

10	7 Aug 06	Developer Contributions – Receipt of Submissions	<p><b>Reason:</b> S 90(3)(b) information the disclosure of which:</p> <p>(i) could reasonably be expected to confer a commercial advantage on a person with whom the Council is conducting or proposing to conduct, business, or to prejudice the commercial position of the Council; and</p> <p>(ii) would, on balance, be contrary to the public interest.</p> <p>(h) Legal advice</p>	Attachment 3		<p>Release and make public Agenda, Attachments 1 &amp; 2, and Minutes.</p> <p>Attachment 3 - Extend Confidential Order to September 2015</p> <p>The Chief Executive Officer be delegated the authority to revoke all or part of the order and directed to present a report containing the item for which the confidentiality has been revoked.</p>	5 Sept 11	NA	<p><b>RELEASE</b> <b>5 Sept 11</b> 5Agenda, attachment s 1 &amp; 2 and minutes – released 6 Sept 2010</p> <p>On web 9 Sept 2010</p>
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CONFID. ATTACHMENT 3 TO ITEM 13.5

7 August 2007. 6 Sept 2007 (extended at Council Mtg 4 Sept 2006)  
extended to 6 September 2008, extended to 9 Sept 2010 - 6 September  
2010 meeting - attachment 3 confidentiality extended to 5 September 2  
011; att 1 & 2 & minute released

## **AGREEMENT**

## **BETWEEN**

### **DISTRICT COUNCIL OF MOUNT BARKER**

(the Council)

**- and -**

### **THE PARTY NAMED IN ITEM 1 OF THE SCHEDULE**

(the Developer)

**- and -**

### **THE PARTY NAMED IN ITEM 1A OF THE SCHEDULE**

(the Owner)

**DRAFT FOR DISCUSSION PURPOSES ONLY – 7 JUNE 2006**

**THIS AGREEMENT** is made on the                      day of                      2006

**BETWEEN:**     **DISTRICT COUNCIL OF MOUNT BARKER** of 23 Mann Street, Mount Barker SA 5251 (“the Council”)

**AND:**             The party identified in Item 1 of the Schedule (“the Developer”)

**AND:**             If the Developer is not the Owner of the Land, the party identified in Item 1A of the Schedule (“the Owner”).

**RECITALS**

- A. The Developer is, or upon the happening of certain pre-conditions, will become the registered proprietor of an estate in fee simple in the whole of the land described in Item 2 of the Schedule (hereinafter called the “**Land**”).
- B. The Land is situated within the area of the Council.
- C. The Developer proposes to develop the Land substantially in accordance with the Concept Plan of Division (the “**Proposed Development**”).
- D. Pursuant to a process of discussion and in accordance with the principles and objectives set out in Annexure E, the Council and the Developer have agreed that the Proposed Development requires:
- the construction of works adjacent to or in the vicinity of the Land required as a consequence of the Proposed Development more particularly described in Annexure B1 (the “**Direct Infrastructure Works**”);
  - new or upgraded infrastructure within the Council’s area more particularly described in Annexure B2 (the “**Indirect Infrastructure Works**”).
- E. The Council and the Developer have therefore agreed that:
- The Developer will undertake or procure the construction of the Direct Infrastructure Works in accordance with the schedule (Annexure C1) unless other arrangements for the construction of the Direct Infrastructure Works are agreed with the Council.
  - The Developer will pay all costs for the Direct Infrastructure Works (the “**Direct Infrastructure Payment**”).
  - The Developer will pay the Indirect Infrastructure Contribution as a once-only contribution to the Council’s Procurement Costs for the Indirect Infrastructure Works unless alternate arrangements are agreed with the Council.

- The Council and the Developer will agree a process or arrangement whereby the Council is satisfied that it has adequate security for performance of the Developer's obligation with respect to the Direct Infrastructure Works, failing which the Developer will lodge with the Council an unconditional bank guarantee in an amount reasonably determined by the Council as security for Developer's Direct Infrastructure Obligations.
  - The Developer will lodge with the Council an unconditional bank guarantee in the amount set out in Item 4 of the Schedule as security for the Developer's obligation to pay the Indirect Infrastructure Contribution.
- F. The parties wish to set out in this Agreement the terms and conditions of their agreement reached in respect of the above issues.

**NOW THE PARTIES AGREE WITH EACH OTHER** as follows:

**1. SECURITY FOR DEVELOPER'S OBLIGATIONS**

- 1.1 Within seven days of the Council notifying the Developer that it has submitted the PAR to the Minister for authorisation, the Developer shall provide the Council with security for performance by the Developer of its obligations under this Agreement with respect to the payment of the Indirect Infrastructure Contribution in the form of an unconditional bank guarantee in the form approved by the Council and for the sum specified in Item 4 of the Schedule (the "**Bank Guarantee**").
- 1.2 Within six months of the authorisation by the Minister of the PAR (or such longer period acceptable to the Council) the Council and the Developer must agree and implement a process or arrangement to secure the Developer's Direct Infrastructure Obligations.
- 1.3 If the Council and the Developer are unable to agree and implement such a scheme within the stipulated time frame, the Developer must, within 7 days of receipt of a written demand from the Council, increase the Bank Guarantee by an amount equivalent to the Council's reasonable estimate of the Developer's liability for the Direct Infrastructure Obligations (by exchanging the original bank Guarantee for a new Bank Guarantee, otherwise on identical terms but in the increased amount).
- 1.4 The Developer hereby undertakes that it will not cause, suffer or permit the lodgement of the Development Application unless:
  - 1.4.1 the Council and the Developer have agreed and implemented a scheme as contemplated by Clause 1.2; or
  - 1.4.2 the Developer has increased the amount of the Bank Guarantee as contemplated by Clause 1.3.

## 2. LAND MANAGEMENT AGREEMENT

- 2.1 Within 7 days following the execution of this Agreement, the Developer (or if the Developer is not the owner of the Land, the Owner) and the Council shall execute a land management agreement, in substantially the form that such document is attached to this Agreement as Annexure D (the “**Land Management Agreement**”).
- 2.2 The Land Management Agreement restricts the nature of development permitted on the Land pending compliance by the owner of the Land with the obligations of the Developer contained in this Agreement.
- 2.3 Following execution by the parties of the Land Management Agreement, both parties shall immediately attend to the registration of the Land Management Agreement.
- 2.4 The Developer will pay all costs associated with the stamping and registration of the Land Management Agreement.

## 3. GENERAL OBLIGATIONS

Subject to the terms and conditions of this Agreement:

- 3.1 The Developer will, at its own cost and in consultation with the Council:
  - 3.1.1 prepare detailed designs, plans and specifications for the Direct Infrastructure Works acceptable to the Council; and
  - 3.1.2 procure the construction of the Direct Infrastructure Worksunless the parties agree that the Council is to procure the detailed designs, plans and specifications for and procure the construction of the Direct Infrastructure Works, in which case the Developer will pay the Direct Infrastructure Payment to the Council; and
- 3.2 The Developer will pay the Indirect Infrastructure Contribution (as same may be adjusted under this Agreement) unless the parties agree that the Developer is to undertake Indirect Infrastructure Works in lieu of making such payment.
- 3.3 Where the Direct Infrastructure Works are identified by the Council as the responsibility of other developer(s) together with the Developer, if all such developers are unable to agree on procurement arrangements for the works, then the Council will procure detailed designs, plans and specifications for and the construction of the works. In such circumstances, the Council's Procurement Cost for the detailed designs, plans and specifications and works will be fully funded by such developers, pro rata in the proportion that the number of allotments to be created by the proposed development of each individual developer bears to the total number of allotments to be created by the proposed developments of all such developers.

#### 4. **DESIGN AND PLANNING PHASE**

- 4.1 When the Developer considers it appropriate, the Developer may prepare and lodge for approval a development application for the division of the Land to use the Land for its re-zoned use ("**Development Application**").
- 4.2 If the Developer makes a Development Application the Developer must, in consultation with the Council and based on the Infrastructure Plan and the Development Application, procure the preparation of the requisite designs, plans and engineering specifications for the Direct Infrastructure Works acceptable to the Council (the "**Detailed Infrastructure Plans**") promptly following the Developer receiving Development Approval in respect of the Development Application (the "**Approval**").
- 4.3 The Detailed Infrastructure Plans must comply in all respects with the Council's stipulated standards and specifications for the Direct Infrastructure Works.

#### 5. **DIRECT INFRASTRUCTURE WORKS**

- 5.1 The obligation of the Developer or the Council (as the case may be) to procure the Direct Infrastructure Works is conditional upon the Approval being granted for the Proposed Development, the deposit of the Plan of Division and the Proposed Development being "substantially" commenced, as that term is understood in the *Development Act 1993*.
- 5.2 Unless the Council, on reasonable grounds, determines otherwise, the Developer must comply with the Council's standard prevailing requirements, procedures and protocols applying to the timing, execution, rectification and maintenance of works constructed by private sector third parties on Council land as notified by the Council to the Developer from time to time.
- 5.3 Subject to Clause 5.1, the Developer or the Council (as the case may be) must, to the extent reasonably practicable, procure the physical commencement and completion of the Direct Infrastructure Works as scheduled by Annexure C1 and commensurate with the progress of the Proposed Development, provided that:
  - 5.3.1 The party procuring the works shall have no liability to the other or to any other party for failure to procure timely completion of the Direct Infrastructure Works where such failure arises out of a matter outside of that party's reasonable control or the Council delays such works because it is necessary or convenient to do so having regard to the timing of the infrastructure works required by any other development in the Council area or the co-ordination of those works with the Direct Infrastructure Works.

## 6. INDIRECT INFRASTRUCTURE WORKS

- 6.1 The Council is of the view, and the Developer agrees, that arising out of the PAR process and anticipated development described in Annexure E (of which the Proposed Development is part) there is a need for works in the nature of the Indirect Infrastructure Works within the Council area.
- 6.2 At the date of this Agreement, the Council is in the concept phase of identifying the nature of and timing for the Indirect Infrastructure Works. Accordingly The Council is under no obligation with respect to the nature of or timing for construction of the Indirect Infrastructure Works.

## 7. DEVELOPER'S CONTRIBUTION

### 7.1 Direct Infrastructure Works

Subject to any alternative arrangements agreed between the Council and the Developer as part of the scheme agreed and implemented pursuant to Clause 1.2,

- 7.1.1 where the Developer procures any portion of the Detailed Infrastructure Plans and Direct Infrastructure Works, the Developer shall procure the conduct of such Works as are scheduled in Annexure C1 and pay all costs associated with such procurement; and

- 7.1.2 where the Council procures any portion of the Detailed Infrastructure Plans and Direct Infrastructure Works the Developer will pay the Council's Procurement Cost associated with such procurement (the "**Direct Infrastructure Payment**") as follows:

- 7.1.2.1 At any time or times during or after the preparation of the Detailed Infrastructure Plans and the performance of the Direct Infrastructure Works, the Council may serve upon the Developer a written demand or demands for payment of the Direct Infrastructure Payment on the following terms:

- (a) such a demand may be for a cost actually incurred by the Council or be a demand for payment in advance of such a cost being incurred (but no more than 90 days in advance);
- (b) such demands shall give particulars of costs and shall be accompanied by evidence to reasonably substantiate any actual cost demanded;
- (c) such demands shall describe the manner in which any demand in advance of an actual cost being incurred has been calculated;

- 7.1.2.2 The Developer shall pay to the Council the amount so demanded within 14 days of the receipt thereof or within such longer period (if any) as may be specified in such demand.



## **7.2 Indirect Infrastructure Contribution**

- 7.2.1 The Council may at any time following the date specified in Item 7 of the Schedule serve upon the Developer a written demand for payment of the Indirect Infrastructure Contribution and the Developer shall pay to the Council the monies sought by any such demand within 14 days of the receipt thereof or within such longer period (if any) as may be specified in such demand.
- 7.2.2 The Council will invest and/or apply such monies to the Council's Procurement Cost associated with the Indirect Infrastructure Works and in this regard:
  - 7.2.2.1 The Council will procure the Indirect Infrastructure Works in accordance with the Council's procurement policy prevailing at the time;
  - 7.2.2.2 Pending procurement of the Indirect Infrastructure Works, the Council will invest the Indirect Infrastructure Contribution in a dedicated interest bearing trust account established specifically to receive, hold and disburse monies for application to the Council's Procurement Cost associated with the Indirect Infrastructure Works; and
  - 7.2.2.3 The Council will report annually by way of a public document as to how it has invested or applied the Indirect Infrastructure Contributions received by the Council.
- 7.2.3 Alternatively, the Council and the Developer may agree for the Developer to procure, at the Developer's cost, all or portion of the works comprising an identified Indirect Infrastructure Works project. In such circumstances, the agreed value of such works will be credited against the Developer's liability to pay the Indirect Infrastructure Contribution upon the completion of such Works.

## **7.3 Developer's Obligations to Survive Transfer of Developer's Land**

For the avoidance of doubt, the Developer's obligation under this Agreement survives any transfer of the Developer's Land from the Developer to any third party.

## **8. EXECUTION AND REDUCTION OF BANK GUARANTEE**

- 8.1 If the Developer fails to pay the whole or any part of any monies sought by the Council pursuant to a demand under Clause 7, then the Council shall be entitled to exercise the Bank Guarantee and such other security that the Council may hold under the scheme agreed and implemented pursuant to Clause 1.2 in order to recover any monies owing to the Council at such time. Where pursuant to the exercise of its security the Council receives monies in excess of the monies owing

to the Council at such time, such excess monies may be retained and applied by the Council to meet the Developer's other obligations under this Agreement.

- 8.2 At any time following the making of a payment or performance of a substantial value of works pursuant to Clause 7, the Developer may apply to the Council for a reduction in the value of the Bank Guarantee or other security held by the Council to an amount equal to the sum of the Council's reasonable estimate of the Developers remaining Direct Infrastructure Obligations Liability and Indirect Infrastructure Contributions.
- 8.3 The exercise by the Council of its rights under the Bank Guarantee or any other security that the Council may hold under the scheme agreed and implemented pursuant to Clause 1.2 shall be without prejudice to any other rights or remedies which the Council may have against the Developer for breach of this Agreement.

## 9. MUTUAL UNDERTAKINGS OF THE PARTIES

- 9.1 The parties hereby each acknowledge that the Council must assess the Proposed Development in accordance with the provisions of the *Development Act 1993* and that this Agreement does not give the Developer or any person who acquires an interest in the Developer's Land any rights under the *Development Act 1993* over and above the normal rights applying to persons seeking to develop the Developer's Land under the *Development Act 1993*.
- 9.2 The parties acknowledge and agree to accept the risk of a legal challenge by a third party to this Agreement, or to any of the arrangements set forth in this Agreement and in the event of such a challenge the Developer:
- 9.2.1 agrees to bear its own costs; and
- 9.2.2 indemnifies and agrees to hold indemnified and save harmless the Council from and against all claims, actions, proceedings, costs, expenses, penalties, demands, losses and liabilities suffered or incurred by the Council which are caused by or arise from or result directly or indirectly from such legal challenge and/or any of the arrangements set forth in this Agreement (including costs and losses incurred by the Council by reason of the delay and obstruction which may be caused by such legal challenge).

## 10. CHANGE IN CIRCUMSTANCES

- 10.1 If the Developer at any time proposes to lodge with any relevant authority, any application or plan which in the opinion of the Council constitutes a Substantial Variation to the Proposed Development (including the Concept Plan of Division and the Plan of Division), the Developer must first apply to the Council to reconsider:
- 10.1.1 the scope and nature of the Direct Infrastructure Works; and

- 10.1.2 the amount of the agreed estimate of the Indirect Infrastructure Contribution.
- 10.2 The Developer must not proceed to lodge its proposed application or plan with the relevant authority unless the Council accepts the varied application or plan pursuant to Clause 10.3.
- 10.3 The Council may, acting reasonably, make its acceptance of the varied application or plan conditional upon the Developer agreeing amendments to the agreement/arrangements between the Council and the Developer with respect to:
  - 10.3.1 the scope and nature of the Direct Infrastructure Works;
  - 10.3.2 the amount of the agreed estimate of the Indirect Infrastructure Contribution;
  - 10.3.3 the amount and nature of the security provided to the Council to secure the Developer's obligations.
- 10.4 All costs incurred by the Council associated with the Council's consideration of such an application by the Developer are payable by the Developer on demand.
- 10.5 The Developer acknowledges that notwithstanding the Council's approval for the revised proposed application or plan, or for any other act or proposal of the Developer contemplated by this Agreement, the Council can not and does not make undertaking which fetters the Council's discretion in the exercise of its statutory powers.

## 11. DISPUTE RESOLUTION

- 11.1 It is acknowledged by the parties that there may be differences of opinion as to the precise nature of infrastructure required in order to comply with the scope of works described in Annexure A, Annexure B1 and Annexure C1 and otherwise to adequately cater for the development impact on the Proposed Development. The parties acknowledge and agree that all disputes with respect to such matters ("**Infrastructure Dispute**") are to be resolved in accordance with the dispute resolution procedure set out in this Clause 11.2. All other disputes shall be resolved in accordance with the dispute resolution procedures set out in Clause 11.3.
- 11.2 **Infrastructure Disputes**
  - 11.2.1 If an Infrastructure Dispute arises then any party may give the other party notice of that dispute ("**Infrastructure Dispute Notice**") requiring that the Infrastructure Dispute be referred to independent expert determination by an expert nominated by the Council and mutually agreed between the Council and the Developer.

### 11.2.2 *Independent Expert Determination*

11.2.2.1 An expert determination conducted under this Clause 11.2 is not an arbitration and the expert is not an arbitrator. The expert may reach a decision from his or her own knowledge and expertise.

11.2.2.2 The expert will:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner he or she thinks fit;
- (c) conduct any investigation which he or she considers necessary to resolve the dispute or difference including requiring each party to provide a statement of its case (within the time period nominated by the expert) setting out in detail the matters which that party wishes the expert to consider;
- (d) examine such documents, and interview such persons, as he or she may require; and
- (e) make such directions for the conduct of the determination as he or she considers necessary.

11.2.2.3 The expert must:

- (a) disclose to the parties any interest he or she has in the outcome of the determination; and
- (b) not communicate with one (1) party without the knowledge of the other.

11.2.2.4 Each party will:

- (a) bear its own costs in respect of any expert determination; and
- (b) pay half of the expert's costs.

11.2.2.5 Unless otherwise agreed between the parties, the expert must notify the parties of his or her decision within twenty eight (28) days from the acceptance by the expert of his or her appointment.

11.2.2.6 The expert will not be liable to the parties in respect of any matter, fact or thing arising out of, or in any way in connection with the expert determination process, except in the case of fraud or negligence.

11.2.2.7 The parties must enter into an agreement setting out the terms of engagement of the expert with the appointed expert within seven (7) days of the appointment of the expert on such terms as the parties and the expert may agree.

11.2.2.8 The determination of the expert:

- (a) must be in writing;
- (b) will be final and binding on the parties.

### 11.3 Other Disputes

#### 11.3.1 *Mediation*

11.3.1.1 Any other dispute arising out of the subject matter of this Agreement shall be notified in writing by either party to the other party. The notice must set out details of the dispute. At first instance the parties shall meet to consider and resolve the dispute. If the parties are unable to resolve the dispute within a reasonable time, then they shall explore in good faith the prospect of mediation.

11.3.1.2 Nothing in this Clause shall prevent either party seeking urgent equitable relief.

#### 11.3.2 *Arbitration or litigation*

11.3.2.1 In the event that the dispute is not resolved in accordance with Clause 11.3.1, any party may then refer the dispute to arbitration or commence litigation proceedings.

11.3.2.2 Where a party to a dispute fails to comply with Clause 11.3.1, any other party to the dispute need not comply with Clause 11.3.1 before referring the dispute to arbitration or commencing litigation proceedings.

11.4 The parties must continue to perform their respective obligations under this Agreement, notwithstanding that a dispute may exist, insofar as those obligations are not the subject matter of the dispute.

11.5 A party is not required to engage in dispute resolution in accordance with this Clause 11 in the case of genuine urgency requiring immediate relief or remedy.

11.6 This Clause 11 will survive termination of this Agreement for any reason.

11.7 Nothing in this clause 11 authorises a variation to the requirements of the scope of works as set out in Annexure A and Annexure B1 by any expert without the consent in writing of the Council.

## 12. TERMINATION

12.1 This Agreement may be immediately terminated by the Council, in its absolute discretion, by written notice to the Developer if:

12.1.1 The PAR is not authorised by the Minister; or

12.1.2 The Council is otherwise unable to enforce its rights to secure Developer contributions to infrastructure as more specifically contemplated by this Agreement or any scheme or agreement or deed implemented by the Council or entered into between the Developer and the Council arising out of this Agreement

in which case the Council shall not be liable to the Developer or the Owner for any compensation, or loss or damages which the Developer or the Owner suffers arising from or in connection with the exercise by the Council of its termination right.

12.2 Termination by the Council under Clause 12.1 is without prejudice to any rights the Council has for antecedent breach by the Developer or the Owner of this Agreement.

12.3 Upon termination of this Agreement, the Council shall return the Bank Guarantee to the Developer (unless it has been drawn down pursuant to Clause 8).

## 13. INTEREST UPON MONEYS OUTSTANDING

If the Developer fails to pay any amount payable by it under this Agreement by the due date, then the Developer must pay interest at the rate set out in Item 6 of the Schedule accrued daily from the time it falls due until such amount has been paid in full.

## 14. NOTICES

Notices given under this Agreement shall be deemed as being given by the sender and received by the intended recipient if addressed to the intended recipient at its address as it appears in this Agreement and:

14.1 If by certified or registered mail, when delivered;

14.2 If by post, 3 working days from and including the date of posting; or

14.3 If by facsimile, at the time and date shown on the facsimile transmission confirmation report confirming complete and uninterrupted transmission.

## 15. GST

In the event that any supply under this Agreement within the meaning of *A New Tax System (Goods and Services Tax) Act 1999* is a taxable supply upon which GST is payable, then the recipient of that supply shall upon production of a Tax Invoice by the supplier pay to the supplier an amount equal to the GST incurred on such supply.

## 16. MISCELLANEOUS PROVISIONS

### 16.1 Costs

Each party shall pay its own costs of and incidental to the negotiation, preparation and execution of this Agreement. The Council will pay the costs of stamping this Agreement.

### 16.2 Invalid or unenforceable provisions

If any part of this Agreement is found to be invalid or void or unenforceable, then that part will be severed from this Agreement and the remainder of this Agreement will continue to apply. This Agreement will terminate where any such change limits the intent or substantial outcomes sought by either party entering this Agreement.

### 16.3 Waiver and exercise of rights

If a party accepts or waives any breach by another party, that acceptance or waiver cannot be taken as an acceptance or waiver of any future breach of the same obligation or of any other obligation under this Agreement.

### 16.4 Governing law and Jurisdiction

This Agreement is governed by the laws of South Australia and any legal action relating to it must be brought in the South Australian courts.

## 17. INTERPRETATION

17.1 The parties acknowledge and agree that the matters hereinbefore recited are true and accurate and agree that they may be referred to in the interpretation of this Agreement.

17.2 In the interpretation of this Agreement unless the contrary intention appears or unless the context otherwise requires, the following expressions have the following meanings:

17.2.1 “**Bank Guarantee**” has the meaning given to that term in Clause 1.1.

17.2.2 “**Concept Plan of Division**” means the draft Plan of Division attached to this Agreement as Annexure C subject to any amendments agreed in writing by the Council.

17.2.3 “**Council’s Procurement Cost**” means the total cost incurred by the Council for and in connection with the procurement and completion of works including without limitation administration and tendering costs, design costs, engineering costs, project management/superintendent costs, cost of labour and materials and any other contractor or consultant costs paid by the Council. Where works are procured and completed by a third party (other than the Developer) – such as the Department of Energy, Transport and Infrastructure – then the Council’s Procurement Cost

associated with those works means the total cost incurred by the Council for and in connection with those works, including for the avoidance of doubt all of the abovementioned costs as well as monies paid by the Council to the third party as the Council's financial contribution towards those works.

17.2.4 **"Detailed Infrastructure Plans"** has the meaning given to that term in Clause 4.2.

17.2.5 **"Development Approval"** means approval (including land division consent) by the relevant authority in respect of a development application.

17.2.6 **"Developer's Direct Infrastructure Obligations"** means the obligation of the Developer to either:

17.2.6.1 procure, at the Developer's cost, the designs, plans and specifications for, and the construction of, the Direct Infrastructure Works; or

17.2.6.2 pay the Direct Infrastructure Payment to the Council

as agreed among the parties pursuant to Clause 5.

17.2.7 **"Direct Infrastructure Payment"** has the meaning given to that term in Clause 7.1.2.

17.2.8 **"Direct Infrastructure Works"** has the meaning given to that term in Recital D.

17.2.9 **"Indirect Infrastructure Contribution"** means the amount determined in accordance with the formula set out in Item 3 of the Schedule.

17.2.10 **"Indirect Infrastructure Works"** has the meaning given to that term in Recital D.

17.2.11 **"Infrastructure Plan"** means the Infrastructure Plan attached to this Agreement at Annexure A.

17.2.12 **"Land"** has the meaning give to that term in Recital A.

17.2.13 **"Land Management Agreement"** has the meaning give to that term in Clause 2.1.

17.2.14 **"Minister"** means the Minister for Urban Development and Planning.

17.2.15 **"PAR"** means the District Council of Mount Barker, District Wide Residential Plan Amendment Report.

17.2.16 **"Plan of Division"** means the Plan of Division prepared and submitted by the Developer for the division of the Land contemplated by the Development Application.



17.2.17 “**Proposed Development**” has the meaning given to that term in Recital C.

17.2.18 “**Substantial Variation**” means a variation that in the opinion of the Council will change the scope and nature of the infrastructure requirements.

17.2.19 “**Schedule of Works**” means the delivery of Direct Infrastructure Works required commensurate with the progressive staging of the Development s site as set out in Annexure C1.

17.2.20 “**Works**” means collectively the Direct Infrastructure Works and the Indirect Infrastructure Works.

### 17.3 General

Unless the contrary intention appears:

17.3.1 Words denoting the singular number only shall include the plural number and vice versa.

17.3.2 The word "person" shall include a corporation or Council as the case may be;

17.3.3 Reference to any Act of Parliament, Statute or Regulation shall include any amendment currently in force at the relevant time and any Act of Parliament, Statute or Regulation enacted or passed in substitution therefore.

17.3.4 When a party to this Agreement is a natural person then the executors administrators and assigns of such person shall also be bound hereunder and when a party is a corporate body (including the Council) then the successors and assigns of that party shall also be bound hereunder;

17.3.5 Headings are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

17.3.6 A reference to the “parties” means the parties to this Agreement.

17.3.7 A reference to a Clause, Schedule or Annexure is to a clause, schedule or Annexure, of or to this Agreement, each of which forms part of this Agreement;

17.3.8 Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

17.3.9 Where an expression is defined anywhere in this Agreement, it has the same meaning throughout;

17.3.10 Including and similar expressions are not and must not be treated as words of limitation; and

- 17.3.11 A reference to any authority or government agency includes a reference to their successors to the role carried out by the former authority or government agency.

**THE PARTIES** have executed this Agreement in acknowledgment of its terms and conditions

The **COMMON SEAL** of **DISTRICT** )  
**COUNCIL OF MOUNT BARKER** was )  
 affixed in the presence of:- )  
 )

.....  
 Mayor

.....  
 Chief Executive Officer

**THE COMMON SEAL** of **[DEVELOPER** )  
**COMPANY]** was hereunto affixed in )  
 accordance with its Constitution and by the )  
 authority of its directors: )  
 )

.....  
 Director

.....  
 Director/Secretary

OR

**SIGNED** by the said **[INDIVIDUAL**  
**DEVELOPER]** who is either personally known  
 to me or has satisfied me as to their identity:

.....

.....

Witness Full Name: .....

Address: .....

.....

Phone No: .....

**[Note: clauses for insert where Developer is not the Owner of the Land]**

1. *Change Title Page and First Page to incorporate the Owner as a party to the Agreement*
2. *Insert the following clause:*

*“ The Owner hereby acknowledges and agrees that:*

- 1.1 *the Developer is entitled to become the registered proprietor of the Land; and*
- 1.2 *the Developer is entitled to represent the Owner for the purposes of reaching agreement with and making representations to the Council in relation to the matters contemplated by this Agreement; and*
- 1.3 *pending the transfer of legal title in the Land to the Developer, the Owner agrees that it is bound by the representations and undertakings made by the Developer and relied on by the Council arising out of this Agreement.”*

**SCHEDULE**

<b>ITEM 1</b> <b>The Developer</b> <b>Item 1A</b> <b>The Owner</b>	
<b>ITEM 2</b> <b>The Land</b> (Recital A)	
<b>ITEM 3</b> <b>Indirect Infrastructure Contribution</b> (Recital E)	<p>The amount of the Indirect Infrastructure Contribution is payable on a per Allotment basis in respect of each Allotment created by the development implemented on the Land, the per Allotment figure finally determined at the time of payment by the Developer by multiplying:</p> <ol style="list-style-type: none"> <li>1. The amount of \$3500; by</li> <li>2. the average of the increase in the 2 indexes referred to in Item 8 of this Schedule</li> </ol>
<b>ITEM 4</b> <b>Amount of Bank Guarantee (initial)</b> (Recital E & Clause 1.1)	
<b>ITEM 5</b> <b>RESERVED</b>  (Clause <b>Error! Reference source not found.</b> )	
<b>ITEM 6</b> <b>Default Rate</b> (Clause 13)	[to be confirmed]
<b>ITEM 7</b> <b>Date for Payment of Indirect Infrastructure Contribution</b> (Clause 7.2.1)	Payable on Allotments created as created through the deposit of plan of division in respect of the development on the Land establishing an Allotment
<b>ITEM 8</b> <b>Escalation Formula</b>	<p>As to 50% - changes in the Average Weekly Earnings, Aust – ABS 6302.0</p> <p>As to 50% - changes in the Produce Price Indexes, Aust – ABS 6427.0</p>

**ANNEXURE A**

**INFRASTRUCTURE PLAN**

**(Coloured plan with high level description of Direct Infrastructure Works and estimated costs. It is to be expressly acknowledged that the specifications for the Direct Infrastructure Works are a matter for further discussion by both parties. )**

**(note: information to be provided by Council)**

## **ANNEXURE B1**

### **DIRECT INFRASTRUCTURE WORKS**

**(More detailed description of Direct Infrastructure Works. It is to be expressly acknowledged that the specifications for the Direct Infrastructure Works are a matter for further discussion by both parties. )**

~~(note information to be provided by Council)~~

**ANNEXURE B2**

**INDIRECT INFRASTRUCTURE WORKS**

**(description of anticipated nature of the Indirect Infrastructure Works incorporating:**

**(note – Information to be provided by Council)**



**ANNEXURE C**

**CONCEPT PLAN OF DIVISION**

**[Draft Plan of Division and brief description of nature of proposed development]**

( Note – Information to be provided by land owner/developer)

**ANNEXURE C1**

**[Describe the timing (relevant to the staging) of provision of the infrastructure external to the development site in the form of direct infrastructure relevant to the staging of the development. It is expressly acknowledged that the specification for the Direct Infrastructure Works are a matter for further discussion by both parties]**

**(Note ; to be provided by Council once having regard to the submissions )**

**ANNEXURE D**  
**LAND MANAGEMENT AGREEMENT**

## ANNEXURE E

### OBJECTIVES, PRINCIPLES AND PROCESSES OF INFRASTRUCTURE COST SHARING

#### 1. OVERVIEW

This document is divided into two Sections:

- The Development Objectives and Guiding Principles of the Council in facilitating the strategic expansion of the Council area for residential and industrial development; and
- Based on these Objectives and Principles, the specific issues to which the Council and the Developer have had regard in arriving at an agreement with respect to payments for/contributions to infrastructure arising out of such development.

#### 2. DEVELOPMENT OBJECTIVES AND GUIDING PRINCIPLES

##### 2.1 Introduction

The Council has endorsed in principle that the Mount Barker, Little Hampton, Nairne and Meadows Townships are suitable for expansion for residential and industrial development subject to achieving appropriate built form, infrastructure (physical and community) and environmental outcomes.

The following 'Development Objectives' and 'Guiding Principles' set the framework upon which Council intends to facilitate good development outcomes for its community.

##### 2.2 Development Objectives

- 2.2.1 Provide infrastructure that clearly meets the needs of a growing community, including but not limited to such areas as, transport, traffic, waste disposal, stormwater management, recreation needs and community facilities.
- 2.2.2 Identification and quantification of individual and cumulative infrastructure costs (both physical and social) generated as a consequence of each major residential and industrial development within the townships of Mount Barker, Little Hampton, Nairne and Meadows over the next 10-15 year period.
- 2.2.3 Agreed model implemented upon which public and private sector payments for/contributions to infrastructure works (other than that required to be provided within the boundaries and or directly abutting each development site pursuant to the *Development Act 1993*) can be generated to ensure financial sustainability for the Council having regard to the whole of life costs of infrastructure procurement, maintenance and renewal.

- 2.2.4 Contributions by Council identified to ensure equity based on sound financial management practices as governed by its 10 Year Financial Plan.
- 2.2.5 Active pursuit by Council and developers/land owners of State and Federal Government contributions to assist infrastructure outcomes.

### 2.3 Guiding Principles

- 2.3.1 The capacity of residential and industrial development envisaged to occur over the next 10-15 years, is to be associated with significant improvement in the provision of services and infrastructure for present and future generations.
- 2.3.2 The Council and individual developers will work collaboratively to plan for and deliver improved infrastructure.
- 2.3.3 Key infrastructure requirements (direct and indirect) will be identified and agreed to be provided prior to or in parallel with the development of future key development sites.
- 2.3.4 Without the adequate provision of improved infrastructure and the financial mechanisms in place to ensure the allocation of funding the capacity for growth is severely limited.
- 2.3.5 Central to development outcomes is the need to address the community's desire to protect the rural setting and township character where development occurs.
- 2.3.6 The capacity to provide 'best practice' urban development and infrastructure will be dependent upon a constructive working relationship between Council and the owners and developers of private land.
- 2.3.7 Council will facilitate the orderly and economic development of the key development sites based on sound and progressive governance practices.
- 2.3.8 Council's desire to progress orderly development does not in any way undermine its authority and capacity to prepare land use and development policy to be incorporated in the District Council of Mount Barker Development Plan pursuant to its responsibilities stipulated in the *Development Act 1993* and the *Local Government Act 1999*.

## 3. BACKGROUND DISCUSSIONS BETWEEN COUNCIL AND DEVELOPER LEADING TO THIS AGREEMENT

- 3.1 Having regard to the foregoing, the Council initiated a district wide Residential Plan Amendment Report (the "PAR") to facilitate the re-zoning of certain land within the Council's area for residential or industrial development (the "Specified Purpose").
- 3.2 The Developer is the owner, or upon the happening of certain pre-conditions will become the owner, of certain land within the Council's area (the "Land").

- 3.3 The current land use zoning designation for the Land does not permit the use of the Land for the Specified Purpose. The Land is situated within a larger area which the Council considers may be appropriate for re-zoning for the Specified Purpose under the PAR.
- 3.4 The Developer wishes to redevelop the Land for the Specified Purpose, and therefore supports the PAR proposed by the Council.
- 3.5 The Council and the Developer each acknowledge that:
- 3.5.1 if the PAR is consented to by the Minister and approved; and
- 3.5.2 the Developer proceeds with its redevelopment plans,
- then there will be a resulting requirement for the Council to facilitate and/or create new infrastructure or additional capacity for existing infrastructure to service (directly and indirectly) the Land when used for the Specified Purpose ("New Infrastructure Requirements").
- 3.6 Accordingly, there has been a need for the Developer and the Council to work collaboratively to understand:
- 3.6.1 the nature, extent and likely cost of the New Infrastructure Requirements; and
- 3.6.2 a basis for determining an appropriate contribution to be made by the Developer towards the costs associated with the New Infrastructure Requirements consistent with the fact that, in the main, the New Infrastructure Requirement is an activity that is of particular benefit to the Land when used for the Specified Purpose and will accordingly enable the Developer to realise a higher value for the Land than in its current configuration and use.
- 3.7 Leading to this Agreement, the parties have therefore been through a process where they worked collaboratively in good faith to understand and agree:
- 3.7.1 the nature, extent and likely costs of those infrastructure works that will, to a substantial extent, directly service the Land when used for the Specified Purpose and which, in the main, will be undertaken adjacent to or otherwise in the vicinity of the Land (the "Direct Infrastructure Works"); and
- 3.7.2 the nature, extent and likely cost of the other, community infrastructure works that will, to a substantial extent, indirectly service the Land when used for the Specified Purpose by adding to the capacity of existing community services or establishing new community services that will address the future needs of residents of the Land (the "Indirect Infrastructure Works")

which the Council proposes are undertaken consequent upon the authorization of the PAR and Developer's proposed development. The parties also reached

agreement on the payment by the Developer of the full costs of the Direct Infrastructure Works and part contribution to the costs of the Indirect Infrastructure Works.

**14. CORRESPONDENCE**

**15. NOTICE OF MOTION**

NIL

**16. OTHER BUSINESS**

**17. QUESTIONS ARISING FROM COUNCIL MEETING (10 MINUTES)**