject land is not the whole of land comprised in an Allotment, the sale is conditional upon the purchaser at its cost (but with free co-operation of the Owner) causing a Plan of Division as to create a separate Allotment for the subject land to be deposited in the Lands Titles Registration Office by the Registrar-General within 60 Business Days after exercise of the Option;
  - 20.5 settlement must occur on the later of:
    - 20.5.1 the date 20 Business Days after the Option is exercised; or
    - 20.5.2 if clause 20.4 operates, 10 Business Days after the deposit of the Plan of Division as creates the subject land as a separate Allotment;
  - 20.6 the Owner must properly execute, and no later than settlement deliver up, a memorandum of transfer and all other relevant documentation as submitted to the Owner by the purchaser at least 5 Business Days before settlement for the purpose of giving effect to the transfer;
  - 20.7 rates, taxes and all other outgoings relating to the Land will be adjusted to the date of settlement;
  - 20.8 the purchaser bears stamp duty and registration costs on the transfer;
  - 20.9 otherwise, the terms and conditions of the form of sale of land contract at the time last published by The Law Society of South Australia Inc.

#### PART 8 – ABOUT THE COUNCIL

21. **The Council as a regulator:**
- 21.1 The Council takes the benefit of this instrument in its commercial capacity as promoter of a common building scheme for the Development Zone, and not in any other capacity.
  - 21.2 This instrument does not fetter or evidence the exercise of any regulatory function or power the Council has now or in the future, including any under the *Development Act 1993*, and:
    - 21.2.1 where for the purposes of this instrument the Council takes any action or declines to take in action, it does so in its commercial capacity and not as a regulator under any law;
    - 21.2.2 when the Council exercises a regulatory function or power, the Council will be taken to be a third party to this instrument.

22. **Access for the Council:** Upon reasonable notice to an occupier of the Land (at least 1 business day), the Owner must not fail to allow the Council and its agents to at any time enter upon the Land to inspect the Land for compliance with this instrument.
23. **Waivers & releases by the Council:** At any time, without liability to the Owner, the Council may modify, waive or release any covenant/s of:
- 23.1 this instrument (including the Master Plan and / or any Design Principles); and / or
- 23.2 any Other Encumbrance (regardless of whether the relevant instrument was entered into or imposed before, at the same time as, or after the date of this instrument) – and any such modification, waiver or release is not effective to release the Owner or their successors in title from the covenants of this instrument.
- A modification, waiver or release is only effective if in writing given by the Council or its agent. A modification, waiver or release is limited to the specific instance to which it relates and the specific purpose for which it is given.
24. **Assignment:** Without consent of the Owner, the Council and any successor of the Council may transfer or assign its rights under this instrument to a third party.
25. **Power of attorney to the Council:**
- 25.1 The Owner irrevocably appoints the Council as their attorney.
- 25.2 If, and only if, the Owner is in default under this instrument, as attorney the Council may in its name and / or in the name of the Owner:
- 25.2.1 do anything the Council thinks expedient for securing or perfecting the security created by this instrument;
- 25.2.2 sign, execute and / or deliver any documents the Owner is required to sign, execute and / or deliver under clause 0.
- 25.3 At any time, the Council may register this power of attorney at the General Registry Office.
- 25.4 A person dealing with the Council need not enquire as to the valid exercise by the Council of the power of attorney granted by this clause.
26. **Default remedies of the Council:** The Council has:
- 26.1 all powers, rights and remedies given to encumbrancees at common law, in equity, under the *Real Property Act 1886*, the *Law of Property Act 1936* and any other legislation; and
- 26.2 the right to an injunction or to damages in respect of a breach of any covenant by the Owner (or a previous Owner).

Upon a sale of the Land by the Council as encumbrancee, it may be a condition of sale that the purchaser purchases the Land subject to an instrument in the same, or substantially the same, terms as this instrument.

Nothing elsewhere in this instrument prejudices the powers, rights and remedies referred to in this clause.

**PART 9 – ABOUT THIS INSTRUMENT**

27. **Time of essence:** Time is of the essence as relates to covenants of the Owner in this instrument.
28. **Legislation:** The provisions of the *Law of Property Act 1936* and the *Real Property Act 1886* relating to encumbrances apply to this instrument.
29. **Authority to complete:** The Owner irrevocably authorises the Council and the Council's lawyers to:
- 29.1 insert any details necessary to complete this instrument; and / or
- 29.2 make any amendments necessary to register this instrument under the *Real Property Act 1886*.
- Insofar as the Owner is able, the Owner must comply promptly with any requisitions that may be made by the Lands Titles Registration Office in relation to this instrument.
30. **Registration:** A failure to register this instrument at all, or within any time or with any priority, does not affect the obligations of the Owner.
31. **Unilateral discharge by the Council:** Despite any other provision of this instrument, at any time and for any reason, the Council may discharge this instrument from the certificate of title to the Land.
32. **Discharge of this instrument:** The rights and obligations of the Council and other owners of any property in the Development Zone arising under the common building scheme created by this instrument all cease and the Owner is entitled to discharge of this instrument:
- 32.1 if the whole of the Land is or becomes Commercial Land - on the date at least total 1,000 Dwellings upon the Development Zone have achieved Substantial Commencement on an equal number of Allotments;
- 32.2 if the whole of the Land is or becomes Buildable Residential Land upon which a Dwelling has achieved Practical Completion - on that date.
33. **Mortgagee's rights and obligations:**
- 33.1 If the Owner defaults under any mortgage of the Land registered under the *Real Property Act 1886*, the mortgagee in the exercise of a power of sale must not sell or transfer the Land to a third party except subject to this instrument and procuring from the incoming purchaser or transferee a replacement encumbrance to the Council on the same terms as this instrument, which replacement encumbrance is registered on the title for the Land immediately after the transfer of the Land to the incoming purchaser or transferee, and before any other interest in the land is created or registered.
- 33.2 Apart from clause 33.1, nothing in this instrument is to be construed as in any way affecting the rights of a registered mortgagee of the Land to exercise power of sale under the mortgage.
34. **Costs:** The Owner must pay to the Council on demand:
- 34.1 all costs (including legal costs) and expenses incurred by the Council in respect of any breach by the Owner of this instrument and any action taken by the Council to remedy or attempt to remedy the same;
- 34.2 any reasonable costs or expenses the Council may incur in the preparation, registration or discharge of this instrument.



35. **Notices from the Council:** To be effective, a notice from the Council in connection with this instrument must be in writing and may be given to the Owner:
- 35.1 by personal delivery;
  - 35.2 if a permanent building is upon the Land, by leaving it with an occupier of that building who appears to be at least 18 years of age;
  - 35.3 by registered post to the last known place of abode in South Australia of the Owner – notice by registered post is given 3 days after it is posted or (if earlier) at the time at which the letter would be delivered in the ordinary course of post; or
  - 35.4 in a manner applicable to the Owner under legislation.

If at any time the Owner is more than one person, notice to any of them is notice to all.

36. **Notices to the Council:** To be effective, a notice to the Council must be in writing, marked "Attention: City Manager" and given to the Council in a manner the *Local Government Act 1999* allows for service of notices to the Council as a council.

If at any time the Owner is more than one person, notice from any of them is notice from all.

### ANNEXURE A - MASTER PLAN



IT IS COVENANTED BETWEEN THE ENCUMBRANCER AND ENCUMBRANCEE in accordance with the terms and conditions expressed \*herein / in Memorandum No. \_\_\_\_\_ subject to such exclusions and amendments specified herein.

\* Delete the inapplicable

DATED .....

EXECUTED by )  
BOWHILL PROPERTIES PTY LTD )  
in accordance with Section 127(1) of the )  
Corporations Act by the authority of its director: )

.....  
Director

.....  
Director/Company Secretary

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.

**BELOW THIS LINE FOR AGENT USE ONLY**

CERTIFIED CORRECT FOR THE PURPOSES OF THE REAL PROPERTY ACT 1886  <hr style="width: 20%; margin: auto;"/> Solicitor/Registered Conveyancer/Encumbrancee
--

AGENT CODE

Lodged by: WALLMANS LAWYERS  
Level 5, 400 King William Street  
ADELAIDE SA 5000

Correction to: WALLMANS LAWYERS                      WALL

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
REGISTERED  REGISTRAR-GENERAL	

**APPENDIX 3****Monday 24 March 2014**

Hi Greg

Further to the above reasoning as follows:

We all know the economy has taken an absolute pounding. The upper spencer gulf has lost many projects.

But the largest blow was Olympic Dam placing on hold the expansion.

This in turn placed projects such as desalination plants new Port facilities unloading docks and new Haul roads etc etc on hold.

Further, this has caused investors to pull out lose confidence, or place on hold belief in the region.

This said and done further time is required via a staged settlement to give this project the best chances of success in what can only be described as a challenging economic period.

1.....First and foremost approval to lodge the subdivision was only given to Alexander Symonds in the past fortnight.

Given past experience there is absolutely no way that plan of deposit will happen this side of Christmas and certainly not expected until at best early to mid next year .

This is an extremely large project 3000 homes etc, the subdivision has to gain clearance via DAC as the first step.

This entails going out for clearance by every agency again.

In the past stages 1 to 8, I have had to go over every aspect of the division to gain clearance for the first 100 acres.

Already I have had SA Water wanting further detailed information regarding future water usage requirements on the large section; they want detailed information as to what is going to be built on the site, so as to consider potential water upgrades.

Given the airport uses fuel this will trigger environmental studies again not a quick process.

Mains sewer requirements and Power are both expected to be questioned further prior to clearances given.

I am submitting the Port Augusta business Park 18 new allotments at the same time on the current plan of division, so as to cater for new business at the same time as housing sales.

Negotiations are continuing for Augusta developments to secure leasing tenancies for a new state of the art medical facility on the corner of Shirley Street and Kittle roads, to be funded and built by Augusta developments Pty Ltd, incorporating dentist radiology doctors etc. These both require time!

2.....Logistically this development has to be viable for all involved if we are serious of achieving the desired development outcomes.

To date to unroll this project in the most cost efficient, effective way without over supply, the first 100 acres was and continues to be the priority.

Not only is it the closest lot to housing but also the closest lot to bring in the infrastructure.

This provides the bitumen, water, power, telecommunications to the larger area.

This first stage assists in funding all of the above.

To date 238 allotments out of 317 have been sold within the first 100 acres, with the first 27 new homes due to start commencement within 6 weeks.

To enable supply to meet demand stages 3/4/5 need to be unrolled developed bitumised ASAP with the new Mains Sewer line requiring to be brought down for stages 6/7/8 in the second half of this year.

This relates in real terms to further investment via myself of around \$12 million dollars over the next 24 months.

This is all on track in fact we are moving into stage 3 within the next 4 weeks , and running extremely well , I am pleased with progress.

Timing is the critical factor to success!

As stated above correct planning and unrolling needs to be appreciated enormous monies are being spent.

Evidenced by new services on site new street lighting kerbing starting to be installed tomorrow.

I have currently spent / committed over \$2 million on water, power, telecommunication and bitumen in stages 1 & 2 alone , to have almost one kilometre of infrastructure brought to the site (corner of Shirley Street and Kittle roads ) this is both crucial and beneficial to moving into the large council area.

Mains sewer requires being brought down from the Westside golf course area to the junction of Kittle Street and Shirley roads.

No high density development can take place without this.

This is expected to cost in the vicinity of around a further \$1 million dollars.

My planners are currently designing this and I am expecting to start installing this around June / July, of this year.

I have had plans drawn for a 177 unit lifestyle village incorporating swimming pool tennis courts 2 x bowling greens and specialised club house facilities.

I am in the current phase of negotiating / finalising the commitment for this to be built to a group of experienced lifestyle village operators.

Their previous 2 lifestyle villages built, still under their current ownership over \$80 million dollars each.

Finalisation of the exact size required by the group may mean a modification to the existing plan of division.

This is a work in progress but any changes will only further delay the division process.

To enable this Lifestyle village to work, I must supply full DA, without this any valuation of the land with no historic sales evidence will mean; logistically the new group cannot make it work.

This requires time!

I have been working with this group to secure this multi million dollar development to date for over 6 months.

I am extremely close to finalisation.

This is not something I can rush as inevitably it will only cost this lucrative group to walk away.

Once again time is required.

To date I have invested multi millions of dollars, I wish to continue to invest tens of millions of dollars.

The economic benefits of having over 238 lots sold is massive to Port Augusta.

With keeping "where possible" all works local the local trades all benefit.

Rates will increase dramatically.

I know this land backwards and what is involved to make this a real development not just a land bank.

I am one of the only developers that has invested and believed in this project for over 6 years.

I have put my money where my mouth is but, I require council assistance regarding the timing of the large settlements to make this project viable.

I have offered additional interest on a per month basis until each individual section settles as a show of good faith.

I also expect that each stage may potentially come forward from the dates requested as the development unrolls.  
But the dates requested below are what is required to ensure this development proceeds in the most efficient manner:

Stage 1 July 1 2015  
Stage 2 July 1 2017  
Stage 3 July 1 2020

I look forward to your approval.

Kind Regards

Pat Cheetham  
Ph .....0412945644  
Augusta developments Pty Ltd  
[augustadevelopment@bigpond.com](mailto:augustadevelopment@bigpond.com)

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For the intended recipient only, if you have received this email in error please contact the above sender.

**Tuesday 25 March 2014**

Hi Greg

Summary in brief terms

First 100 acres 238 lots sold out of 317 (roads and infrastructure in this area, must take first priority to meet demand and tight time frames).

238 sold being house and land packages, the economic benefits (\$70 million) are too great not to place enormous priority on this area for completion first.

To put this in perspective 238 sold; if each house build is \$250,000 we are talking about investment into the first 238 lots of \$59,500,000 not to mention my own infrastructure costs of around \$15 million in total.

This is providing a \$70 million dollar economic benefit already secured.  
This area is effectively funding the infrastructure right to the larger area.  
\$12 million required over next 24 months invested into new roads and infrastructure to complete stages 3 to 8 first 100 acres (funded progressively via the revenue from the multi million dollar sales at present)  
With 79 lots still remaining to sell in stages 6/7/8 careful consideration must be given, to not over supplying (flooding the market)  
Having until 1/7/2015 is required to cement stages 1 to 8 in a good position so as to move priorities into the larger area.

The extension of Shirley street into the larger area, requires an agreement to be finalised via the crown for a section of land to be classified as roadway this requires time and certainly will be the aim to be finalised prior to the proposed sunset date 1/7/2015.

Telstra telecommunication lines run from this point right through to the airport.  
Servicing both the airport and Royal flying doctor service.  
This will require months of planning again to have an agreement reached to replace this as existing infrastructure cannot be used due to down time to crucial services.

Careful consideration of minimising holding costs whilst huge investment into stages 1 to 8 are completed (allowing to 1/7/2015 for the first settlement of the large area, will enable approvals for the next stages to be achieved prior to settlement , allowing the development to proceed immediately after settlement)



This will only be achieved through careful planning and strategic approvals being in place prior to commencement.

The fact that in any case subdivision approvals will not be achieved in my honest opinion until at best early to mid 2015 settlement cannot occur until the division has been deposited.

Retirement / Lifestyle village negotiations are ongoing and may require plan modification.

Priority is currently given to securing a new medical facility Business park and retirement village.

By allowing the first stage settlement to be 1/7/2015 this enables pre planning time and pre commitment of plans / sales / leasing. This in turn will enhance values and enable funding new roads and infrastructure to be secured easier.

Greg this is a multi million dollar project with the potential for hundreds of millions in economic benefit to Port Augusta.

Working together with realistic time frames will ensure this project is given every chance of success

Kind Regards

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