

## **Land Management Agreement**

**DA 23017564**

**62 Arthur Street, Unley and 79-85 Mary Street, Unley**

The Corporation of the City of Unley

Mary and Arthur Street Pty Ltd (ACN 656 922 780)

## DATE

## PARTIES

**THE CORPORATION OF THE CITY OF UNLEY** ABN 63 714 797 082 of 181 Unley Road, Unley SA 5061 (**Council**)

**MARY AND ARTHUR STREET PTY LTD** ACN 656 922 780 of 5/26 The Parade West, Kent Town SA 5067 (**Owner**)

## BACKGROUND

- A. The Owner is the proprietor of an estate in fee simple in the Land.
- B. Council and the Developer have entered into the Infrastructure Agreement, pursuant to which certain commitments have been made in relation to the provision and funding of Works required to facilitate the Proposed Development of the Land.
- C. In considering whether to enter into this agreement, Council has had regard to the relevant mandatory considerations under Section 192(4) of the Act.
- D. Council and the Owner agree that the obligations under this agreement are intended to be complied with by all occupiers and persons having enjoyment from time to time of the Land and that it is the Owner's responsibility to ensure that all such persons comply with the terms of this agreement.
- E. Pursuant to section 192(1) of the Act the Owner has agreed with Council to enter into this agreement relating to the development, management, preservation or conservation of the Land.
- F. Council is a designated authority with the power to enter Land Management Agreements pursuant to section 192(19) of the Act.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this agreement:

**Act** means the *Planning, Development and Infrastructure Act 2016* (SA).

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

**Council** includes any agent or employee of Council who is authorised by Council.

**Developer** has the meaning given to it in the Infrastructure Agreement.

**Development Application** has the meaning given to it in the Infrastructure Agreement.

**Development Approval** means development approval under the Act.

**Infrastructure Agreement** means the agreement entered into between Council and the Developer in the form of the agreement attached to this agreement at Annexure A as subsequently varied, supplemented, superseded or assigned as agreed to between the parties from time to time.

**Land** means the whole of the land comprised in Certificates of Title:

- Volume 6278 Folio 699 (commonly known as Allotment 1000 in D130774)
- Volume 5581 Folio 644 (commonly known as Allotment 233 in F12871), and includes any part or parts of it.

**Proposed Development** has the meaning given to it in the Infrastructure Agreement.

**Regulations** means the *Planning, Development and Infrastructure (General) Regulations 2017 (SA)*.

**Section 138 Certificate** has the meaning given to it in the Infrastructure Agreement.

**Works** has the meaning given to it in the Infrastructure Agreement.

## 1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to the Owner includes each person registered or entitled to be registered as a proprietor of an estate in fee simple of the Land;
- 1.2.6 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.2.9 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.10 a provision is not construed against a party only because that party drafted it;
- 1.2.11 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;

- 1.2.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.13 an expression defined in the Act or the Regulations has the meaning given by the Act or Regulations at the date of this agreement;
- 1.2.14 expressions defined in the Background have those meanings.

### 1.3 **Background**

The Background forms part of this agreement and is correct at the date of this agreement.

### 1.4 **Legislation**

The requirements of this agreement are to be construed as additional to the requirements of the Act and any other legislation affecting the Land.

## 2. **OWNER'S OBLIGATIONS**

### 2.1 **Compliance with Infrastructure Agreement**

The Owner must not commence or proceed with, or permit any other person to commence or proceed with:

- 2.1.1 the Proposed Development; or
- 2.1.2 any application or request for a Section 138 Certificate in respect of the Proposed Development,

in each case unless at all times the Developer is complying with the Developer's obligations under the Infrastructure Agreement.

### 2.2 **Notice to intending purchasers and occupiers**

The Owner must provide a copy of this agreement to any person:

- 2.2.1 intending to purchase a portion of the Land, prior to signing any contract for the sale and purchase of a portion of the Land; and
- 2.2.2 commencing occupation of the Land, before commencement of that occupation.

## 3. **RESTRICTION ON LEASING AND OTHER DEALINGS**

Excluding the acquisition by a statutory authority of any statutory easement or other interest in the Land, the Owner must not grant any lease licence easement or other right which may give any person the right to possession or control of or entry on to the Land which right would enable such person to breach any of the obligations imposed on the Owner by this agreement unless such grant contains as an essential term a covenant by the grantee not to do or omit to do (or suffer or permit any other person to

do or omit to do) any act matter or thing which would constitute a breach by the Owner of the Owner's obligations under this agreement.

#### **4. COUNCIL'S POWERS OF ENTRY**

- 4.1 The Council may at any reasonable time enter the Land for the purpose of:
- 4.1.1 inspecting the Land and any building or structure on the Land;
  - 4.1.2 exercising any other powers of the Council under this agreement or pursuant to law.
- 4.2 If the Owner is in breach of any provision of this agreement, the Council may, by notice served on the Owner, specify the nature of the breach and require the Owner to remedy the breach within such time as may be nominated by the Council in the notice (being at least 28 days from the date of service of the notice unless the circumstances otherwise require). If the Owner fails so to remedy the breach, the Council or its servants or agents may carry out the requirements of the notice and in doing so may enter and perform any necessary works upon the Land and recover any costs thereby incurred from the Owner.
- 4.3 If in a notice referred to in clause 4.2 the Council requires the removal of the building or structure from the Land, the Council and its servants or agents are authorised and empowered by the Owner to enter and remove the building or structure from the Land and to dispose of it in any manner determined by the Council provided that if the building or structure has any monetary value then the Council must use its best endeavours to realise that monetary value and must after the disposal account to the Owner and pay to the Owner the realised value less all expenses incurred.
- 4.4 The Council may delegate any of its powers under this agreement to any person.
- 4.5 The Owner agrees that a breach of this agreement may cause loss or injury for which compensation is not an adequate remedy. If the Owner is in breach, or is threatening a breach of any provision of this agreement, by word or actions, the Council may obtain an injunction restraining the Owner from committing the breach without proving any actual damage has or will be occasioned by the breach.
- 4.6 Clause 4.5 does not limit the Council's ability to obtain any other remedy against the Owner under this agreement or the Act.

#### **5. NOTATION OF THIS AGREEMENT**

Each party must do and execute all acts documents and things necessary to ensure that as soon as possible after the execution of this agreement by all necessary parties this agreement is noted by the Registrar-General on the Certificate of Title for the Land pursuant to section 192(12) of the Act.

#### **6. RESCISSION OF THIS AGREEMENT**

- 6.1 Without limiting clause 7.6 below, if:
- 6.1.1 Development Approval under the Act has been granted in respect of the Proposed Development on the Land; and

- 6.1.2 Council, acting reasonably, is satisfied the Owner has complied with its obligations under the Infrastructure Agreement; and
  - 6.1.3 the Owner has requested Council in writing to rescind this agreement, Council must rescind this agreement in relation to the Land.
- 6.2 Where this agreement is rescinded in relation to the Land or any part of it:
- 6.2.1 Council and the Owner will do all things required for a note of the rescission of this agreement to be entered on the relevant Certificate(s) of Title; and
  - 6.2.2 the Owner must pay Council's reasonable costs of an incidental to the rescission of this agreement and the noting of the rescission by the Registrar-General.

## 7. MISCELLANEOUS

### 7.1 Consideration

In consideration of the Owner's obligations under this agreement, the Council must pay to the Owner the sum of 10 cents if demanded.

### 7.2 Alteration

This agreement may be altered by an agreement or deed in writing signed by the Council and the Owner.

### 7.3 Approvals and consents

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this agreement.

### 7.4 Entire agreement

This agreement:

- 7.4.1 constitutes the entire agreement between the parties about its subject matter;
- 7.4.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

### 7.5 Adverse Construction

No provision in this agreement may be construed adversely against a party only because that party drafted it.

### 7.6 Operation and rescission of agreement

- 7.6.1 This agreement will not operate unless and until the Council has granted Development Approval for the Development Application.
- 7.6.2 If Development Approval for the Development Application lapses or is cancelled or set aside without having been implemented, the Council agrees if requested by the Owner to rescind this agreement and to

apply to the Registrar-General for notation of its rescission, with all relevant costs to be borne by the Owner.

#### 7.7 **Waiver**

A waiver of a provision of or right under this agreement:

7.7.1 must be in writing signed by the party giving the waiver;

7.7.2 is effective only to the extent set out in the written waiver.

#### 7.8 **Exercise of power**

7.8.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

7.8.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

#### 7.9 **Survival**

Each indemnity, obligation of confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

#### 7.10 **Severability**

An unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement.

#### 7.11 **Consents**

The Owners warrant that no person has a legal interest in the Land except the persons whose consents to this agreement appear in Annexure B.

#### 7.12 **Counterparts**

This agreement may be executed in any number of counterparts. All executed counterparts constitute one document.

#### 7.13 **Governing law**

7.13.1 This agreement is governed by the law in South Australia.

7.13.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts in South Australia.

### 8. **NOTICES**

8.1 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:

8.1.1 in writing, in English and signed by a person authorised by the sender;  
and

8.1.2 hand delivered or sent by pre paid post or electronic mail to an address of the recipient specified below, as varied by any Notice given by the recipient to the sender, or affixed in a prominent position on the Land.

8.2 At the date of this agreement, the postal and electronic mail addresses for Notices to the Owner are:

**Mary and Arthur Street Pty Ltd**  
Postal Address: 5/26 The Parade West, Kent Town SA 5067  
Email: louis@chasecrown.com.au  
Attention: Louis Kanellos

8.3 At the date of this agreement, the postal and electronic mail addresses for Notices to the Council are:

**The Corporation of the City of Unley**  
Postal Address: PO Box 1, Unley SA 5061  
Email: pobox1@unley.sa.gov.au  
Attention: Chief Executive Officer

8.4 A Notice is deemed to be received:

- 8.4.1 if hand delivered or affixed in a prominent position on the Land, on delivery or affixing;
- 8.4.2 if sent by pre paid priority post two Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);
- 8.4.3 if sent by pre paid standard post:
  - (a) four Business Days after posting
  - (b) seven Business Days after posting if posting from a city outside the city of the recipient;
  - (c) 12 Business Days after posting if posting to or from a place outside Australia;
- 8.4.4 if sent by electronic mail, at the time and on the day shown in the sender's electronic mail delivery report, if it shows that the Notice was sent to the recipient's electronic mail address last Notified by the recipient to the sender.

However if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

8.5 If two or more persons comprise a party, Notice to one is effective Notice to all.

8.6 Each party authorises its solicitor to sign Notices on its behalf.


## 9. COSTS


The Owner must pay to the Council on demand the Council's reasonable costs and expenses (including legal costs and expenses) of preparing, negotiating and noting this agreement.



**EXECUTED** as an agreement

**Signed for The Corporation of the City of Unley** by its authorised delegate pursuant to Section 44 of the *Local Government Act 1999* (SA) in the presence of:

  
.....  
Signature of witness  
**LARA GREGORY**  
.....  
Name of witness (print)

  
.....  
Signature of authorised delegate  
**Peter Tsokas**  
**Chief Executive Officer**  
**City of Unley**  
.....  
Name of authorised delegate (print)  
.....  
Position of authorised delegate

**Executed by Mary and Arthur Street Pty Ltd** pursuant to section 127 of the *Corporations Act 2001* (Cth)

  
.....  
Signature of Director  
**LOUIS KANELLOS**  
.....  
Name of Director (print)  
or

  
.....  
Signature of Director/Company Secretary  
(Please delete as applicable)  
**ANTHONY STEWART**  
.....  
Name of Director/Company Secretary (print)

.....  
Signature of Sole Director and Sole Company Secretary

.....  
Name of Sole Director and Sole Company Secretary (print)



**Annexure A      Form of Infrastructure Agreement**



## **Infrastructure Agreement**

**DA 23017564**

**62 Arthur Street, Unley and 79-85 Mary Street, Unley**

The Corporation of the City of Unley

Mary and Arthur Street Pty Ltd (ACN 656 922 780)

## DATE

## PARTIES

**THE CORPORATION OF THE CITY OF UNLEY** ABN 63 714 797 082 of 181 Unley Road, Unley SA 5061 (**Council**)

**MARY AND ARTHUR STREET PTY LTD** ACN 656 922 780 of 5/26 The Parade West, Kent Town SA 5067 (**Developer**)

## BACKGROUND

- A. The Owner is the registered proprietor of an estate in fee simple in the Land.
- B. The Developer has an interest in the development of the Land.
- C. The Land is located within Council's area.
- D. The Developer has lodged the Development Application for the Proposed Development.
- E. The parties agree to the Developer undertaking the Works on and within the vicinity of the Land to support the Proposed Development.
- F. The Developer has agreed to provide Council with appropriate Security to secure completion of the Works in accordance with this agreement.
- G. The parties agree and acknowledge that prescribed works pursuant to regulations 80 to 85 (inclusive) of the Regulations will not generally form part of this agreement and will be controlled under the Development Approval and the Regulations.
- H. The parties agree to enter into this agreement in support of such an arrangement in the manner set out herein.

## AGREED TERMS

### 1. DEFINITIONS AND INTERPRETATION

#### 1.1 Definitions

In this agreement:

**Act** means the *Planning, Development, and Infrastructure Act 2016* (SA).

**Approvals** include any approval, authorisation, agreement, licence, permit, consent, qualification, accreditation, registration, certificate, declaration or exemption and any renewal and variation of them by or with a Government Agency.

**Arthur Street** means the public road named "Arthur Street" as depicted on the Plan.

**Australian Roads Standards** means the standards ordinarily applicable to Works of the nature of those described in paragraph 1 of Item 5 of the Schedule.

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

**Certificate of Practical Completion** means the certificate issued by the Developer pursuant to clause 6.1 of this agreement.

**Civil Works** means all works specified in Item 5 of the Schedule except the Plantings (if any).

**Completion Date** means the date for completion of the Works being the date specified in Item 6 of the Schedule.

**Defect** in relation to the Works includes any damage to or deterioration of the Works other than any damage or deterioration caused by normal aging or ordinary wear arising from the normal use of the Works concerned for their intended purpose.

**Defects Liability Period** means the period of 12 calendar months, unless otherwise nominated, commencing on the date of acceptance by Council of a Certificate of Practical Completion for Works.

**Development Application** means development application in Item 3 of the Schedule.

**Development Approval** means the development approval granted to the Development Application under the Act.

**External Civil Works Plan** means the External Civil Works Plan prepared by MLEI Consulting Engineers dated 23 September 2024, Drawing No. A2022-12105, Sheet: SK07, Rev. H attached to this agreement at Annexure C.

**Government Agency** means any government or any government, semi-government, administrative, fiscal or judicial body, commission, authority, tribunal, agency or entity including any self-regulatory organisation established under statute or any stock exchange.

**Internal Roads** means the internal roads on the Land as depicted on the Plan.

**King William Road** means the public road named "King William Road" as depicted on the External Civil Works Plan.

**Land** means the land specified in Item 1 of the Schedule.

**Land Management Agreement** means the land management agreement pursuant to section 192 of the Act entered into between the Owner and Council to bind this agreement to the Land in the form of the land management agreement attached to this agreement at Annexure B.

**Landscape Plans** means the following plans prepared by Oxigen dated 23 September 2024 attached to this agreement at Annexure D:

- a) Key Plan, Drawing No. 101, Rev. L

- b) Landscape Plan, Drawing No. 102, Rev. L
- c) Landscape Plan, Drawing No. 103, Rev L
- d) Landscape Plan- Pocket Park, Drawing No. 104, Rev. L
- e) Landscape Details 01, Drawing No. 105, Rev. L

**Maintenance Period** means, subject to any extension of that period under this agreement, the period of 24 calendar months commencing on the date of issue by Council of the Confirmation of Practical Completion of Plantings.

**Mary Street** means the public road named "Mary Street" as depicted on the Plan.

**Owner** means the person(s) specified in Item 2 of the Schedule.

**Plan** means the plan of division prepared by Fyfe Pty Ltd, Drawing No. 66904-2-6-SV-DA1-r12, dated 22 August 2024, Rev. 12 attached to this agreement at Annexure A.

**Plantings** means the Street Trees and planting of vegetation, trees or grass in Item 5 of the Schedule (if any).

**Plans and Specifications** has the meaning given to it in clause 3.1.

**Practical Completion** of the Works means the state of being substantially complete and fit for use by Council and members of the public, all performance or structural tests required by Council having been satisfactorily completed and omissions or defects being limited to items:

- (a) the immediate making good of which by the Developer is accepted by Council as not being practicable;
- (b) the existence of which or the subsequent making good of which is accepted by Council as not likely to significantly inconvenience Council or the members of the public using the Works taking into account the use or intended use of the works concerned and the areas in which they exist; and
- (c) which Council accepts do not cause any legal impediment to the use of the Works by Council and members of the public.

**Proposed Development** means the development specified in Item 4 of the Schedule.

**Regulations** means the *Planning, Development and Infrastructure (General) Regulations 2017 (SA)*.

**Reserve** means the proposed allotment of 433m<sup>2</sup> labelled "50 RESERVE" on the Plan and "Pocket Park" on the Landscape Plans.

**Road A** means the Internal Road labelled "Road A" on the External Civil Works Plan and "Public Road" on the Plan.

**Section 138 Certificate** means a certificate issued under section 138 of the Act for the Proposed Development.

**Section 221 Authorisation** means an authorisation pursuant to section 221 of the *Local Government Act 1999* (SA).

**Security** means security for payment of money in a form as agreed by the parties in writing or, in the absence of such agreement, an unconditional and irrevocable undertaking by a financial institution or insurance company approved by Council in favour of Council and in a form and in terms reasonably approved by Council at its absolute discretion for the amount specified in Item 7 of the Schedule.

**Standards** means the standards ordinarily applicable to Works of the nature described in Item 5 of the Schedule.

**Street Light Plans** means the plans prepared by Distribution Power design dated 23 September 2023, Drawing No. 500034787, Rev C, Sheets 1 and 2 attached to this agreement at Annexure E.

**Street Light Standards** means SA Power Networks Technical Standard – TS 101 “Public Lighting – Design and Installation” published on 28 October 2016 and as updated from time to time; and Standards Australia AS/NZS 1158/3.1:2005 “Lighting for Roads and Public Spaces” as updated from time to time.

**Street Trees** means the street trees specified in Item 5 of the Schedule.

**Works** means the works as specified in Item 5 of the Schedule.

## 1.2 Interpretation

In this agreement, unless the context otherwise requires:

- 1.2.1 headings do not affect interpretation;
- 1.2.2 singular includes plural and plural includes singular;
- 1.2.3 words of one gender include any gender;
- 1.2.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.2.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.2.6 a reference to this agreement includes any schedules and annexures to it;
- 1.2.7 a reference to an allotment or road means an allotment or road as depicted on the Plan;
- 1.2.8 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- 1.2.9 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;

- 1.2.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.2.11 an unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement;
- 1.2.12 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions;
- 1.2.13 where two or more terms are connected with the word 'or', any one or more, or all of those terms are referred to.

### 1.3 **Scope of this agreement**

The Developer acknowledges and agrees that nothing contained within, or that occurs under or pursuant to the terms of this agreement with respect to the Works shall in any way fetter Council's discretion as a relevant authority (or a relevant entity in any other capacity) under the Act in relation to a future development application under the Act in relation to the Land.

## 2. **BACKGROUND**

The parties acknowledge and agree that the Background forms part of this agreement and is correct.

## 3. **DESIGN OF WORKS**

- 3.1 The Developer must engage at its own expense appropriately qualified surveyors, engineers and designers to prepare detailed plans and specifications for the Works in accordance with the Standards and any other standards applied by Council (**Plans and Specifications**) and submit the Plans and Specifications to Council for Council's written approval.
- 3.2 The Developer must submit detailed construction and installation costs estimates for the Works (including any reasonable contingency amount required by Council) (**Costs**) if seeking a Section 138 Certificate before:
  - 3.2.1 expiry of the Defects Liability Period/Maintenance Period (as applicable); or
  - 3.2.2 the acceptance by Council of a Certificate of Practical Completion for Works or the grant of a Confirmation of Practical Completion for Plantings.
- 3.3 Council must not unreasonably withhold or delay its approval of the Plans and Specifications and/or Costs. Council is taken to have unreasonably withheld or delayed its approval of the Plans and Specifications and/or Costs if Council does not give notice in writing within 20 Business Days after the receipt of the Plans and Specifications and/or Costs from the Developer that it either approves or does not approve the Plans and Specifications and/or Costs.
- 3.4 If Council gives notice that it does not approve the Plans and Specifications and/or Costs submitted by the Developer under clause 3.1 or clause 3.2, Council must specify in that notice the matters and things required to be addressed by the Developer for the Plans and Specifications and/or Costs to



be granted approval and the process set out in clauses 3.1 to clause 3.3 will again apply (with appropriate modifications).

- 3.5 If Council approves the Plans and Specifications and/or Costs (or the resubmitted Plans and Specifications and/or Costs) Council will give notice to the Developer accordingly.
- 3.6 The Developer must obtain and comply with all Approvals required for the construction of the Works, including any Approvals required from Council in its capacity as statutory authority under the Act or rights of access required to be granted by Council in its capacity as owner of adjoining land or public roads (which for the avoidance of doubt includes a Section 221 Authorisation), prior to commencement of the Works.
- 3.7 The Developer acknowledges that Council is not bound to check any of the Plans and Specifications or Works for errors, omissions, or compliance with the requirements of this agreement and Council's receipt or assessment of any documentation and inspection of any work pursuant to this clause does not relieve the Developer from responsibility for meeting its obligations under this agreement.
- 3.8 The Developer must not carry out the Works under this agreement unless and until the Plans and Specifications have been approved under clause 3 of this agreement.
- 3.9 The Developer must not seek a Section 138 Certificate before:
  - 3.9.1 expiry of the Defects Liability Period/Maintenance Period (as applicable); or
  - 3.9.2 the acceptance by Council of a Certificate of Practical Completion for Works or the grant of a Confirmation of Practical Completion for Plantings;

unless the Security has been provided under clause 14 of this agreement.

#### 4. DEVELOPER TO CARRY OUT WORKS

The Developer must carry out or cause to be carried out the Works and must achieve Practical Completion of the Works:

- 4.1 in strict accordance with the Plans and Specifications approved by Council under clause 3 of this agreement, subject to any variation to those Plans and Specifications approved by Council in writing;
- 4.2 in accordance with all Approvals required for the construction of the Works;
- 4.3 to the reasonable satisfaction of Council;
- 4.4 at the expense of the Developer; and
- 4.5 on or before the Completion Date, or such other date as Council agrees in writing.

## 5. WALKOVER PRIOR TO PRACTICAL COMPLETION

Prior to providing a Certificate of Practical Completion in accordance with clause 6.1, the Developer must invite Council in writing to inspect the Works (or such part of them to be the subject of a Certificate of Practical Completion) at a time to be agreed between the parties (acting reasonably).

## 6. CERTIFICATE OF PRACTICAL COMPLETION

- 6.1 When the Developer considers that it has achieved Practical Completion of the Works it must give written notice to Council, including a **Certificate of Practical Completion** issued by the Developer's superintendent, stating that the Works have reached Practical Completion and have been constructed in accordance with all Approvals required for the construction of the Works and the Plans and Specifications approved by Council under clause 3 of this agreement.
- 6.2 The Developer must provide all quality assurance documentation required by Council in relation to the Works the subject of a Certificate of Practical Completion including (if applicable):
- 6.2.1 a minor omissions and defects list for the Works with a date to complete or rectify outstanding items;
  - 6.2.2 a final set of approved Plans and Specifications;
  - 6.2.3 electronic copies of the "As Constructed" plans, certified by the project engineer (or equivalent professional, depending on the nature of the Works) as being a true and correct record of the construction;
  - 6.2.4 all relevant compaction testing reports and material compliance certificates;
  - 6.2.5 all warranties, guarantees and instruction manuals; and
  - 6.2.6 evidence of the currency of the Developer's public liability insurance policy for the Defects Liability Period/Maintenance Period (as applicable).
- 6.3 Subject to the requirements of clause 6.1 and clause 6.2 having been satisfied, Council must then either:
- 6.3.1 give to the Developer:
    - (a) written notice accepting that the Developer has achieved Practical Completion of the Works to the satisfaction of Council and identifying any additional omissions or defects required to be completed or rectified; and/or
    - (b) a **Confirmation of Practical Completion** for Plantings identifying any additional omissions or defects required to be completed or rectified,  
  
(as applicable); or
    - (c) give to the Developer a written notice stating that Council is not satisfied that the Developer has achieved Practical Completion

of the Works and specifying the omissions or defects that the Developer must attend to before Council will accept the Developer's Certificate of Practical Completion for the Civil Works and/or issue a Confirmation of Practical Completion for Plantings (as applicable).

- 6.4 If Council fails to give to the Developer either a notice pursuant to clause 6.3.1(a) or clause 6.3.1(b) (as applicable) or a notice pursuant to clause 6.3.1(c) within 15 Business Days after receipt of the Developer's Certificate of Practical Completion and quality assurance documentation under clause 6.2, then the Developer may give to Council a further written notice requiring Council to issue a notice pursuant to clause 6.3.1(a) or clause 6.3.1(b) (as applicable) or a notice pursuant to clause 6.3.1(c) within five Business Days after receipt of such further notice from the Developer. If Council fails to do so, it is deemed to have accepted the Developer's Certificate of Practical Completion for Works.
- 6.5 The Developer may give a notice to Council pursuant to clause 6.1 more than once.

## **7. COMPLETION OF THE WORKS, RECTIFICATION OF DEFECTS AND MAINTENANCE OF THE WORKS AFTER PRACTICAL COMPLETION**

- 7.1 During the Defects Liability Period the Developer must:
- 7.1.1 complete those minor omissions or Defects in the Works identified by the Developer or Council; and
  - 7.1.2 rectify and make good any Defects in the Works arising from faulty materials and/or workmanship during the Defects Liability Period, as soon as reasonably practicable.
- 7.2 If any such Defect exists or becomes apparent during the Defects Liability Period and Council gives written notice to the Developer within the Defects Liability Period specifying the nature of such Defect and requiring the rectification and making good of the same, the Developer must comply with the requirements of such notice within any period reasonably specified in that notice or, if no period is specified, within 28 calendar days after receipt of that notice.
- 7.3 Clauses 7.1 and 7.2 again apply with any modifications appropriate in the circumstances in respect of the practical completion of the rectification and making good of any Defect by the Developer pursuant to clause 7.2. The Developer must maintain and must rectify and make good any Defect in any further work carried out pursuant to clause 7.2 for the further period of six calendar months commencing on the date of acceptance by Council of a Certificate of Practical Completion for Civil Works or the date of issue by Council of a Confirmation of Practical Completion for Plantings (as applicable) in respect of such further work if that work is reasonably deemed by Council (in its absolute discretion) to be work of a major nature.
- 7.4 Without limiting the obligations in clauses 7.1 and 7.2, during the Maintenance Period the Developer must generally care for and maintain the Plantings including removing and replacing any Plantings that have failed to thrive as soon as reasonably practicable to do so.

7.5 The Developer must care for and maintain the replaced Plantings for a further period of up to six calendar months until they have established.

## 8. WALKOVER PRIOR TO FINAL COMPLETION

At least 14 calendar days prior to the expiry of the Defects Liability Period/Maintenance Period (as applicable) the Developer must invite Council in writing to inspect the Works at a time to be agreed between the parties (acting reasonably).

## 9. DAMAGE TO COUNCIL INFRASTRUCTURE

9.1 If at any time during the construction of the Works or during the Defects Liability Period/Maintenance Period (as applicable), any damage is caused to:

- 9.1.1 any part of the Works; or
- 9.1.2 any infrastructure vested in Council or under Council's care, control and management on the Road or on any land adjacent to the Works;

by the Developer or any agent or contractor of the Developer (but excluding any assignee of the Developer pursuant to this agreement), Council may by notice in writing to the Developer providing reasonable particulars of the damage require the Developer at Council's absolute discretion to either:

- 9.1.3 take such steps as Council may reasonably require to repair the damage within a period stated in the notice (which period must be reasonable in the circumstances); or
- 9.1.4 pay to Council an amount representing a reasonable cost of repairing the damage on or before a date specified in the notice (being no earlier than 10 Business Days after the giving of the notice).

9.2 If the Developer does not comply with a notice given to the Developer under clause 9.1 Council may:

- 9.2.1 recover an amount representing a reasonable cost of repairing the damage from the Developer as a debt; and
- 9.2.2 if Council sees fit, call upon any Security provided by the Developer under clause 14 of this agreement to discharge in whole or in part any liability incurred by the Developer under this clause 9.

## 10. REPLACEMENT OR RE-EXECUTION BY THE DEVELOPER OF INFERIOR MATERIALS OR WORK

10.1 If any of the materials supplied by the Developer are or any of the work executed by the Developer in the performance or maintenance of the Works before or after the issue of a Certificate of Practical Completion (in the opinion of Council acting reasonably in such assessment) is of an inferior quality or in any other respect not in compliance with this agreement, the Developer must upon receipt of a written notice from Council specifying the nature of the non-compliance and requiring the rectification and making good of the non-compliance remove the materials from the Works or re-execute the work within any period reasonably specified in that notice, or if no period is specified, within two calendar months after receipt of the notice, at the Developer's expense so that the materials or work comply with this agreement.

- 10.2 Council may issue a notice under clause 10.1 more than once during the performance of the Works or before the expiry of the Defects Liability Period/Maintenance Period (as applicable).

## 11. DEVELOPER'S SAFETY REQUIREMENTS

- 11.1 As from the date of commencement of the Works and until Practical Completion of the Works, and if Council notifies the Developer of any minor omission(s) or Defect(s) under this agreement, then from the commencement of additional works until acceptance of Practical Completion by Council for such additional work done pursuant to clause 7, the Developer must at its own expense, and subject to and in accordance with any reasonable directions given by Council:
- 11.1.1 erect and at all times during the day and night maintain on or around the Works fences or barriers restricting the unauthorised entry of vehicles or persons upon the site of the Works; or
  - 11.1.2 suitable signs warning the public of the carrying on of the Works; and
  - 11.1.3 during all hours of darkness keep all machinery and other obstructions or traps created by the Works adequately fenced or illuminated for the protection of the public.
- 11.2 The Developer must comply with all statutory requirements (including in particular, all requirements under the *Work Health and Safety Act 2012 (SA)*) applicable to any activity undertaken by the Developer on or in the vicinity of the Land for the purposes of or incidental to the construction or maintenance of the Works.

## 12. DEVELOPER'S INDEMNITY TO COUNCIL AND INSURANCE

- 12.1 The Developer must indemnify Council:
- 12.1.1 from the commencement of the Works against all losses, damages, costs and expenses suffered or incurred by Council at any time which are caused by or arise out of:
    - (a) any execution, rectification or maintenance of the Works or any activity associated therewith; or
    - (b) the state or condition of the Works as a consequence of any execution, rectification or maintenance of the Works by the Developer or any person for whom the Developer is responsible,at any time before the conclusion of the Defects Liability Period/Maintenance Period (as applicable); and
  - 12.1.2 from the commencement of the Works against all actions, proceedings, claims and demands which may be brought or made against Council at any time in respect of the death of or any injury to any person or any loss of or damage to any property caused by or arising from:
    - (a) any execution, rectification or maintenance of the Works or any activity associated therewith; or

- (b) the state or condition of the Works as a consequence of any execution, rectification or maintenance of the Works by the Developer or by any person for whom the Developer is responsible,

at any time before the conclusion of the Defects Liability Period/Maintenance Period (as applicable), except to the extent caused or contributed to by the negligence or default of Council.

- 12.2 Before commencing the execution of any part of the Works the Developer must have or must effect or procure for the benefit of Council and the Developer a policy of public risk insurance that is satisfactory to Council for cover of not less than \$20,000,000 in respect of any one claim with a registered insurer carrying on business in South Australia. The Developer must ensure that such policy is kept current at all times until expiry of the Defects Liability Period/Maintenance Period (as applicable) and must furnish to Council a copy of such policy and such evidence of its currency as Council may from time to time require.

### 13. PERFORMANCE OF THE WORKS BY COUNCIL

- 13.1 If the Developer:

- 13.1.1 fails to comply with any notice from Council issued pursuant to clause 7.2 or 10.1; or
- 13.1.2 purports to comply with any notice from Council issued pursuant to clause 7.2 or 10.1 and Council remains reasonably dissatisfied with the state of the Works; or
- 13.1.3 fails to complete the Works on or before the date specified in Item 6 of the Schedule or such later date as Council agrees in writing; or
- 13.1.4 at any time prior to or during the performance of the Works by notice in writing requests Council to execute or complete the Works or any part thereof (as the case may be) and Council in its absolute discretion agrees to such request,

then but not otherwise Council may immediately and without prior notice to the Developer take possession of the Works. This determines the Developer's right to perform or continue to perform the Works.

- 13.2 Upon the exercise by Council of any of those rights Council must at its option either:

- 13.2.1 perform or complete the Works which remain incomplete or carry out the repair of defects therein (as the case may be) using Council's own employees, plant and equipment; or
- 13.2.2 cause the Works or the repair of defects (as the case may be) to be carried out or completed by an independent contractor chosen by Council acting reasonably in such choice; and

at any time or times during or after the performance of the Works, Council may serve upon the Developer a written demand or several progressive written demands for payment of the costs (actual or contingent) reasonably incurred by Council in so doing. The Developer must pay to Council those costs within 10 Business Days of receipt of the demand.

- 13.3 Council must in a reasonable and competent manner procure the performance of the Works within a reasonable time taking into account the nature and amount of the Works to be performed, the weather and all other relevant factors.

#### 14. SECURITY

- 14.1 If the Developer intends to seek a Section 138 Certificate prior to:

- 14.1.1 expiry of the Defects Liability Period/Maintenance Period (as applicable); or
- 14.1.2 the acceptance by Council of a Certificate of Practical Completion for Works or the grant of a Confirmation of Practical Completion for Plantings;

to the extent that the Developer has not already done so, the Developer must provide to Council the Security specified in Item 7 of the Schedule payable to Council each for at least the amount specified in Item 7 of the Schedule.

- 14.2 Without limiting clause 14.6 Council may call upon:

- 14.2.1 the Security specified in Item 7 of the Schedule as being related to the construction of a particular class of Works to discharge or partially discharge any liability or potential liability of the Developer to Council as a result of the failure of the Developer to perform its obligations under this agreement in relation to the construction of any Works of that class; and
- 14.2.2 the Security specified in Item 7 of the Schedule as being related to the Defects or maintenance of Works of a particular class of Works to discharge or partially discharge any liability or potential liability of the Developer to Council as a result of the failure of the Developer to perform its obligations under this agreement in relation to the rectification of any Defects in or maintenance of any Works of that class.

- 14.3 Where Security is expressed in Item 7 of the Schedule to relate to a particular class of Works and there is no separate Security in relation to the Defects or maintenance of Works of that class, 10% of the amount reasonably assessed by Council as the value of the Works to which the Security relates will, for the purposes of clauses 14.2.2 and 14.7, be taken to relate to the rectification of any Defects in or maintenance of that class of Works.

- 14.4 Council may call upon Security in accordance with the terms of this agreement without reference to the Developer but will notify the Developer as soon as reasonably practicable that Council has called upon such Security.

- 14.5 Subject to clause 14.6, where Council has not called upon Security for the construction works Council will upon request of the Developer, and within 10 Business Days following the acceptance by Council of the Certificate of Practical Completion for that class of the Works to which the Security relates (or if more than one Certificate of Practical Completion is issued and accepted for the Works of the relevant class, following the acceptance of the last such Certificate) return the relevant Security to the Developer.

14.6 Notwithstanding:

14.6.1 any allocation of Security to the construction or Defects rectification or maintenance of any particular Works under clause 14.2 and Item 7 of the Schedule or under clause 14.3; or

14.6.2 any obligation Council may otherwise have under clauses 14.5 and 14.7 to return Security to the Developer;

Council may:

14.6.3 call in any Security for the purposes of discharging a liability under clause 9 of this agreement; and

14.6.4 may retain any Security if Council has reasonable cause to believe that the retention of the Security may be required to meet a liability or prospective liability under that clause until the end of the Defects Liability Period/Maintenance Period (as applicable).

14.7 Subject to clause 14.6, where Council has not called upon Security for the rectification of Defects or maintenance of any Works, Council will upon request of the Developer, and following the expiry of the relevant Defects Liability Period/Maintenance Period (as applicable) (subject to any extension of the Defects Liability Period/Maintenance Period in accordance with this agreement) return the relevant Security to the Developer.

15. **LAND MANAGEMENT AGREEMENT**

As further security for performance of the Developer under this agreement, Council and the Developer agree that promptly following the execution of this agreement and, in any case, prior to any request by the Developer for the issue of a Section 138 Certificate for the Proposed Development:

15.1 Council must complete and execute the Land Management Agreement;

15.2 the Developer must use its reasonable endeavours to procure the Owner to enter into the completed Land Management Agreement and procure all consents to the noting of the Land Management Agreement against the Land; and

15.3 following the execution of the Land Management Agreement, the parties must use their reasonable endeavours to note the Land Management Agreement against the Land as soon as practicable.

16. **ASSIGNMENT**

16.1 The Developer must not assign this agreement or any right or obligation under this agreement (including by subdivision or sale of the Land) without procuring that the third party to whom this agreement or any right or obligation under this agreement is to be assigned, enters into a deed or agreement with Council, in which it undertakes to meet the Developer's obligations being assigned, and also provides Council with Security which replaces all or part of the existing Security (as relevant to the assignment) as security for the Works.

16.2 Without restricting any other meaning given to the expression 'assign' or 'assignment' by operation of law or equity, any change in the shareholding of the Developer (including a series of cumulative changes) or a change in the



corporate structure of the Developer resulting in a person other than its shareholders as at the date of execution of this agreement:

- 16.2.1 controlling the composition of its board of directors;
- 16.2.2 controlling more than one half of the voting power of its board of directors or any class of shareholders or both; or
- 16.2.3 holding more than 20% of the issued share capital (either beneficially or otherwise);

is deemed to be an assignment of the Developer's rights under this agreement.

- 16.3 It will be unreasonable for Council to withhold its consent to an assignment of the Developer's rights and obligations under this agreement to a third party who has complied with the requirements of clause 16.1 above.

## 17. INTEREST UPON MONEYS OUTSTANDING

Any amount payable by the Developer to Council under this agreement bears interest at the rate charged by Council's bank upon an overdraft account of \$100,000 plus 2% from the date on which the amount falls due for payment (and where that date is not specified in this agreement, from the date on which Council makes written demand) until payment of the amount in full.

## 18. GST

- 18.1 In this clause an expression defined in the *A New Tax System (Goods and Service Tax) Act 1999* (Cth) has the meaning given to it in that Act.
- 18.2 If a party makes a supply under or in connection with this agreement in respect of which GST is payable, the consideration for the supply is increased by an amount equal to the GST payable by the supplier on the supply.
- 18.3 A party need not make a payment for a taxable supply under or in connection with this agreement until it receives a tax invoice for the supply.

## 19. NOTICES

- 19.1 A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
  - 19.1.1 in writing and in English;
  - 19.1.2 in the case of Notice by Council, signed by a person authorised or with delegation to sign such notices;
  - 19.1.3 in the case of Notice by the Developer, signed by a person authorised by the Developer; and
  - 19.1.4 hand delivered or sent by pre paid post or electronic mail to the recipient's address specified in this agreement, as varied by any Notice given by the recipient to the sender.
- 19.2 As at the date of this agreement, the addresses for Notices are set out in the Item 9 of the Schedule.

19.3 A Notice is deemed to be received:

19.3.1 if hand delivered, on delivery;

19.3.2 if sent by prepaid mail, five Business Days after posting (or seven Business Days after posting if posting to or from a place outside Australia);

19.3.3 if sent by electronic mail, on the day after the day the message is showing on the sender's electronic mail system as having been properly transferred or transmitted,

however if the Notice is deemed to be received on a day that is not a Business Day or after 5:00pm, the Notice is deemed to be received at 9:00am on the next Business Day.

19.4 A Notice by Council, stating the amount of money owing or payable or any other matter, is sufficient evidence of the matter unless proved incorrect.

## 20. DISPUTE RESOLUTION

### 20.1 Resolution by negotiation

If there is a dispute between the parties, the aggrieved party must serve a notice on the other party setting out the nature of the dispute (**Complaint Notice**). The parties must then make every effort to resolve the dispute by negotiation.

### 20.2 Reference to Independent Expert

20.2.1 If the dispute cannot be resolved within 10 Business Days of service of the Complaint Notice the parties may refer the matter to a mutually agreed expert for determination (**Independent Expert**).

20.2.2 If the parties cannot agree upon an Independent Expert, then either party may request that one of the following be appointed to resolve the dispute:

(a) in the case of a dispute concerning a legal matter, a practising barrister or solicitor having at least seven years current and continuous practice in South Australia appointed by the President for the time being of the Law Society of South Australia; or

(b) in any other case, any other suitably qualified expert appointed by the President for the time being of the Law Society of South Australia.

### 20.3 Written submission

The written submission of the dispute to the Independent Expert must state the specific matter to be determined together with all other reasonably relevant matters and must be accompanied by a copy of this agreement.

#### 20.4 **Procedures**

The Independent Expert must give due weight to any representations put forward by a party within any time limit prescribed by the Independent Expert. The Independent Expert must give written reasons for their determination. The parties must supply the Independent Expert with any requested information, assistance and cooperation.

#### 20.5 **Costs**

Unless the Independent Expert determines otherwise in their absolute discretion, the fees and expenses of the Independent Expert must be borne by the parties in equal shares.

#### 20.6 **Conclusiveness of determination**

The Independent Expert acts as an independent expert and not an arbitrator. The Independent Expert's determination is conclusive and final and binding on the parties (except in the case of fraud or manifest error).

#### 20.7 **Urgent relief**

Nothing in this clause prevents a party from seeking urgent injunctive and/or equitable relief in an appropriate court.

### 21. **TERMINATION BY A PARTY**

#### 21.1 **Termination**

A party may terminate this agreement with immediate effect by giving notice to another party if:

- 21.1.1 a party fails to pay any sum of money within 10 Business Days after the date such payment fell due under this agreement;
- 21.1.2 a party breaches any other provision of this agreement and fails to remedy the breach within 10 Business Days after receiving notice requiring it to do so, in accordance with clause 19 of this agreement;
- 21.1.3 a party breaches a material provision of this agreement where that breach is not capable of remedy; or
- 21.1.4 any event referred to in the following subclause happens to a party.

#### 21.2 **Notification of events**

A party must notify another party immediately if:

- 21.2.1 there is any change in the direct or indirect beneficial ownership or control of a party;
- 21.2.2 it disposes of the whole or any part of its assets, operations or business other than in the ordinary course of business;
- 21.2.3 it ceases to carry on business;
- 21.2.4 it ceases to be able to pay its debts as they become due;

- 21.2.5 any step is taken by a mortgagee to take possession or dispose of the whole or any part of its assets, operations or business;
- 21.2.6 any step is taken to enter into any arrangement between a party and its creditors;
- 21.2.7 any step is taken to appoint a receiver, a receiver and manager, a trustee in bankruptcy, a liquidator, a provisional liquidator, an administrator or other like person of the whole or any part of its assets or business; or
- 21.2.8 where a party is a partnership, any step is taken to dissolve that partnership or a partner dies.

### 21.3 **Accrued rights and remedies**

Termination of this agreement under this clause does not affect any accrued rights or remedies of either party.

## 22. **MISCELLANEOUS**

### 22.1 **Consideration**

In consideration of the Developer's obligations under this agreement, Council must pay to the Developer the sum of 10 cents if demanded.

### 22.2 **Alteration**

This agreement may be altered only by a deed or agreement in writing signed by each party.

### 22.3 **Approvals and consents**

Unless otherwise provided, a party may in its discretion give (conditionally or unconditionally) or withhold any approval or consent under this agreement.

### 22.4 **Entire agreement**

This agreement:

- 22.4.1 constitutes the entire agreement between the parties about its subject matter;
- 22.4.2 supersedes any prior understanding, agreement, condition, warranty, indemnity or representation about its subject matter.

### 22.5 **Adverse Construction**

No provision in this agreement may be construed adversely against a party only because that party drafted it.

### 22.6 **Severability**

An unenforceable provision or part of a provision may be severed, and the remainder of this agreement continues in force, unless this would materially change the intended effect of this agreement.

## 22.7 Counterparts

This agreement may be executed in any number of counterparts. All executed counterparts constitute one document.

## 22.8 Waiver

A waiver of a provision of or right under this agreement:

22.8.1 must be in writing signed by the party giving the waiver;

22.8.2 is effective only to the extent set out in the written waiver.

## 22.9 Survival

Each indemnity, obligation or confidence and other term capable of taking effect after the expiration or termination of this agreement, remains in force after the expiration or termination of this agreement.

## 22.10 Exercise of power

22.10.1 The failure, delay, relaxation or indulgence by a party in exercising a power or right under this agreement is not a waiver of that power or right.

22.10.2 An exercise of a power or right under this agreement does not preclude a further exercise of it or the exercise of another right or power.

## 22.11 Governing law

22.11.1 This agreement is governed by the law in South Australia.

22.11.2 The parties irrevocably submit to the non-exclusive jurisdiction of the courts in South Australia.

## 23. COSTS OF THIS AGREEMENT

The Developer will bear Council's reasonable costs and expenses (including legal costs and expenses) of and incidental to the preparation, negotiation and execution of this agreement and any document required to be entered into pursuant to this agreement.

## 24. SPECIAL CONDITIONS

The special conditions (if any) in Item 8 of the Schedule form part of this agreement. If there is any inconsistency between those special conditions and the above provisions, those special conditions govern to the extent of the inconsistency.

## Schedule

- Item 1**  
Land
- The whole of the land comprised in Certificates of Title:
- Volume 6278 Folio 699 (Allotment 1000 in D130774)
  - Volume 5581 Folio 644 (Allotment 233 in F12871)
- Item 2**  
Owner
- Arthur and Mary Street Pty Ltd (ACN: 656 922 780)
- Item 3**  
Development Application
- 23017564
- Item 4**  
Proposed Development
- The division of the Land to create 18 allotments from 2 existing allotments and removal of a regulated tree (*Corymbia citriodora*) in accordance with the Plan approved in the Development Application.
- Item 5**  
Works
- 1. Road Infrastructure**
    - 1.1 Internal Roads are to be constructed to facilitate connection to north of the Land to Mary Street and south of the Land to Arthur Street at the points depicted on the Plan.
    - 1.2 New turn profiles, kerb, footpath, watertable, and verge (with associated stormwater infrastructure), crossovers, and linemarking is to be constructed on Mary Street in accordance with the External Civil Works Plan including:
      - 1.2.1 protuberance kerbing either side of Road A to facilitate line of sight with a minimum required land width of 3m;
      - 1.2.2 linemarking at the junction with Road A;
      - 1.2.3 replacement of the existing footpath for the length of the Land on the southern side of Mary Street with pavers to Council's standard specification;
      - 1.2.4 removal of existing street tree adjacent proposed allotment 9;
      - 1.2.5 removal of existing street tree adjacent Road A and reinstatement of verge to Council's requirements;
      - 1.2.6 existing crossover adjacent to proposed allotment 9 to be reinstated with kerbing to Council's standards;

1.2.7 provision of protective measures to existing street tree to the east of Road A;

1.2.8 new 150 standard barrier kerb and gutter on the southern side of Mary Street,

as approved by Council in writing prior to the commencement of construction.

1.3 New turn profiles to suit vehicular access, kerb, footpath, watertable, and verge (with associated stormwater infrastructure), crossovers, and linemarking is to be constructed on Arthur Street in accordance with the External Civil Works Plan including:

1.3.1 protuberance kerbing either side of Road A to facilitate line of sight with a minimum required land width of 3m;

1.3.2 linemarking at the junction with Road A;

1.3.3 replacement of the existing footpath for the length of the Land on the northern side of Arthur Street with pavers to Council's standard specification;

1.3.4 existing crossover adjacent to the land situated in Allotment 232 in F12871 comprised in Certificate of Title Volume 5840 Folio 883 to be reinstated with kerbing to Council's standards;

1.3.5 provision of protective measures to existing street tree to the east of Road A;

1.3.6 new 150 standard barrier kerb and gutter on the southern side of Mary Street,

as approved by Council in writing prior to the commencement of construction.

1.4 Any damage to existing road infrastructure within Mary Street or Arthur Street during construction of the infrastructure described in paragraphs 1.2 and 1.3 above is to be remediated to a satisfactory condition as approved by Council (acting reasonably) in writing prior to seeking a Section 138 Certificate.

1.5 For the avoidance of doubt, all infrastructure within this paragraph 1 is to be subject to

detailed design and constructed in accordance with the Australian Road Standards, as approved by Council in writing in its absolute discretion prior to the commencement of construction.

## 2. Stormwater Infrastructure

- 2.1 New stormwater infrastructure is to be constructed on Mary Street and King William Road in accordance with the External Civil Works Plans including:
- 2.1.1 new spoon drain on Mary Street and reinstatement of road to Council's requirements;
  - 2.1.2 trenching in Mary Street (and reinstatement to Council's requirements);
  - 2.1.3 375 diameter stormwater pipe (or larger if clearances to exist in Council's reasonable opinion) extended from Road A to the side entry pit at the corner of King William Road;
  - 2.1.4 additional set of side entry pits on Mary Street (to be approved by Council having regard to the location of existing services, trees and driveways) with the associated 375 diameter stormwater pipe crossing Mary Street between these side entry pits;
  - 2.1.5 new junction box on Mary Street adjacent King William Road junction in line with existing RCBC;
  - 2.1.6 modification of existing side entry pit on Mary Street adjacent King William Road junction with existing outlet to be infilled with concrete and sealed;
  - 2.1.7 existing reinforced concrete pipe on King William Street adjacent Mary Street to be removed as required to facilitate construction;
  - 2.1.8 modification of existing junction box on King William Street adjacent Mary Street (to a size approved by Council);



2.1.9 existing services to be potholed in the junction between Mary Street and King William Road; and

2.1.10 existing water main in King William Road to be dog-legged (if required by Council or SA Water),

as approved by Council in writing prior to the commencement of construction.

2.2 Any remediation required to facilitate external connection of the stormwater infrastructure is to be undertaken in accordance with the relevant Standards and approved by Council in writing.

2.3 All infrastructure in this paragraph 2 is to be subject to detailed design and constructed in accordance with the relevant Standards, as approved by Council in writing in its absolute discretion prior to commencement of construction.

### 3. **Street Trees**

3.1 Street trees are to be provided in accordance with the Landscape Plans on:

3.1.1 Road A;

3.1.2 Mary Street (noting one replacement street tree is required); and

3.1.3 Arthur Street (noting one replacement street tree is required).

3.2 Street trees in above paragraph 3.1 are to be located and selected according to the location and species listed on the Landscape Plans (unless otherwise agreed in writing with Council), with the size, maturity, planting, and maintenance methodology (and location and species if not depicted on the Landscape Plans) to be approved by Council in writing prior to the commencement of planting.

3.3 Street trees are to be placed centrally between the side driveway edge and side boundary of the proposed allotment, or between side boundaries for rear loaded allotments (as applicable).

3.4 Street tree placement and tree pit design must achieve a minimum 1200mm wide footpath (but 1500mm is desired) with tree root barriers installed along the road edge.

- 3.5 All street trees are to be provided with an automatic irrigation service, with the final irrigation design and layout to be approved by Council in writing prior to installation.

4. **LED Street Lights**

- 4.1 LED street lighting is to be designed and installed in accordance with the Street Light Plans (as applicable) and Street Light Standards:

4.1.1 on all Internal Roads in the Land; and

4.1.2 on the Reserve in accordance with the Landscape Plans (as applicable for the Reserve),

and as approved by Council prior to commencement of construction.

5. **Landscaping within the Reserve**

- 5.1 Landscaping within the Reserve incorporating:

5.1.1 tree planting;

5.1.2 planting of understorey and other vegetation;

5.1.3 trafficable pathway of in situ concrete paving (of at least 1.5m in width and compliant with the *Disability Discrimination Act 1992* (Cth));

5.1.4 irrigated grass;

5.1.5 boulders;

5.1.6 bench seats with arm rests;

5.1.7 log steppers;

5.1.8 compacted granulitic sand

5.1.9 fence;

5.1.10 mature stone slithers;

5.1.11 concrete edging; and

5.1.12 drinking fountain allowing for water bottle filling and dog drinking bowl,

in accordance with the Landscape Plans and design details approved by Council prior to

commencement of construction or planting as the case may be.

- 5.2 All trees and other plantings in this paragraph 5 are to be provided with an automatic irrigation service in accordance with the design and final irrigation layout to be approved by Council in writing prior to installation.

**Item 6**  
Completion Date

1. Subject to paragraph 2 below, prior to seeking a Section 138 Certificate.
2. If agreed in writing with Council:
  - a. 12 months after the date of the grant of a Section 138 Certificate; or
  - b. such other time as specified by Council.

**Item 7**  
Security

Security in the amount of:

1. In relation to any portion of the Works which has not commenced and for which Council has not issued acceptance of a Certificate of Practical Completion for Works, or has not granted a Confirmation of Practical Completion for Plantings: a portion of the Costs approved by Council in accordance with clause 3 (with the addition of any GST) reasonably assessed by Council as the value of that said portion of the Works; or
2. In relation to any portion of the Works which has commenced but has not been completed and for which Council has not issued acceptance of a Certificate of Practical Completion for Works, or has not granted a Confirmation of Practical Completion for Plantings - then Costs approved by Council in accordance with clause 3 less the actual costs incurred by the Developer (if demonstrated as reasonably incurred by the Developer to Council's reasonable satisfaction) in relation to the Works to that date; or
3. In relation to Works for which Council has issued acceptance of a Certificate of Practical Completion for Works, or has granted a Confirmation of Practical Completion for Plantings, but for which the Defects Liability Period/Maintenance Period (as applicable) has not expired: 10% of the Costs approved by Council in accordance with clause 3 (with the addition of any GST).

**Item 8**  
Special conditions

1. All existing trees depicted on the Landscape Plans and External Civil Works Plan that are either:
  - a. not identified for removal; or
  - b. identified for retention,

must be protected at all times during construction associated with the Works and Proposed Development, with appropriate tree protection zones established and maintained consistent with the relevant Australian Standards (including, but not limited to, AS 4970-2009).

2. Council will reimburse the Developer its actual reasonable costs incurred for delivery (excluding design) of the stormwater pipe in item 5 para 2.1.4 only provided that both of the following conditions have first been satisfied and then within 10 Business Days of that occurring:
  - a. the Council has issued a Certificate of Practical Completion for those works; and
  - b. the Developer has provided to Council all reasonable written evidence of costs incurred by the Developer to deliver those works to Council's reasonable satisfaction.

**Item 9**  
Notices

**Council**

Postal Address: PO Box 1, Unley SA 5061  
Email: pobox1@unley.sa.gov.au  
Attention: Chief Executive Officer

**Developer**

Postal Address: 5/26 The Parade West, Kent Town SA 5067  
Email: louis@chasecrown.com.au  
Attention: Louis Kanellos

**EXECUTED** as an agreement

**COUNCIL**

**Signed for The Corporation of the City of Unley** by its authorised delegate pursuant to section 44 of the *Local Government Act 1999* (SA) in the presence of:

.....  
Signature of witness

.....  
Signature of authorised delegate

.....  
Name of witness (print)

.....  
Name of authorised delegate (print)

.....  
Position of authorised delegate

**DEVELOPER**

**Executed by Mary and Arthur Street Pty Ltd** pursuant to section 127 of the *Corporations Act 2001* (Cth)

.....  
Signature of Director

.....  
Signature of Director/Company Secretary  
*(Please delete as applicable)*

.....  
Name of Director (print)  
*or*

.....  
Name of Director/Company Secretary (print)

.....  
Signature of Sole Director and Sole Company Secretary

.....  
Name of Sole Director and Sole Company Secretary (print)



FORM OF INFRASTRUCTURE AGREEMENT



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FORM OF INFRASTRUCTURE AGREEMENT





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**Annexure B      Consents**



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**National Australia Bank Ltd. (ACN: 004 044 937)** being a person with a legal interest in the Land by registered mortgages 13722835 and 13722836 consents to the Owner entering into this agreement.

**Executed by National Australia Bank Ltd.** pursuant to section 127 of the *Corporations Act 2001* (Cth)

.....  
Signature of Director  
Signature of Director/Company Secretary  
(Please delete as applicable)

.....  
Name of Director (print)  
or  
Name of Director/Company Secretary (print)

.....  
Signature of Sole Director and Sole Company Secretary  
Name of Sole Director and Sole Company Secretary (print)

Or

**Signed** in my presence by:  
.....  
Name of Attorney (print)  
of .....  
Address of Attorney

**National Australia Bank Ltd.**  
by Attorney  
.....  
Signature of Attorney  
.....  
Name/Office of Attorney

who is personally known to me, as attorney for **National Australia Bank Ltd.**

Power of Attorney No: 10664492

.....  
Witness  
.....  
Name of Witness (print)

.....  
Address of Witness  
.....  
Business Hours Telephone



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**Despina Daoulas** and **George Daoulas** being persons with a legal interest in the Land by registered easement over the land marked A on D130774 (TG 9649076) consent to the Owner entering into this agreement.

**Signed by Despina Daoulas** in the presence of:

.....  .....

Despina Daoulas

Signature of witness

.....  ALEX BESZ .....


Name of witness (print)

**Signed by George Daoulas** in the presence of:

.....  .....

George Daoulas

Signature of witness

.....  ALEX BESZ .....

Name of witness (print)

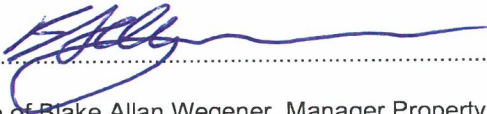


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The **South Australian Water Corporation** being a person with a legal interest in the Land by registered easement over the land marked A on D130774 (TG 4146893) consents to the Owner entering into this agreement, for the purpose of registering this agreement against the title to the Land, which consent is not a waiver or exemption from liability for any detriment to its registered easements and or statutory rights

Signed for and on behalf of the SOUTH AUSTRALIAN WATER CORPORATION by a person duly authorised by an Instrument of Authority dated 12 December 2013



Signature of Blake Allan Wegener, Manager Property Services, the person duly authorised by the above Instrument, in the presence of:



SIGNATURE of WITNESS - Signed in my presence by the Manager Property Services, who is either personally known to me or has satisfied me to his or her identity.

Witness ..... Craig Stanway .....  
(Print **F**ull name)

Title/Position ..... Senior Development services officer .....

Address C/- S. A. Water Corporation  
GPO Box 1751 Adelaide SA 5001

Telephone No ..... 7424 1837 .....



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The Owner certifies pursuant to section 192(11) of the Act that no other person has a legal interest in the Land.

**Executed by Mary and Arthur Street Pty Ltd** pursuant to section 127 of the Corporations Act 2001 (Cth)



.....  
Signature of Director



.....  
Name of Director (print)  
or



.....  
Signature of Director/Company Secretary

(Please delete as applicable)  
ANTHONY STEWART

.....  
Name of Director/Company Secretary (print)

.....  
Signature of Sole Director and Sole Company Secretary

.....  
Name of Sole Director and Sole Company Secretary (print)



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