



Maddocks

COPY

Date 28 / 8 / 09

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Kew Residential Services Development Agreement - Deed of Variation

**The Secretary to the Department of Innovation Industry and Regional Development
and**

Kew Development Corporation Pty Ltd
ACN 119 766 264
and

Walker Group Holdings Pty Ltd
ACN 001 215 069

Interstate office
Sydney

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Kew Residential Services Development Agreement - Deed Of Variation

Dated 28 / 8 / 09.

Parties

Name	The Secretary to the Department of Innovation Industry and Regional Development , acting pursuant to a Nomination Order issued in respect of the Project on 30 August 2005 by the Governor in Council on the recommendation of the Premier, for and behalf of the Crown in right of the State of Victoria
Address	Level 8, 121 Exhibition Street, Melbourne
Short name	State

Name	Kew Development Corporation Pty Ltd ACN 119 766 264
Address	Level 50, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW 2000
Short name	Developer

Name	Walker Group Holdings Pty Ltd ACN 001 215 069
Address	Level 50, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW 2000
Short name	Guarantor

Background

- A. The parties are parties to the Principal Agreement.
- B. The parties have agreed to resolve a number of outstanding issues which have arisen under the Principal Agreement.
- C. The parties have agreed to amend the Principal Agreement in the manner set out in this Deed to reflect the outcome of their agreement in relation to the resolution of those outstanding issues.
- D. The rights and liabilities of the Secretary to the Department of Infrastructure under the Principal Agreement have been allocated to the Secretary to the Department of Innovation Industry and Regional Development with effect from 30 June 2009.

The Parties Agree

1. Definitions and Interpretation

- 1.1 Words which are defined in the Principal Agreement or the Deed of Release and which are used in this Deed have the same meaning in this Deed as in the Principal Agreement or the Deed of Release, unless the context requires otherwise.
- 1.2 The provisions of clauses A1.2, A1.11, A4.2, A7.1, A7.3, A25, A26, A28, A29 and A30 of the Principal Agreement form part of this Deed as if set out in length in this Deed.
- 1.3 The following definitions apply unless the context requires otherwise:

Deed of Release means the deed made between the parties on or about the date of this Deed dealing with Liquidated Damages.

Principal Agreement means the agreement titled 'Kew Residential Services Development Agreement' entered into between the State, the Developer and the Guarantor and dated 27 October 2006 as amended.

2. Liquidated Damages Amount

For the purposes of the Principal Agreement, the Liquidated Damages Amount (including any interest payable in accordance with clause 2.3 of the Deed of Release) will constitute Project Expenditure but will not be taken into account for the purpose of calculating the Developer's Base Margin.

3. Project Expenditure

In accordance with clause D2.5(c) of the Principal Agreement the amount of \$7,241,000 constituting Project Expenditure will not be taken into account for the purpose of calculating the Developer's Base Margin.

4. Agreement on Outstanding Items

- 4.1 The State and the Developer agree that the following items (**Outstanding Items**) are still to be finally agreed:
- 4.1.1 the agreed Recreation Centre Specifications.
- 4.2 The State and the Developer must finalise the Outstanding Items by no later than 30 September 2009. If the Outstanding Items are not finalised by 30 September 2009 the Recreation Centre Specifications in schedule 5 shall apply.
- 4.3 When the Outstanding Items are finalised, the following amendments will be made to this Deed:
- 4.3.1 the Recreation Centre Specifications in schedule 5 will be deleted and replaced with the finalised Recreation Centre Specifications.

5. Amendments to Principal Agreement

The Principal Agreement is amended in accordance with Schedule 1 with effect as and from the date of this Deed.

6. Remaining Provisions unaffected

Except as specifically amended by this Deed and the Deed of Release, all terms and conditions of the Principal Agreement remain in full force and effect. The Principal Agreement as amended by this Deed and the Deed of Release is to be read as a single integrated document incorporating the amendments effected by this Deed and the Deed of Release.

7. Guarantor Consent

- 7.1 The Guarantor acknowledges and agrees to the terms and conditions of this Deed and the amendments to the Principal Agreement made by this Deed.
- 7.2 The Guarantor acknowledges that the guarantee in Part E of the Principal Agreement continues in full force and effect following the execution of this Deed and extends to the Developer's obligations pursuant to this Deed.

8. Costs and Stamp Duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Deed. All stamp duty (including fines, penalties and interest) that may be payable on or in connection with this Deed, any transaction evidenced by this Deed and any instrument or transaction entered into under this Deed must be borne by the Developer.

Signing Page

Each attorney executing this Deed states that he or she has no notice of the revocation or suspension of his or her power of attorney.

Executed by the parties.

Signed by **Sean Sweeney**, Executive Director, Major Projects Victoria in his capacity as authorised delegate of the Secretary to the Department of Innovation Industry and Regional Development for and behalf of the Crown in the right of the State of Victoria in the presence of:

)
)
) 

witness



Executed by **Kew Development Corporation Pty Ltd ACN 119 766 264** in accordance with Section 127 of the Corporations Act 2001 in the presence of:

)
)
)
)

Director


JOHN HUGHES

Full name

Director (or Company Secretary)


DAVID RYAN

Full name

Usual address

Usual address

Executed by **Walker Group Holdings Pty Ltd ACN 001 215 069** in accordance with Section 127 of the Corporations Act 2001 in the presence of:

)
)
)

Director


JOHN HUGHES

Full name

Director (or Company Secretary)


DAVID RYAN

Full name

Usual address

Usual address

Schedule 1

Variations to the Principal Agreement

The following amendments will be made to the Principal Agreement:

1. **Definitions**

1.1 Amend the definition of 'Community Facilities' to read as follows:

'Community Facilities' means the facilities specified in clause B15.1.'

1.2 Amend paragraph (c) of the definition of 'Community Houses Default' to read:

'A failure by the Developer to Complete the Initial Stage 2 Community Houses by the Initial Stage 2 Community Houses Completion Date, to Complete Stage 3A by the Stage 3A Completion Date, to Complete Stage 2 by the Stage 2 Date for Completion or to Complete the Community Facilities by the Community Facilities Date for Completion.'

1.3 Amend the definition of 'Completion' by:

1.3.1 replacing the reference to 'or Stage 2' in paragraph (b) with a reference to, 'Stage 2 or Stage 3A';

1.3.2 inserting a new paragraph (c) as follows:

(c) in respect of the Community Facilities when:

- (i) all Construction Works applicable to the Community Facilities have been completed in accordance with the design documents for the Community Facilities;
- (ii) all occupancy permits and other Approvals have been obtained for the Community Facilities; and
- (iii) the Community Facilities are operational and available for use by the State and KRS Residents. This requirement will be deemed to be satisfied if the Developer has used its reasonable endeavours to secure an operator on reasonable commercial terms for the Community Facilities in accordance with clause B 15.1 (d) but has been unable to do so.

1.4 Amend the definition of 'Developer's Base Margin' to read as follows:

'Developer's Base Margin' means an amount equal to 18% of Project Expenditure (excluding the Liquidated Damages Amount and any Management and Overhead Costs included within Project Expenditure) incurred by the Developer.'

1.5 Amend the definition of 'Key Personnel' to read as follows:

'Key Personnel' means the persons employed or contracted by the Developer to carry out the positions and roles described in Schedule 4'.

1.6 Amend the definition of 'Recreation Centre' by changing the reference to 'clause B15.2' to 'clause B15.1'.

1.7 Amend the definition of 'Revenue Share Land Payment' by changing the reference to 'clause D2' to 'clause D1.2'.

1.8 Amend the definition of 'Stage 2' to read as follows:

'Stage 2' means the stage of the Project described as Stage 2 in the Staging Plan including the subdivision, development, provision of infrastructure, construction of houses and all other works required to be carried out by the Developer in order to Complete Stage 2.'

1.9 Amend the definition of 'Stage 2 Community Houses' to read as follows:

'Stage 2 Community Houses' means the four permanent Community Houses to be constructed being the Initial Stage 2 Community Houses and the Final Stage 2 Community Houses.'

1.10 Amend the definition of 'Stage 2 Date for Completion' to read as follows:

'Stage 2 Date for Completion' means 31 December 2011 (as extended in accordance with this Agreement).'

1.11 Amend the definition of 'Termination Events' by adding the following paragraph (bb):

(bb) a failure by the Developer to achieve Completion of the Community Facilities by the Community Facilities Date for Completion (as extended in accordance with this Agreement)'

1.12 Insert the following new definitions:

'Community Facilities Date for Completion' means 30 June 2012 (as extended in accordance with this Agreement).'

'Initial Stage 2 Community Houses' means the two permanent Community Houses to be constructed in Stage 3A in the location designated on the Staging Plan.'

'Final Stage 2 Community Houses' means the final two permanent Community Houses to be constructed in Stage 6 in the location designated on the Staging Plan or such other location as may be agreed by the State.'

'Initial Stage 2 Community Houses Completion Date' means 31 December 2010 (as extended in accordance with this Agreement).'

'Staging Plan' means the plan contained in schedule 2'.

'Stage 3A' means the stage of the Project shown as Stage 3A in the Staging Plan including the subdivision, development, provision of infrastructure, construction of houses, provision of the Initial Stage 2 Community Houses and all other works required to be carried out by the Developer in order to complete Stage 3A.

'Stage 3A Completion Date' means 31 December 2010 (as extended in accordance with this Agreement).

'Recreation Centre Specifications' means the indicative design for the Recreation Centre attached as schedule 18.'

2. Clause A5.1(c)

Clause A5.1(c) is amended to read:

'(c) the date being 10 years from the Operative Date.'

3. **New Clause A5.3(j)**

A new clause A5.3(j) is inserted as follows:

- '(j) Notwithstanding any other provisions of this clause A5.3, the only grounds on which the Developer may claim an extension to the Stage 2 Date for Completion, the Initial Stage 2 Community Houses Completion Date, the Stage 3A Date for Completion and/or the Community Facilities Date for Completion is:
 - (i) the occurrence of an event within paragraph (a), (b), (c), (d) or (e) of the definition of "Extension Event" and, in respect of the Community Facilities, also includes delays in complying with conditions of Approvals or the requirement of any Relevant Authority; or
 - (ii) in accordance with clause A5.5.'

4. **New Clause A5.5**

A new clause A5.5 is inserted as follows:

'A5.5 Market Condition Change – Stages 2 and 3A, Initial Stage 2 Community Houses and Community Facilities

- (a) Subject to clause A5.5(b), on receipt of a written application from the Developer, the State will allow an extension of time to the Stage 2 Date for Completion, the Initial Stage 2 Community Houses Completion Date, the Stage 3A Date for Completion and/or the Community Facilities Date for Completion where the Developer can demonstrate to the State's reasonable satisfaction that a Market Condition Change has occurred.
- (b) The State will only be obliged to agree to an extension to the Stage 2 Date for Completion, the Initial Stage 2 Community Houses Completion Date, the Stage 3A Date for Completion and/or the Community Facilities Date for Completion under this clause A5.5 if:
 - (i) the Developer has provided to the State all reasons and relevant information (including details of the nature of the Market Condition Change relied upon and supporting evidence from reputable independent experts) and the State is satisfied (acting reasonably) that an extension to the Stage 2 Date for Completion, the Initial Stage 2 Community Houses Completion Date, the Stage 3A Date for Completion and/or the Community Facilities Date for Completion is a feasible solution to the Market Condition Change;
 - (ii) the total amount of extension sought as a consequence of Market Condition Change does not exceed 12 months for each of Stage 2, the Initial Stage 2 Community Houses, Stage 3A and the Community Facilities;

- (iii) the Developer has acted prudently and has not wilfully, artificially or arbitrarily delayed completion of Stage 2 by the Stage 2 Date for Completion, the Initial Stage 2 Community Houses by the Initial Stage 2 Community Houses Completion Date, Stage 3A by the Stage 3A Date for Completion and/or completion of the Community Facilities by the Community Facilities Date for Completion in such a way as to contribute to the impact of the Market Condition Change;
 - (iv) there is no subsisting Default Event in respect of which the Developer has been given a Default Notice at the date of the application or existing before the State's decision is communicated to the Developer;
 - (v) the State (acting reasonably) is otherwise satisfied with the Developer's performance of its obligations under this Agreement up to the date of the Developer's application under clause A5.5(a); and
 - (vi) the State (acting reasonably) is otherwise satisfied that having regard to the performance of the Developer and prevailing economic and market conditions it is in the commercial interest of both the Developer and the State to grant an extension.
- (c) The Developer may make multiple applications for extensions and the State may grant more than one extension provided that no extension under this clause will be granted where the extension would or may have the effect of extending the Stage 2 Date for Completion, the Initial Stage 2 Community Houses Completion Date, Stage 3A Date for Completion and/or the Community Facilities Date for Completion by more than 12 months or such later date as may be agreed by the State.

5. **Clause A8.3**

Clause A8.3 is amended to read as follows:

'The Developer must employ or contract with suitable individuals to occupy the positions and perform the roles of the Key Personnel during the term of this Agreement.'

6. **Clause A18.1**

6.1 Clause A18.1(a) is amended by changing the reference to 'Stage 1 and Stage 2' to 'Stage 1, Stage 2, the Initial Stage 2 Community Houses, Stage 3A and the Community Facilities'.

6.2 Clause 18.1(b) is amended by changing the reference to 'Stages 1 and 2' to 'Stage 1, Stage 2, the Initial Stage 2 Community Houses, Stage 3A and the Community Facilities'.

7. **Clause A20.2**

7.1 Clause A20.2(b)(ii) is amended to read as follows:

'(ii) any impact the Default Event will have on achieving Completion of Stage 1 by the Stage 1 Date for Completion, Stage 2 by the Initial Stage 2 Date for Completion, the Initial Stage 2 Community Houses by the Stage 2

Community Houses Completion Date, Stage 3A by the Stage 3A Date for Completion or the Community Facilities by the Community Facilities Date for Completion; and'

7.2 Clause A20.2(f) is amended to read as follows:

- '(f) Subject to clause A21 and the Developer demonstrating in the case of a Community Houses Default that Completion of Stage 1, Stage 2, the Initial Stage 2 Community Houses, Stage 3A or the Community Facilities (as the case may be) will occur no later than 1 April 2008, the Stage 2 Date for Completion, the Initial Stage 2 Community Houses Completion Date, the Stage 3A Date for Completion and the Community Facilities Date for Completion respectively, the State shall not unreasonably refuse to grant an extension to the Applicable Cure Period where the Developer has satisfied the requirements of this clause.'

8. **Clause A21.1(c)(ii)**

Clause A21.1(c)(ii) is amended to read as follows:

- '(ii) sets out a Cure Plan which, in the State's reasonable opinion, causes there to be a material risk that the Completion of Stage 1, Stage 2, the Initial Stage 2 Community Houses, Stage 3A or the Community Facilities will not occur by the Stage 1 Date for Completion, the Stage 2 Date for Completion, the Initial Stage 2 Community Houses Completion Date, the Stage 3A Date for Completion or the Community Facilities Date for Completion respectively; or'

9. **Clause A23.2(a)**

Clause A23.2(a) is amended to read as follows:

'After the Completion of Stage 2, the Initial Stage 2 Community Houses Stage 3A and the Community Facilities, the Developer may deliver to the State a replacement Project Guarantee for the amount of \$2 million.'

10. **Clause A26.5**

Clauses A26.5(a) and A26.5(b)(i) are amended by substituting 1 July 2007 for 1 July 2001 and changing \$50 million to \$82 million.

11. **Clause B7.2**

Clause B7.2(a) is amended to read as follows:

- '(a) The Developer may from time to time submit a revised Construction Works Program (which must nonetheless comply with Completion of the Initial Community Houses and Stage 1 by the Stage 1 Date for Completion, Completion of Stage 2 by the Stage 2 Date for Completion, Completion of the Initial Stage 2 Community Houses by the Stage 2 Community Houses Completion Date, Completion of Stage 3A by the Stage 3A Completion Date, Completion of the Community Facilities by the Community Facilities Date for Completion and the Completion of the Project by the End Date) for endorsement by the State's Representative (which endorsement shall not be unreasonably withheld and must be given or withheld within the Approval Period).'

12. **Clause B7.3**

Clause B7.3 is amended to read as follows:

'Following Completion of Stage 1, Stage 2, the Initial Stage 2 Community Houses, Stage 3A and the Community Facilities, the Developer must update the Construction Works Program in relation to the remainder of the Project (other than the Public Land Works Stage 1, Stage 2, the Initial Stage 2 Community Houses, Stage 3A and the Community Facilities) whenever there is a material change to the Construction Works Program, which update may be indicative only.'

13. **Clause B8.3(c)**

Clause B8.3(c) is amended to read as follows:

'(c) bring Stage 1 to Completion by the Stage 1 Date for Completion, Stage 2 to Completion by the Stage 2 Date for Completion, the Initial Stage 2 Community Houses to Completion by the Initial Stage 2 Community Houses Completion Date, Stage 3A to Completion by the Stage 3A Date for Completion, the Community Facilities to Completion by the Community Facilities Date for Completion and the Final Stage 2 Community Houses to Completion by the End Date;'

14. **Clause B13.2**

14.1 Clause B13.2(b)(i) is amended by changing the reference to 'Stage 1 and Stage 2' to 'Stage 1, Stage 2, the Initial Stage 2 Community Houses, Stage 3A and the Community Facilities'.

14.2 Clause B13.2(b)(iii) is amended by changing the reference to 'Stage 1 and Stage 2' to 'Stage 1, Stage 2, the Initial Stage 2 Community Houses, Stage 3A and the Community Facilities'.

14.3 Clause B 13.2(d) is amended by changing the reference to 'the Stage 1 Date for Completion, the Stage 2 Date for Completion or the End Date' to 'the Stage 1 Date for Completion, the Stage 2 Date for Completion, the Initial Stage 2 Community Houses Completion Date, the Stage 3A Date for Completion, the Community Facilities Date for Completion or the End Date'.

15. **Clause B 13.3**

15.1 Clause B 13.3(d) is amended by changing the reference to 'the Stage 1 Date for Completion, the Stage 2 Community Houses Completion Date, the Stage 2 Date for Completion and the End Date' to 'the Stage 1 Date for Completion, the Stage 2 Date for Completion, the Initial Stage 2 Community Houses Completion Date, the Stage 3A Date for Completion, the Community Facilities Date for Completion and the End Date'.

16. **Clause B14.3**

Clause B14.3(c) is amended to read as follows:

'(c) ensure that Completion of the Initial Stage 2 Community Houses occurs on or before the Initial Stage 2 Community Houses Completion Date,, that Completion of Stage 2 occurs on or before the Stage 2 Date for Completion, that Completion of Stage 3A occurs on or before the Stage 3A Date for Completion and that Completion of the Community Facilities occurs on or before the Community Facilities Date for Completion; and'

17. **Clause B14.11**

Clause B14.11 is deleted.

18. **Clause B14.13(b)**

Clause B14.13(b) is amended to read as follows:

- '(b) Progressively as the Stage 2 Community Houses are Completed, the State will hand back to the Developer the Transitional Stage 1 Community Houses which will then be treated as Sale Lots. The State and the Developer will discuss and agree the procedures for transition, including the timing and order in which the Transitional Stage 1 Community Houses are handed back progressively to the Developer following progressive completion of the Stage 2 Community Houses.'

19. **Clause B14.14**

Clause B14.14 is deleted and replaced with the following clause:

'Construction of Stage 2 Community Houses

- (a) The Developer must construct:
 - (i) the Initial Stage 2 Community Houses in the locations designated on the Staging Plan or such other location as may be agreed in writing by the State and in accordance with the Design Brief and the Design Documents by the Initial Stage 2 Community Houses Completion Date,;
 - (ii) the Final Stage 2 Community Houses in the locations agreed in accordance with paragraph (b) and in accordance with the Design Brief and the Design Documents by the End Date.
- (b) On or before the Initial Stage 2 Community Houses Completion Date, the State and the Developer must agree the location and timing for construction of the Final Stage 2 Community Houses. The Developer must not alter the location or timing for the construction of the Final Stage 2 Community Houses except with the prior written consent of the State. If the State and the Developer are unable to agree the location of the Final Stage 2 Community Houses, the Final Stage 2 Community Houses will be constructed in Stage 6 in the location shown on the Staging Plan.
- (c) The State acknowledges and confirms that when the Developer has Completed the Stage 2 Community Houses it will have complied with its obligations under the Principal Agreement with respect to Community Houses.

20. **Clause B15**

Clause B15 is deleted and replaced with the following clause:

'B15 Community Facilities

B15.1 Recreation Centre

- (a) The Developer must construct a Recreation Centre in the Heritage Buildings in accordance with the Recreation Centre Specifications.

- (b) The Recreation Centre must include as a minimum:
 - (i) a 20 metre lap pool;
 - (ii) an indoor recreation facility, including gymnasium;
 - (iii) consulting rooms for health practitioners including dentist and doctor suites, excluding provision for specialised equipment including, by way of example, medical gases or facilities for day surgery;
 - (iv) a kiosk/café;
 - (v) facilities for community based activities;
 - (vi) a community meeting space/multi-purpose room;
 - (vii) car parking.
- (c) The Developer must consult with the State as part of the design phase for the Recreation Centre and must ensure that the Recreation Centre addresses the specific requirements of KRS Residents as outlined in the RFP. The Developer must obtain the consent of the State Representative to the design of the Recreation Centre which consent will not be unreasonably withheld or delayed where the design of the Recreation Centre complies with the Recreation Centre Specifications.
- (d) Following construction of the Recreation Centre, the Developer must secure an operator to manage and operate the Recreation Centre as an operational facility on an ongoing basis. The initial operator must be approved by the State.
- (e) Ownership of the land on which the Recreation Centre is constructed will remain with the State and may be transferred by the State to another public authority. The State must either enter into the operating agreement for the Recreation Centre with the initial operator or procure another public authority to do so.

B15.2 Heritage Buildings

- (a) The Developer must carry out building works as necessary to repair the Heritage Buildings in accordance with the Demolition Permit and any additional buildings required to be retained pursuant to any further Demolition Permit in accordance with paragraph (b).
- (b) If:
 - (i) the Developer is required to obtain a further Demolition Permit in consequence of changes to the Development Plan to which the initial Demolition Permit is related; and
 - (ii) that further Demolition Permit requires one or more additional buildings to be retained in addition to the Heritage Buildings,

the Developer must advise the State in writing of the Loss incurred by the Developer as a consequence of the retention of any additional Heritage Buildings. In that event:

- (iii) the Guaranteed Land Payment will be adjusted pro rata to reflect the reduction in the number of Lots arising as a consequence; and
- (iv) the State must pay Compensation to the Developer for any Loss incurred by the Developer as a consequence.

B15.3 Cost Allowances

- (a) The Developer has included in its Development Budget an allowance of \$3,000,000 (plus GST) for the construction of the Recreation Centre and an allowance of \$3,000,000 (plus GST) for the design, site preparation and building costs associated with the repair of the Heritage Buildings.
- (b) If the Developer becomes aware that the estimated construction costs of the Recreation Centre and repair of the Heritage Buildings will either be less than \$5 million or will exceed \$6 million, the Developer must discuss and review the proposed construction and repair works and costs with the State Representative including discussing any modifications to the facilities or design of the Recreation Centre to ensure that the required standard of facilities are being provided.
- (c) Notwithstanding paragraph (b), unless the State agrees to a modification of the proposed repair works, the Developer must repair the Heritage Buildings in accordance with the Demolition Permit.
- (d) Notwithstanding paragraph (b), unless the State agrees to a modification to the facilities or design of the Recreation Centre (which the State is under no obligation to do so), the Developer must construct the Recreation Centre in accordance with clause B15.1.

21. Schedule 1

Schedule 1 is amended to read as follows:

'State

Address: Level 8, 121 Exhibition Street, Melbourne

Fax: 03 9655 8633

Email: tania.orr@mpv.vic.gov.au

Developer

Address: Level 50, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW 2000

Fax: 02 9252 7400

Email: dave.ryan@walkercorp.com.au

Guarantor

Address: Level 50, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW 2000

Fax: 02 9252 7400

Email: john.hughes@walkercorp.com.au

State's Representative

Name: Tania Orr

Address: Level 8, 121 Exhibition Street, Melbourne

Fax: 03 9655 8633

Email: tania.orr@mpv.vic.gov.au

Developer Representative

Name: David Gallant

Address: Level 50, Governor Phillip Tower, 1 Farrer Place, Sydney, NSW

Fax: (02) 9252 7400

Email: david.gallant@walkercorp.com.au

22. Schedule 2

Schedule 2 is amended by inserting the plan attached as schedule 6 representing the amended designs for the Initial Stage 2 Community Houses.

23. Schedule 4

Schedule 4 is amended to read as follows:

Position	Role	Skills
Development Manager	Advisor regarding design, implementation and marketing of the Project and interface and liaison with DHS in relation to Community House and KRS issues	Demonstrated experience in marketing and design associated with delivery of large scale medium density residential build out developments and an ability to manage high level Government stakeholders

24. Schedule 6

Schedule 6 is amended by deleting the Stage 2 plan contained in Schedule 6 and replacing it with a copy of the Staging Plan attached as Schedule 2 to this Deed.

25. **Schedule 7**

Schedule 7 is amended to read as follows:

Project Guarantee Amount	Delivery Date	Release Date
\$5,000,000	On or before Operative Date	On delivery of Replacement Guarantee in accordance with clause A23.2(b)
\$2,000,000	At any time after Completion of Stage 2, Stage 3A and the Community Facilities	5 Business Days after End Date

26. **Schedule 15**

Schedule 15 is deleted and replaced with the Pro Forma Lot Sale Contract and Amendment Protocol attached as Schedules 3 and 4 to this Deed.

27. **New Schedule 18**

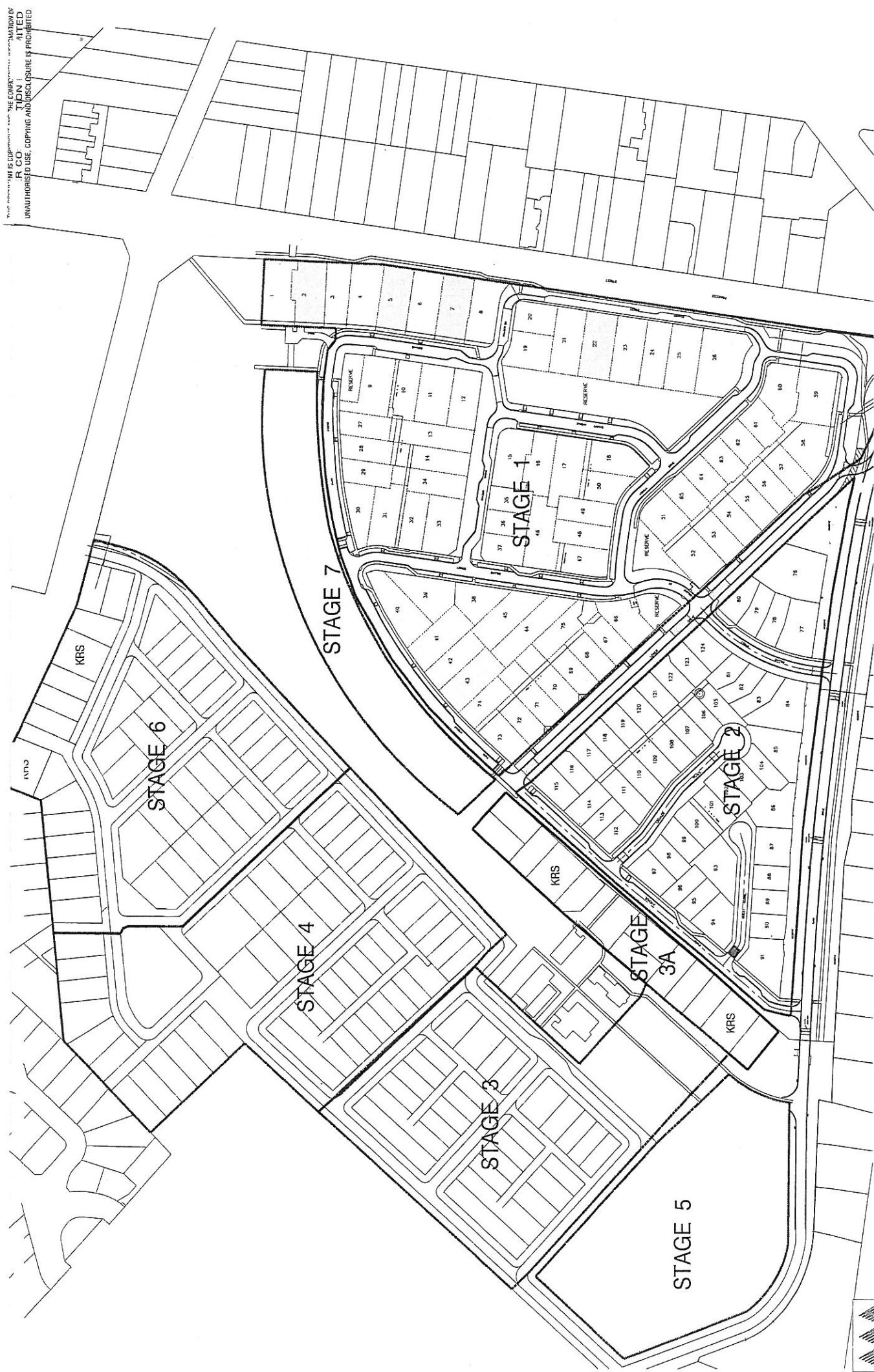
A new schedule 18 is inserted comprising the Recreation Centre Specifications attached as schedule 5 to this Deed.



Schedule 2

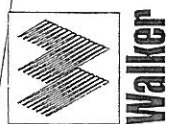
Staging Plan

THIS DOCUMENT IS THE PROPERTY OF WALKER CORPORATION. IT IS TO BE USED FOR THE PURPOSES SPECIFIED IN THE COVER SHEET. IT IS NOT TO BE REPRODUCED, COPIED, ALTERED, OR IN ANY MANNER MISUSED WITHOUT THE WRITTEN PERMISSION OF WALKER CORPORATION. UNAUTHORIZED USE, COPYING AND DISCLOSURE IS PROHIBITED.



MAIN DRIVE KEW - STAGING PLAN

MASTERPLAN



Walker Corporation Pty Ltd ABN 95 001 176 263
PO Box 4033 Sydney NSW 2051
Level 50, Governor Macleay Tower, 11 Macleay Street Sydney NSW 2000
www.walker.com.au

VICTORIA

Scale 1:500 @ A1
Date 25.06.09
Drawn KO
Checked ARK-001



Maddocks

Schedule 3

Lot Sale Contract

Contract of Sale

Lot

Stage 2A
Main Drive, Kew

FORM 2

CONTRACT OF SALE OF REAL ESTATE

IMPORTANT NOTICE TO PURCHASERS

Cooling-off period

Section 31 *Sale of Land Act 1962*

If none of the exceptions listed below applies to you, you may end this contract within 3 clear business days of the day that you sign the contract.

To end this contract within this time, you must either give the vendor or the vendor's agent written notice that you are ending the contract or leave the notice at the address of the vendor or the vendor's agent.

If you end the contract in this way, you are entitled to a refund of all the money you paid EXCEPT for \$100 or 0.2% of the purchase price (whichever is more).

EXCEPTIONS - The 3-day cooling-off period does not apply if:

- You bought the property at or within 3 clear business days before or after a publicly advertised auction
- You received independent advice from a solicitor before signing the contract
- The property is used mainly for industrial or commercial purposes
- The property is more than 20 hectares in size and is used mainly for farming
- You previously signed a similar contract for the same property
- You are an estate agent or a corporate body.

The conditions of this contract are contained in the attached:

Particulars of Sale, and
Schedule, and
General Conditions, and
Special Conditions (if any).

The vendor sells and the purchaser buys both the property and the chattels for the price and upon the conditions set out in this contract.

The Vendor's Statement required by Section 32(1) of the *Sale of Land Act 1962* is attached to, and included in, this contract.

Where the signature of any party to this contract is secured by an agent, the parties acknowledge being given a copy of this contract by the agent at the time of signing.

Vendor

Purchaser

GENERAL CONDITIONS ('GC')

Encumbrances

- 1.1 The purchaser buys the property and the chattels subject to the encumbrances shown in Item 1 of the Schedule.
- 1.2 ~~If the purchaser is taking over an existing mortgage:~~
- ~~(a) the purchaser assumes liability for the mortgage~~
 - ~~(b) the price is satisfied to the extent of any mortgage money owing at the settlement date, and~~
 - ~~(c) the vendor must treat any payment made by the purchaser under the mortgage as a payment made to the vendor under this contract.~~

Loss or Damage Before Settlement

- 2.1 The vendor carries the risk of loss or damage to the property and the chattels until settlement.
- 2.2 ~~The vendor must deliver the property and the chattels to the purchaser at settlement date in their present condition (fair wear and tear excepted).~~
- 2.3 ~~If any chattel is not in its present condition (fair wear and tear excepted) at settlement, the purchaser is only entitled to compensation from the vendor.~~

Finance

- 3 ~~This contract is subject to the lender approving the loan on the security of the property by the approval date or any later approval date allowed by the vendor. The purchaser may end the contract if the loan is not approved by the approval date only if the purchaser:~~
- ~~(a) has made immediate application for the loan~~
 - ~~(b) has done everything reasonably required to obtain approval of the loan~~
 - ~~(c) serves written notice ending the contract on the vendor on or before 2 business days after the approval date, and~~
 - ~~(d) is not in default under any other condition of this contract when the notice is given.~~
- ~~All money must be immediately refunded to the purchaser if the contract is ended.~~

Terms Contracts

- 4 ~~If this is a terms contract as defined in Section 2(1) of the *Sale of Land Act 1962*, then:~~
- ~~(a) the vendor must arrange the discharge of any mortgage affecting the land by the settlement date~~
 - ~~(b) all money payable under the contract must be paid to a duly qualified legal practitioner or a licensed estate agent to be applied towards discharging the mortgage~~
 - ~~(c) the purchaser must pay interest to the vendor from the settlement date upon the balance outstanding at the rate, on the days, and with the adjustments set out in Item 2 of the Schedule~~
 - ~~(d) the vendor must apply instalments under this contract first to pay interest and then to reduce the balance owing.~~

Nominee

- 5 If the contract says that the property is sold to a named purchaser 'and/or nominee' (or similar words), the named purchaser may, at least 14 days before settlement date, nominate a substitute or additional purchaser, but the named purchaser remains personally liable for the due performance of all the purchaser's obligations under this contract.

Payment

- 6.1 The purchaser must pay all money (except the deposit) to the vendor, the vendor's solicitor lawyer or at the direction of the vendor.
- 6.2 ~~The purchaser must pay the deposit:~~
- ~~(a) to the vendor's estate agent or, if there is no estate agent, to the vendor's solicitor lawyer, or~~
 - ~~(b) if the vendor directs, into a special purpose banking account specified by the vendor in the joint names of the purchaser and the vendor.~~
- 6.3 If the land sold is a lot on an unregistered plan of subdivision then the deposit:

- (a) must not exceed 10% of the price, and
- (b) must be paid:
 - (i) to the vendor's ~~solicitor~~ lawyer or estate agent to be held by the ~~solicitor~~ lawyer or estate agent on trust for the purchaser, or
 - (ii) if the vendor directs, into a special purpose account in the authorised deposit-taking institution in Victoria that is specified in this contract in the joint names of the purchaser and the vendor
 until the registration of the plan.

Breach

- 7 A party who breaches this contract must pay to the other party on demand:
- (a) compensation for any reasonably foreseeable loss to the other party resulting from the breach, and
 - (b) any interest due under this contract as a result of the breach.

Time

- 8 If the time for performing any action expires on a Saturday, Sunday or bank holiday, then time is extended until the next business day.

General Conditions in Legislation

- 9.1 The general conditions in Table A of the Seventh Schedule of the *Transfer of Land Act 1958* apply if the land is under the operation of that Act.
- 9.2 The general conditions in the Third Schedule of the *Property Law Act 1958* apply if the land is not under the operation of the *Transfer of Land Act 1958*.
- 9.3 General Condition 9 in Table A or in the Third Schedule applies as if its second last sentence ended with the additional words, 'as a resident Australian beneficial owner of the land'.

Conflict Between Conditions

- 10 In case of a conflict between the conditions the order of priority is:
- (a) any special conditions in this contract;
 - (b) general conditions in this contract; and
 - (c) general conditions in legislation.

Conditions

- 11 These conditions prevail over the conditions in any earlier contract and any requisitions and answers properly made and given under that contract are deemed to be requisitions and answers properly made and given under this contract.

Service

- 12 Any document served by post is deemed to be served on the next business day after posting unless proved otherwise.

Transfer and Settlement

- 13.1 The purchaser must provide the instrument of transfer required by General Condition 12 in Table A, or the assurance required by the Third Schedule (as the case may be), to the vendor or the vendor's solicitor at least 10 days prior to the settlement date.
- ~~13.2 The vendor must pay the bank fees on all bank cheques exceeding 3 that are required by the vendor for settlement.~~

PARTICULARS OF SALE

**VENDORS ESTATE
AGENT:**

**VENDOR'S
LAWYER:**

MADDOCKS

140 William Street, Melbourne VIC 3000

Tel: 9288 0555

Fax: 9288 0666

DX259

Melbourne

Ref: Michael McDonald

**DEVELOPER'S
LAWYER:**

ARNOLD BLOCH LEIBLER

Level 21, 333 Collins Street, Melbourne 3000

Tel: 9229 9999

Fax: 9229 9900

DX38455

Ref: Pamela Williams

**PURCHASERS
LAWYER:**

Name:			
Address:			
Suburb:	State:	Postcode:	
Tel:	Fax:	DX:	Ref:

VENDOR:

SECRETARY TO THE DEPARTMENT OF INNOVATION
INDUSTRY AND REGIONAL DEVELOPMENT (as
successor in title to the Secretary to the Department of
Infrastructure (ABN 24 997 892 497))
of 121 Exhibition Street, Melbourne, Victoria, 3000

PURCHASER:

Name:		
and/or nominee		
Address:		
Suburb:	State:	Postcode:
Daytime Contact Telephone:		After Hours Contact Telephone:

LAND:

Lot

on proposed Plan of Subdivision PS 603974U being part of
the land more particularly described in certificate of title
volume 11062 folio 158

**PROPERTY
ADDRESS:**

The land together with any improvements
known as:

Lot

Stage 2A, Main Drive, Kew

CHATTELS:

All fixtures, fittings and chattels described in Annexure A.

***COLOUR SCHEME
OPTIONS
(*tick one)**

--	--

Option 1

--	--

Option 2**Purchaser's Initials****Purchaser's Initials**

[Note: If neither option is ticked, then Colour Scheme 1 will apply]

PRICE:

\$

inclusive of GST

DEPOSIT:

\$

10% of the Price

BALANCE:

\$

Paid:

\$

Amount paid on the Day of Sale

Balance of Deposit:

\$

Balance payable in accordance with special condition 15

Due Date:

14 days after the Day of Sale

**PAYMENT OF
BALANCE:**

on the day which is the later of:

1. 10 Business Days after written notification by the vendor's lawyers to the purchaser of registration of the Plan of Subdivision; or
2. 10 Business Days after written notification by the vendor's lawyers to the purchaser of the issue of an Occupancy Permit for the Property.

**SETTLEMENT
DATE:**

is the date upon which vacant possession of the property and the chattels must be provided, namely, upon acceptance of title and payment of the Price

DAY OF SALE:is the date of this contract, namely
the

day of

2009

SCHEDULE

ITEM 1 (GC 1)

Encumbrances-

- 1 Any easements, covenants and other restrictions disclosed in the Vendor's Statement (including the Section 173 Agreement and Memorandum of Common Provisions).
- 2 The easements and other encumbrances to be created by registration of the Plan of Subdivision or the Transfer.
- 3 The access rights referred to in special condition 18.

SPECIAL CONDITIONS

1 Definitions and Interpretation

1.1 In this Contract:

"Bank Guarantee" means an unconditional and irrevocable guarantee or undertaking by an Australian trading bank to pay money to the Vendor's lawyer:

- (a) without reference to the Purchaser;
 - (b) with an expiry date (if any) no earlier than the expiry of the Registration Period and Construction Period; and
 - (c) in a form satisfactory to the Vendor and the Developer's financier,
- and **"Bank Guarantor"** means the bank giving such guarantee or undertaking;

"Builder" means a person who is registered as a builder under the Building Act 1993;

"Building Plans and Specifications" means the floor plan, indicative architectural impression and indicative specifications and inclusions included in annexure "A" to this Contract;

"Business Day" means any day which is not a Saturday, Sunday or a proclaimed public holiday in the State of Victoria; ** For each of stages 2b, 2c & 2d, 24 months.*

"Construction Period" means the period expiring ***18 months after the Day of Sale;

"Developer" means Kew Development Corporation Pty Ltd ACN 119 766 264;

"Guarantee and Indemnity" means the guarantee and indemnity annexed as annexure "B";

"GST" means tax payable under the GST Law;

"GST Law" means the goods and services tax system which is Australian law under the "A New Tax System (Goods and Services Tax) Act 1999" and associated legislation or any amendment or replacement of that Act or legislation;

"Land to be Developed" means all of the land in certificate of title volume 10998 folio 189 being the former Kew Residential Services Site, Princess Street, Kew;

"**Major Domestic Building Contract**" means a major domestic building contract as defined in section 3 of the *Domestic Building Contracts Act 1995*;

"**Memorandum of Common Provisions**" means the memorandum of common provisions included in the Vendor's Statement;

"**Non Deductible Costs**" means non deductible costs calculated in accordance with the Revenue Ruling;

"**Occupancy Permit**" means a permit issued under Regulation 9.5 of the Regulations;

* The number of the plan of subdivision varies for each of stage 2a, 2b, 2c + 2d. *

"**Plan of Subdivision**" means plan of subdivision no. PS603974U, a copy of which is included in the Vendor's Statement and includes any amendments or alterations made to the plan and the Restriction noted on that plan;

* For each of stages 2b, 2c + 2d,

24 months. * * *

"**Registration Period**" means the period expiring 18 months after the Day of Sale;

"**Restriction**" means a restriction as defined in section 3 of the *Subdivision Act 1988*;

"**Revenue Ruling**" means Revenue Ruling DA.048 issued by the State Revenue Office of Victoria and includes any amendment thereto or replacement thereof;

"**Section 173 Agreement**" means an agreement under section 173 of the Planning and Environment Act 1987 which may be required to satisfy the conditions of planning permit No. 20070638 and heritage permit No. P13872, copies of which are included in the Vendor's Statement;

"**SLA**" means the *Sale of Land Act 1962* (Vic);

"**Subsequent Stages**" means subsequent stages of construction or subdivision of the Land to be Developed;

"**Table A**" means Table A of the Seventh Schedule of the *Transfer of Land Act 1958*;

"**Transfer**" means the instrument of transfer referred to in condition 12 of Table A;

"**Vendor's Statement**" means the statement given by the Vendor under section 32 of the *Sale of Land Act 1962*, a copy of which is annexed to this Contract;

"**Works**" means the works described in the Building Plans and Specifications.

1.2 In this Contract, unless the context requires otherwise:

- (a) a reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any statutory instrument issued under, that legislation or legislative provision;
- (b) the singular includes the plural and vice versa;
- (c) a person includes a corporation, partnership, joint venture, firm, association, authority or government;
- (d) any gender includes all genders;
- (e) a person includes the person's executors, administrators, successors, substitutes and permitted assigns;
- (f) a reference to a condition, annexure or schedule is a reference to a condition, annexure or schedule of this Contract;
- (g) the word "includes" in any form is not a word of limitation; and

- (h) terms used in the Particulars of Sale have the meaning given them in the Particulars of Sale.
 - (i) a term defined within a special condition has the meaning given it in that special condition wherever it is used in this Contract; and
 - (j) a word or term defined in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) has the same meaning in this Contract where used in connection with the GST imposed under that Act.
- 1.3 In this Contract, headings are for convenience of reference only and do not affect interpretation.
- 1.4 No provision of this Contract, which is expressed as or is capable of surviving settlement, merges on or by virtue of settlement.
- 1.5 If a provision of this Contract is void or voidable, unenforceable or illegal but would not be void, voidable, unenforceable or illegal if it were read down and it is capable of being read down, then the provision must be read down. If, despite being read down, a provision is still void, voidable, unenforceable or illegal and the provision would not be void, voidable, unenforceable or illegal if words were severed, then those words must be severed. In any other case, the whole provision must be severed. If any event under this special condition occurs, then the remainder of this Contract continues in full force and effect.
- 1.6 Where a party to this Contract consists of more than one person, this Contract will bind all of those persons jointly and each of them severally.

2 Conditions precedent to settlement

- 2.1 Settlement of this Contract is condition on:
- (a) the Vendor arranging registration of the Plan of Subdivision by the Registrar of Titles before the end of the Registration Period; and
 - (b) an Occupancy Permit being issued for the Property before the end of the Construction Period.
- 2.2 If the Plan of Subdivision is not registered before the end of the Registration Period, either the Vendor or the Purchaser may at any time after the end of the Registration Period (but only before the Plan of Subdivision is registered), rescind this Contract by written notice served on the other.
- 2.3 If an Occupancy Permit is not issued for the Property before the end of the Construction Period, either the Vendor or the Purchaser may at any time after the end of the Construction Period, but only before an Occupancy Permit is issued for the Property, rescind this Contract by written notice served on the other.
- 2.4 If this Contract is terminated under either of special conditions 2.1 or 2.3:
- (a) any money paid by the Purchaser on account of the Price will be refunded to the Purchaser together with any interest earned (less all proper bank and government charges, fees and taxes); and
 - (b) any Bank Guarantee accepted by the Vendor under special condition 15 will be returned to the Purchaser or the Bank Guarantor for cancellation; and
 - (c) the Purchaser will not be entitled to any compensation from the Vendor in respect of any losses, costs, fees or other expenses paid or incurred by the Purchaser in relation to this Contract.

- 2.5 Subject to the Purchaser's rights under the *SLA* and under special condition 2.1 the Purchaser agrees not to make any objection, requisition or claim because of anything connected with the registration of or failure to obtain registration of the Plan of Subdivision.

3 Matters to which Land is subject

- 3.1 The Purchaser buys the Land subject to:
- (a) the encumbrances described in Item 1 of the Schedule, including those that may be created or come into existence after the Day of Sale;
 - (b) the provisions of the *Subdivision Act 1988*, including any easements (whether express or implied) affecting the Land by virtue of that Act;
 - (c) any restrictions imposed on the Land by:
 - (i) any Act, order, regulation, by-law or planning scheme affecting the Land; or
 - (ii) any governmental, semi-governmental or judicial entity; and
 - (d) any easement or other right held or claimed by any statutory authority or supply authority or company.

4 Vendor's rights to create further encumbrances and restrictions

- 4.1 The Purchaser acknowledges that the Vendor:
- (a) may be required to:
 - (i) enter into leases with statutory authorities, supply authorities or companies or other entities; and
 - (ii) create easements, enter licences, enter covenants and grant or create other like rights or restrictions (including positive covenants under agreements pursuant to section 173 of the *Planning and Environment Act 1987* or pursuant to section 143 of the *Melbourne and Metropolitan Board of Works Act 1958*),

to ensure the provision of services to the Land to be Developed or to enable certification of, the issue of a statement of compliance for, or registration of the Plan of Subdivision; and
 - (b) may require the Purchaser to create in the instrument of transfer of the Land, easements or covenants which burden the Land, which the Vendor (acting reasonably) considers necessary for the development and proper functioning of the Land to be Developed.
- 4.2 Subject to the Purchaser's rights under the *SLA*, the Purchaser will not make any objection, requisition or claim nor rescind, terminate or delay settlement of this Contract because of anything contemplated by special condition 4.1.

5 Plan of Subdivision and Identity of Land

- 5.1 The Vendor may make any amendments and alterations to the Plan of Subdivision, which are necessary to obtain the certification or registration of the Plan of Subdivision or which the Vendor considers to be reasonably necessary.
- 5.2 The Vendor will notify the Purchaser of any amendment or alteration to the Plan of Subdivision in accordance with the *SLA*.

5.3 Subject to the Purchaser's rights under of the SLA, the Purchaser will not make any objection, requisition or claim nor rescind, terminate or delay completion of this Contract because of:

- (a) any amendment or alteration to the Plan of Subdivision which does not materially and detrimentally affect the Property;
- (b) any alleged misdescription of the Land or deficiency in its area or measurements,
- (c) any re-numbering of lots on the Plan of Subdivision;
- (d) consolidation of lots on the Plan of Subdivision; or
- (e) any change to the Restriction on the Plan of Subdivision reasonably necessary to link it properly to the Memorandum of Common Provisions, or to enable its registration,

nor will the Purchaser call upon the Vendor to amend title or pay all or any part of the cost of doing so and condition 3 of Table A does not apply to this Contract.

5.4 For the purposes of special condition 5.3, the Purchaser agrees that an alteration to the Plan of Subdivision which results in a change to the area of the Property of 3% or less does not materially and detrimentally affect the Property.

6 Location of Easements and Natural Surface Levels

- 6.1 The Purchaser agrees that section 10(1) of the SLA will not apply in respect of the final location of any easements shown on the Plan of Subdivision.
- 6.2 For the purposes of section 9AB of the SLA, the Purchaser acknowledges and agrees that, to the Vendor's knowledge, in carrying out subdivisional works and constructing the Works and the other dwellings on the land in the Plan of Subdivision after the Day of Sale, the Builder will carry out works that will affect the natural surface level of the land in the Plan of Subdivision and those parts of the Land to be Developed that abut the land in the Plan of Subdivision in the manner set out in the plan included in Annexure "C".
- 6.3 In accordance with section 9AB of the SLA, the Vendor discloses to the Purchaser that the Vendor is undertaking further investigation as to whether (and if so, what) works affecting the natural surface level of the Land or any land abutting the Land which is a Lot on the Plan of Subdivision may be required prior to registration of the Plan of Subdivision.
- 6.4 If the Vendor becomes aware that any works of the nature described in Special Condition 6.3 are required, the Vendor will disclose details of those works to the Purchaser in accordance with Section 9AB(3) of the SLA as soon as practicable after details of those works come to the knowledge of the Vendor.

7 Construction of Works

- 7.1 The Vendor warrants to the Purchaser that:
 - (a) the Works are being or will be constructed under a separate contract that is a Major Domestic Building Contract;
 - (b) the Works will be completed generally in accordance with the Building Plans and Specifications by the Settlement Date; and
 - (c) any defects and other faults in the construction of the Works (excluding minor shrinkage and settlement cracks) due to faulty materials or poor workmanship, of which the Purchaser has given the Vendor written notice within 12 weeks from the Settlement Date, will be repaired in a proper and workmanlike manner by the

Builder at no cost to the Purchaser as soon as practicable after written notice is given.

- 7.2 The Purchaser agrees that the Building Plans and Specifications may be varied by the Developer from time to time in any manner the Developer (acting reasonably) considers necessary, including:
- (a) variations necessary to enable the proper construction of the Works;
 - (b) variations to enable the provision of services to the Works and other dwellings to be constructed on the land in the Plan of Subdivision; and
 - (c) by substituting any of the fixtures, fittings, finishes and appliances specified in the Building Plans and Specifications with fixtures, fittings, finishes or appliances of like quality.
- 7.3 The Vendor will notify the Purchaser within a reasonable time of any variation to the Building Plans and Specifications which, in the Vendor's reasonable opinion, materially and detrimentally affects the Property.
- 7.4 The Purchaser may rescind this Contract by written notice to the Vendor within 21 days of notification under special condition 7.3.
- 7.5 If the Purchaser lawfully rescinds this Contract under special condition 7.4:
- (a) any money paid by the Purchaser on account of the Price will be refunded to the Purchaser together with any interest earned (less all proper bank and government charges, fees and taxes); and
 - (b) any Bank Guarantee accepted by the Vendor under special condition 15 will be returned to the Purchaser or the Bank Guarantor for cancellation; and
 - (c) the Purchaser will not be entitled to any compensation from the Vendor in respect of any losses, costs, fees or other expenses paid or incurred by the Purchaser in relation to this Contract.
- 7.6 In the event of any dispute as to the nature of the fixtures, fittings and/or chattels in the Works or the quality or standard of the finish of the Works or the fixtures, fittings and/or chattels, the Purchaser must not delay or postpone Settlement or retain any part of the balance of the Price as security for any alleged obligation on the Developer to complete the Works and shall proceed to settle as required by this Contract.
- 7.7 The Purchaser acknowledges and agrees:
- (a) that subject to any limitations specified in special conditions 5 and 7.2, the Vendor or any person authorised by the Vendor is entitled (in the absolute discretion of the Vendor or any such authorised person) from time to time (both prior to and subsequent to Settlement) to:
 - (i) vary the number, size or usage mix of Lots on the land within the Plan of Subdivision;
 - (ii) make alterations to the layout of the Land to be Developed and the size and position of the Lots within the Plan of Subdivision (including varying the configuration, mass, height or bulk of other Lots in the Plan of Subdivision) and/or lots within Subsequent Stages;
 - (iii) make application for amendments and variations to any existing planning or heritage permits and to the endorsed plans thereunder, and to extend the time for the use and development permitted thereunder to be commenced and completed; and
 - (b) that any details of the development and use of other Lots in the Plan of Subdivision and proposed Subsequent Stages (including the details of the

proposed Subsequent Stages) contained in the Vendor's Statement and artistic impressions or perspective drawings used in marketing materials or any display unit for the Land to be Developed represent the Vendor's current intentions based on existing masterplanning for the Land to be Developed, and the Vendor does not warrant or represent that the other Lots in the Plan of Subdivision or the Subsequent Stages will be developed in accordance with those details and due to market, regulatory (including planning or heritage restrictions or approvals) or other reasons, the Vendor may alter its masterplanning for the Land to be Developed so that those Lots or the Subsequent Stages are developed with different numbers or configurations of lots, and different mass, height or bulk of or uses for the development in those Lots or Subsequent Stages.

- (c) that the Vendor or any person authorised by the Vendor is entitled (in the absolute discretion of the Vendor or such authorised person) from time to time (both prior to and subsequent to Settlement) to make application for planning or heritage permits, building permits certification and registration of further plans of subdivision and all other requisite permits approvals consents and sanctions and covenants;
 - (d) that subsequent to Settlement occurring under this Contract, the Developer will be undertaking:
 - (i) construction works within other Lots on the Plan of Subdivision; and
 - (ii) the development of Subsequent Stages;
 - (e) not to object to anything relating or arising from the matters mentioned in special conditions 7.7(a), 7.7(b), 7.7(c) or 7.7(d).
- 7.8 The Purchaser hereby consents to all applications for all permits, approvals, consents, sanctions and covenants referred to in special condition 7.6, and agrees to sign such forms of consent as the Vendor may from time to time reasonably require. Production of this Contract constitutes sufficient evidence of such consent.
- 7.9 The Purchaser hereby irrevocably appoints the Vendor as the Purchaser's attorney and agent as and for the Purchaser and in the Purchaser's name for the purpose of signing and giving the Purchaser's consent in respect of all such applications for permits, approvals, consents sanctions and covenants referred to in special condition 7.6, and production of this Contract shall be sufficient evidence of such appointment.
- 7.10 The Purchaser warrants having inspected the Building Plans and Specifications and having satisfied itself as to all matters referred to in the Building Plans and Specifications. The Purchaser further warrants to make no objection or requisition or claim any compensation nor to rescind or determine this Contract nor to delay or postpone settlement of this Contract as a result of any thing or matter contained in or arising out of the Building Plans and Specifications.
- 7.11 Without limiting special conditions 7.6 and 7.10, the Purchaser acknowledges that any display unit, impressions, pictures, drawings or other marketing material inspected by the Purchaser prior to the Day of Sale is intended only as an indicative representation of finishes, fittings, fixtures (and the like) forming part of the Works generally. The Purchaser further acknowledges:
- (a) the Purchaser has not relied on its inspection of that display unit or other marketing material in entering into this Contract, but has relied on its review of the Building Plans and Specifications;
 - (b) to the extent of any inconsistency between the finishes or other details in the display unit or other marketing material and the Building Plans and Specifications, the Building Plans and Specifications shall prevail.

8 Title to issue

- 8.1 If, on the Settlement Date, the certificate of title for the Land:
- (a) has not issued; or
 - (b) is not available from the Land Registry;
- the Purchaser must accept an order to register the Transfer endorsed on that instrument by the Vendor's Lawyer.
- 8.2 If, after the Settlement Date, the certificate of title for the Land issues from the Land Registry to the Vendor's Lawyer, the Vendor will arrange for the title to be delivered to the Purchaser's Lawyer or at its direction to another party.

9 Apportionment of Purchase Price and Fractional Interests

- 9.1 The Purchaser acknowledges and agrees that:
- (a) the Vendor will apportion the Price between Land Value (which includes Non-Deductible Costs) and Construction Cost in accordance with the Revenue Ruling.
 - (b) the Vendor is unable as at the Day of Sale to calculate all of the Non-Deductible Costs that will be attributable to the calculation of the Land Value as at the Settlement Date as the Vendor will incur additional Non-Deductible Costs after the Day of Sale.
- 9.2 The Vendor does not make any warranty as to the amount of stamp duty payable on the Transfer to the Purchaser and the Purchaser acknowledges that it is liable for all stamp duty payable on the Transfer.
- 9.3 The Purchaser is not entitled to make any requisition, objection or claim in respect of or in any way connected with the stamp duty payable on the Transfer and must not delay or postpone Settlement or retain any part of the balance of the Price as a result of any legislative amendment or any ruling or determination made by the State Revenue Office after the Day of Sale affecting the stamp duty payable on the Transfer.
- 9.4 If there is more than one entity comprising the Purchaser, it is the Purchaser's responsibility to complete the purchaser details in the Particulars of Sale to correctly record, at the Day of Sale, the proportions in which each Purchaser is purchasing the property ("**Fractional Interests**").
- 9.5 If the Fractional Interests recorded in the Transfer vary from those recorded in the purchaser details in the Particulars of Sale, the Purchaser is liable for all additional duty which may be assessed as a result of that variation.

10 Adjustments

- 10.1 For the purposes of Clause 9 of Table A:
- (a) where separate assessments have not issued in relation to the Property, outgoing for which there are no separate assessments will be apportioned to the Property on the basis of the area of the Land as a proportion of the area of all of the land the subject of the assessment or on such other fair and reasonable basis as the Vendor may nominate; and
 - (b) where land tax has been assessed but is not due at the Settlement Date, the Purchaser agrees that:
 - (i) the Vendor will not be obliged to pay the amount of the assessment until it is due; and

- (ii) that the Purchaser will proceed with settlement notwithstanding that the land tax assessed has not been paid by the Vendor; and
- (c) where land tax has been assessed and is due prior to Settlement Date, the Purchaser will accept evidence of payment of an assessment which includes the Property, as proof of the Vendor having discharged its obligation to pay land tax for the Property.

11 Statutory Obligations and Notices

- 11.1 The Purchaser acknowledges that prior to execution of this Contract the Purchaser received a signed Vendor's Statement from the Vendor or the Vendor's Estate Agent.
- 11.2 Condition 15 of Table A will not apply to this Contract and the Purchaser will only assume liability for compliance with any notices or orders relating to the Property (other than those referring to apportionable outgoings), which are made or issued after Settlement Date.

12 PRE-SETTLEMENT INSPECTION

- 12.1 The last sentence of condition 15 of Table A does not apply to this Contract of Sale.
- 12.2 The purchaser may inspect the condition of the Property once before the Settlement Date by making an appointment with the Vendor or the Vendor's Agent.
- 12.3 The purchaser acknowledges that some or all of the Lots in the Plan of Subdivision may be settled at or about the same time as settlement of this Contract. To ensure that inspection appointments by all purchasers of Lots in the Plan of Subdivision will be carried out in a safe and orderly manner and in co-ordination with completion of the Works, the Vendor retains the right:
 - (a) to set the time and date of the Purchaser's inspection of the Property; and
 - (b) to limit the time spent by a Purchaser inspecting the Property; and
 - (c) to limit the number of persons attending an inspection appointment.

13 Purchaser not to lodge caveat

- 13.1 The Purchaser must not lodge (nor have lodged on its behalf) nor allow any person claiming an interest through the Purchaser to lodge any caveat in relation to the Land, which will delay or prevent registration of the Plan of Subdivision.
- 13.2 If the Purchaser lodges (or allows to be lodged on the Purchaser's behalf) or a person claiming through the Purchaser lodges a caveat which delays or prevents registration of the Plan of Subdivision, the Purchaser must immediately on receipt of written notice from the Vendor, the Vendor's Lawyer or the Developer's Lawyer, have that caveat withdrawn at the Purchaser's cost.
- 13.3 If the Purchaser enters into an agreement of the type described in special condition 26.1, that agreement must contain provisions on the same terms as special condition 13.1 and 13.2 (with all necessary changes).
- 13.4 The Purchaser agrees to indemnify the Vendor against all claims, damages, losses, liabilities or proceedings of any nature arising from breach of this special condition 12 by the Purchaser.

14 Foreign Purchaser

- 14.1 Where the provisions of the *Foreign Acquisitions and Takeovers Act 1975* apply to the Purchaser or the purchase of the Land by the Purchaser, the Purchaser must promptly (and whether or not requested or directed by the Vendor) execute and lodge with the Foreign Investment Review Board ("**FIRB**") any application or notice required by FIRB to be executed and lodged in relation to the purchase of the Land.

15 Deposit

- 15.1 The Deposit must be paid either by:
- (a) cash or cheque to be held by the Vendor's Lawyers in accordance with special condition 15.2; or
 - (b) Bank Guarantee to be held by the Vendor's Lawyers in accordance with special condition 15.3.
- 15.2 In the event that the Deposit is to be paid by cash or cheque:
- (a) the Purchaser must provide any difference between the Deposit and the amount paid by the Purchaser at or prior to the Day of Sale to the Vendor's Lawyers on or before the day being 14 days after the Day of Sale;
 - (b) the Deposit must be paid to the Vendor's Lawyers to be held on trust for the Purchaser until registration of the Plan of Subdivision;
 - (c) the Vendor and Purchaser hereby authorise the Vendor's Lawyers to invest the Deposit (or any part thereof) in a Bank without incurring any responsibility therefor;
 - (d) if this Contract is completed the Vendor will be immediately entitled to be paid the Deposit including all interest accrued on investment of the Deposit (less costs, duties and expenses incurred on the investment);
 - (e) on rescission of this Contract as a result of a default by the Purchaser the Vendor will be immediately entitled to be paid the Deposit and all interest accrued thereon (less costs, duties and expenses incurred on the investment) in the Vendor's own right;
 - (f) if this Contract is rescinded as a result of a default by the Vendor or pursuant to Sections 9AC or 9AE or 9AH of the SLA, the Purchaser will be entitled to the immediate return of the Deposit and all interest thereon (less costs, duties and expenses incurred on the investment) and all other moneys paid under this Contract except for any money paid by the Purchaser as an occupation fee for any time during which the Purchaser was in actual occupation of the Land;
 - (g) at any time prior to registration of the Plan of Subdivision the Purchaser is entitled to replace the Deposit by substituting a Bank Guarantee in favour of the Vendor's Lawyers at which time the Deposit held by the Vendor's Lawyers will be returned to the Purchaser (less all interest accrued on the Deposit and any costs, duties and expenses incurred on the investment); and
 - (h) the Purchaser must provide its tax file number to the Vendor within 14 days after the Day of Sale, and acknowledges that if it fails to do so:
 - (i) the Vendor's Lawyers are not obliged to invest the Deposit in accordance with special condition 15.2(c); or
 - (ii) if the Vendor's Lawyers invest the Deposit in accordance with special condition 15.2(c), withholding tax may be deducted from any interest earned on that investment.

15.3 Where the Deposit is to be provided by Bank Guarantee:

- (a) the Purchaser must provide a Bank Guarantee to the Vendor's Lawyers (to be held by them in accordance with the provisions of the SLA as if the Bank Guarantee was cash) within 14 days after the Day of Sale;
- (b) if the Purchaser does not provide the Bank Guarantee within 14 days after the Day of Sale, the Vendor:
 - (i) may terminate this Contract by notice to the Purchaser; and
 - (ii) shall be entitled to recover from the Purchaser as a liquidated debt, the Deposit.
- (c) if the Vendor has not terminated this Contract at the time of recovery of the amount referred to in special condition 15.3(b)(ii), the amount recovered must be paid directly to the Vendor's Lawyers to be held as the Deposit in accordance with special condition 15.1.
- (d) the Vendor's Lawyers may make demand on the issuing bank pursuant to the Bank Guarantee for payment of the amount guaranteed in any circumstances where the Vendor is entitled to forfeit and retain the Deposit under this Contract.
- (e) the Purchaser agrees with the Vendor that it will not, before Settlement, do any thing which may cause the Bank Guarantee to be withdrawn, revoked, terminated or limited in any way.
- (f) at settlement, the Purchaser must pay the Price and the Vendor will procure the Vendor's Lawyers to return the Bank Guarantee to the Purchaser.

15.4 The parties acknowledge that conditions 5 and 6 of Table A do not apply to special condition 15.3.

15.5 Notwithstanding special condition 15.4, time remains of the essence for the purposes of special condition 15.3.

15.6 Where:

- (a) despite anything else contained in this Contract, the Purchaser provides the Deposit as a Bank Guarantee which has an expiry date; and
- (b) settlement does not occur by the date which is 14 days prior to that expiry date ("**Replacement Date**"),

the Purchaser must on or before the Replacement Date procure the issuing of a further Bank Guarantee without an expiry date or with an expiry date approved by the Vendor failing which the Purchaser is in default and the Vendor's Lawyers may draw against the Bank Guarantee.

16 Vendor Warranties

16.1 The warranties in special conditions 16.2 and 16.3 replace the Purchaser's right to make requisitions and inquiries.

16.2 The Vendor warrants that the Vendor:

- (a) has, or by the due date for settlement will have, the right to sell the Land; or
- (b) is under no legal disability; and
- (c) is in possession of the Land, either personally or through the Developer; and
- (d) has not previously sold or granted any option to purchase, agreed to a lease or granted a pre-emptive right which is current over the Land and which gives another party rights which have priority over the interest of the Purchaser; and

- (e) will at settlement be the holder of an unencumbered estate in fee simple in the Land; and
- (f) will at settlement be the unencumbered owner of any improvements, fixtures, fittings and goods sold with the Land.

16.3 The Vendor further warrants that the Vendor has no knowledge of any of the following:

- (a) public rights of way over the Land;
- (b) easements over the Land;
- (c) leases or other possessory agreement affecting the Land;
- (d) notices or orders affecting the Land which will not be dealt with at Settlement, other than the usual rate notices and any land tax notices;
- (e) legal proceedings which would render the sale of the Land void or voidable or capable of being set aside.

16.4 The warranties in special conditions 16.2 and 16.3 are subject to any contrary provisions in this Contract and disclosures in the Vendor's Statement.

17 Guarantee and Indemnity

17.1 If the Purchaser is or includes a corporation, that is not listed on the Australian Stock Exchange:

- (a) where that corporation is not a wholly owned subsidiary of a corporation that is listed on the Australian Stock Exchange, the Purchaser must cause the Guarantee and Indemnity to be executed by all directors of the purchaser corporation on the Day of Sale or within such period after the Day of Sale as the Vendor may allow; or
- (b) where that corporation is a wholly owned subsidiary of a corporation listed on the Australian Stock Exchange, the Purchaser must cause the Guarantee and Indemnity to be executed by the listed corporation on the Day of Sale or within such period after the Day of Sale as the Vendor may allow.

17.2 If, in accordance with general condition 5, the Purchaser nominates a corporation as a substitute or additional purchaser and that corporation is not listed on the Australian Stock Exchange:

- (a) where the nominated corporation is not a wholly owned subsidiary of a corporation that is listed on the Australian Stock Exchange, the Purchaser must cause all directors of the nominated corporation to execute a guarantee and indemnity in substantially the same form as the Guarantee and Indemnity at the time the nomination is made; or
- (b) where the nominated corporation is a wholly owned subsidiary of a corporation listed on the Australian Stock Exchange, the Purchaser must cause the listed corporation to execute a guarantee and indemnity in substantially the same form as the Guarantee and Indemnity at the time the nomination is made.

18 Access for Construction and Post-settlement matters

18.1 The Purchaser acknowledges and agrees that:

- (a) not all of the lots on the Plan of Subdivision may be sold before Settlement Date and not all of the Land to be Developed will be sold before Settlement Date;

- (b) the Vendor will conduct marketing activities on the Land to be Developed involving, among other things, operating a display suite and display homes from and placing signs and other marketing material on parts of the Land to be Developed after Settlement Date ("Marketing Activities");
- (c) there will be continuing surveying, engineering and construction works on the Land to be Developed after Settlement Date ("Ongoing Works") and the Developer may need access to the land in the Plan of Subdivision to carry out the Ongoing Works after Settlement Date; and
- (d) the Developer may be obliged to carry out rectification and repair works after Settlement Date ("Repair Works") and may need access to the Property and the land in the Plan of Subdivision to carry out the Repair Works.

18.2 The Purchaser grants:

- (a) the Vendor (and its contractors) a right to access the land in the Plan of Subdivision to carry on the Marketing Activities;
- (b) the Developer (and its contractors) a right to access the Property (but only where necessary) and the land in the Plan of Subdivision to carry out the Ongoing Works and the Repair Works.

18.3 If the Purchaser sells the Property while the Vendor remains owner or occupier of any part or parts of the Land to be Developed, the Purchaser must ensure that its successor in title enters into a deed with the Vendor, in a form satisfactory to the Vendor (acting reasonably):

- (a) conferring on the Vendor and the Developer the rights conferred on it by the Purchaser under special condition 18; and
- (b) obliging the successor in title to satisfy the Purchaser's obligations under special condition 18.

19 Restriction, Memorandum of Common Provisions and Section 173 Agreement

19.1 The Purchaser acknowledges and agrees that:

- (a) the final form of the Memorandum of Common Provisions may be different to the copies of those documents included in the Vendor's Statement;
- (b) Section 173 Agreements will be registered on the title for lots on the Plan of Subdivision; and
- (c) the Memorandum of Common Provisions will be registered at the Land Registry and form part of the Restriction.

19.2 If for any reason the Memorandum of Common Provisions and/or the Restriction is not able to be registered at the Land Registry, the Purchaser will, at the request of the Vendor, enter into a covenant with the Vendor in the Transfer to observe stipulations in the form of those contained in the Restriction and Memorandum of Common Provisions:

- (a) to the intent that the burden of the covenant is annexed to and runs with and binds the Land and every part thereof; and
- (b) to the intent that the benefit of the covenant is annexed to and runs with each and every part of the land identified as having the benefit of the Restriction in the Plan of Subdivision.

19.3 The Purchaser will not make any objection, requisition or claim nor rescind, terminate or delay settlement of this Contract because of:

- (a) the final terms of the Section 173 Agreements or Memorandum of Common Provisions;
- (b) anything else contemplated by this special condition 19.

20 GST

- 20.1 The Price is inclusive of GST.
- 20.2 The Vendor and the Purchaser agree that the Vendor will use the margin scheme as referred to in Division 75 of the GST Law in calculating GST on the supply of the Property.

21 Assignment

The Vendor may assign, mortgage, encumber or transfer its right and interest in this Contract at any time.

22 Capacity

- 22.1 If the Purchaser:
 - (a) being an individual:
 - (i) dies; or
 - (ii) becomes incapable of managing the Purchaser's affairs; or
 - (b) being a company:
 - (i) resolves to go into liquidation;
 - (ii) has an application for its winding up presented and not withdrawn within 30 days of its presentation;
 - (iii) enters into any scheme of arrangement with its creditors under the relevant provisions of the Corporations Act or any similar legislation; or
 - (iv) has a liquidator, provisional liquidator, receiver, receiver and manager or administrator appointed,

the Purchaser will be taken to have repudiated its obligations under this Contract and the Vendor may, without limiting in any way the Vendor's other rights or remedies, accept such repudiation and rescind this Contract at any time before settlement in which case the provisions of conditions 6(3)(b) and 7 of Table A shall apply.

23 Representations, Warranties and Acknowledgements

- 23.1 This Contract contains the entire agreement between the parties as at the Day of Sale, notwithstanding any negotiations or discussions held or documents signed or brochures and plans produced prior to the Day of Sale.
- 23.2 The Purchaser acknowledges and agrees that:
 - (a) in entering into this Contract, the Purchaser has not relied on any warranty or representation made by or any other conduct of the Vendor or any person on behalf of the Vendor, except as set out in this Contract or in legislation; and
 - (b) the Purchaser is relying entirely upon its own enquiries with respect to:

- (i) the fitness or suitability for any particular purpose of the Property;
- (ii) the Purchaser's obligations and rights under this Contract;
- (iii) any financial return the Purchaser may make from the Property.

24 Agent

- 24.1 The Purchaser warrants that the Purchaser was not introduced to the Vendor or to the Property by or through the medium of:
- (a) a real estate agent; or
 - (b) an employee of a real estate agent, other than:
 - (c) the Vendor's Estate Agent; or
 - (d) another real estate agent details of whom were disclosed to the Vendor by the Purchaser before the Day of Sale.

25 Further Variations to General Conditions

- 25.1 General conditions 1.2, 2.2, 2.3, 3, 4, 6.2 and 13.2 do not apply to this Contract.
- 25.2 For the purposes of condition 13 of Table A:
- (a) and for no other purpose, the Developer's Lawyer will be the "legal practitioner" for the Vendor to the intent that demands, notices and documents given to or by the Vendor under this Contract will be given to or by the Developer's Lawyer; and
 - (b) the term "legal practitioner" will include any conveyancing company or similar entity appointed to act on behalf of the Purchaser.

26 Restriction on Further Sale

- 26.1 The Purchaser must not enter into any agreement to sell, transfer or otherwise dispose of the Property before registration of the Plan of Subdivision without first obtaining the written consent of the Vendor, which consent will not be unreasonably withheld, provided the Purchaser complies with special conditions 13.3, 18.3 and 27.2.
- 26.2 Nothing in special condition 26.1 is to be construed as limiting the Purchaser's right to nominate a substitute or additional purchaser under general condition 5

27 Window Furnishings and External Colours

- 27.1 The Purchaser must not, without first obtaining the written consent of the Vendor:
- (a) install any window furnishings in the Property that are visible from a street, public open space or any other public area, unless those window furnishings are white or charcoal grey in colour; or
 - (b) paint or otherwise change the exterior of the Property, unless the paint is the same colour as, or the other change uses the same material as, was used by the Builder in constructing the Property.
- 27.2 If the Purchaser sells the Property while the Vendor remains owner or occupier of any part or parts of the Land to be Developed, the Purchaser must ensure that its successor in title enters into a deed with the Vendor, in a form satisfactory to the Vendor (acting reasonably), obliging the successor in title to comply with special condition 27.1.

- 27.3 The Purchaser acknowledges that, without limiting special condition 26.1, external alterations to the Property may also require approval of relevant planning and/or heritage authorities as a consequence of planning and heritage restrictions affecting the Property.

28 Subsequent Stages

- 28.1 The Purchaser acknowledges that the Vendor may not have completed development of the Subsequent Stages prior to satisfying the conditions to enable settlement of the Land.
- 28.2 The Purchaser warrants to the Vendor that it will not prior to or after the Settlement Date make any objection, complaint, claim, requisition or demand or claim any compensation or instigate or join in or fund any legal action in respect of:
- (a) any works undertaken or being undertaken on the Subsequent Stages; or
 - (b) the effect that any works undertaken or being undertaken on the Subsequent Stages has on the Land or residents of the Land;
 - (c) any application which may be made to any statutory authority for any licence, consent or approval for development of the Subsequent Stages.

29 Colour Scheme Option

- 29.1 The Purchaser acknowledges that:
- (a) it has selected the Colour Scheme Option ticked in the Particulars of Sale.
 - (b) if the Purchaser does not select a Colour Scheme Option, the Purchaser is deemed to have selected Colour Scheme Option 1.
- 29.2 The Purchaser is entitled to notify the Vendor in writing, within seven (7) days after the Day of Sale, of any change the Purchaser requires to the Colour Scheme Option selected by the Purchaser and upon notification the Colour Scheme Option so notified in writing will form part of this contract.
- 29.3 If the Vendor does not receive written notification in accordance with special condition 29.2 within seven (7) days after the Day of Sale the Purchaser will not be entitled to request any changes to the Colour Scheme Option it has selected.

ANNEXURE A

**Indicative architect's impression, floor plan, and indicative specification
and inclusion schedule attached**

Indicative Architect's Impression and Floor Plans

Indicative Specification and Inclusion Schedules

MAIN DRIVE Kew

Standard Specification and Inclusion Schedule

This schedule lists the range of, and variation in; materials, appliances, general finishes, fixtures and fittings for housing in Stage 2. Their use, extent and location will vary from lot to lot throughout the stage as indicated on your marketing drawings and as specified in your selected colour scheme.

EXTERIOR FINISHES

Walls	-	Rendered Masonry/FC Sheeting – Selected Paint Finish
		Profiled Zinc Cladding (as nominated)
Roof	-	Colourbond Profiled Metal Roof Covering
Gutter & Downpipes	-	Colourbond Box Gutters
	-	Colourbond Downpipes and Rainwater Heads
Windows	-	Powdercoat Aluminium Framed Windows
	-	Clear and/or Obscure Glazing
Entry Door	-	Solid Core Timber Door with Enamel Paint Finish
Garage Door	-	Selected Powdercoated Aluminium Panel Lift Door
Entry Paving	-	Precast Coloured Concrete Feature Pavers
Driveway	-	Coloured Concrete to KDC's Specifications
Fencing	-	To Kew Development Corporation's Specifications
Letterbox	-	Rendered Masonry with Stainless Steel Fascia
Landscaping	-	To Kew Development Corporation's Specification

STAGE 2A

FIXTURES & FITTINGS

Kitchen	-	Benchtop	Reconstituted Stone
	-	Joinery doors and drawers	2 Pac – Polyurethane Finish
	-	Splashback	Colourback Glass
	-	Water point to fridge space	
Kitchen Appliances	-	Sink	Undermount Sink
	-	Tapware	Chrome Finish Mixer Tap with Pullout Spray
	-	Oven	Miele Electric Oven 90cm wide - Stainless Steel
	-	Cooktop	Miele Gas - Stainless Steel
	-	Rangehood	Miele - Stainless Steel
	-	Dishwasher	Miele Integrated
	-	Microwave	Miele - Stainless Steel
	-	Fridge	Miele Integrated
	-	Freezer	Miele Integrated
	-	Coffee Machine	Miele - Stainless Steel
Ensuite	-	Joinery Units	2 Pac Polyurethane Finish
	-	Vanity Finish	Selected Marble
	-	Shower Screen	Frameless Glass
	-	Toilet	Concealed Cistern - White Ceramic
	-	Shower Base	Selected Marble Tile
	-	Mirror	Square Polished Edge
	-	Exhaust Fan	Ceiling Mounted
	-	Vanity Mounted Basin	Custom Made Stone Composite
	-	Tapware	Roger Seller Chrome Finish Mixer Tap
	-	Towel Rail	Roger Seller Double Stainless Steel
	-	Toilet roll holder	Roger Seller Stainless Steel
	-	Robe Hook	Roger Seller Stainless Steel
	-	Shower Tray/ Shelf	Roger Seller Stainless Steel
	-	Soap Tray	Roger Seller Stainless Steel
Bathroom	-	Joinery Units	2 Pac - Pac Polyurethane
	-	Vanity Finish	Selected Marble
	-	Bath	Custom Made Stone Composite
	-	Shower Screen	Frameless Glass
	-	Toilet	Concealed Cistern - White Ceramic
	-	Mirror	Square Polished Edge
	-	Exhaust Fan	Ceiling Mounted
	-	Vanity Mounted Basin	Custom Made Stone Composite
	-	Tapware	Roger Seller Chrome Mixer Tap to Basin
			Roger Seller Chrome Finish Wall Mixer to Shower
			Roger Seller Chrome Finish Floor Mounted Faucet with Wall Mixer to Bath
	-	Towel Rail	Roger Seller Stainless Steel
	-	Toilet roll holder	Roger Seller Stainless Steel
	-	Robe Hook	Roger Seller Stainless Steel

	-	Shower Tray/ Shelf	Roger Seller Stainless Steel
Powder Room	-	Joinery Units	2 Pac – Polyurethane Finish
	-	Vanity Finish	Selected Marble
	-	Vanity Basin	Custom Made Stone Composite
	-	Toilet	Concealed Cistern - White Ceramic
	-	Toilet Roll Holder	Roger Seller Stainless Steel
Laundry	-	Joinery Units	Laminate
	-	Benchtop	Laminate
	-	Tapware	Single Bowl Stainless Steel Chrome Finish Trough Mixer Tap & Chrome Finish Washing Machine Taps
	-	Exhaust Fan	Ceiling Mounted
Bedroom Wardrobe	-	Wardrobe	2 Pac Polyurethane Finish and/or Mirrored Sliding Doors Fixed and Adjustable Melamine Shelving Melamine Drawers Chrome Single and Double Hanging Rails Stainless Steel Joinery Hardware
Linen Cupboards			Doors Painted to Match Wall Colour Fixed and Adjustable Melamine Shelving Stainless Steel Joinery Hardware

INTERIOR FINISHES

Floors	-	Engineered Timber flooring
	-	Carpets 80% Wool & 20% Nylon
Walls	-	Plasterboard with Paint Finish
Cornice	-	Ground Floor – Shadow Line to Perimeter
	-	Upper Floor – Square Set
Floor Tiling	-	Ceramic Tiles - 300 x 600mm or 400 x 400mm (Entry / Laundry)
	-	Marble Tiles – 300 x 600mm or 400 x 400mm (Ensuite / Bathroom / Powder Room)
Wall Tiling:	-	Ceramic Tiles - 300 x 600mm (Bathroom and Ensuite)
	-	Splashback in Laundry (Skirting and Splashback)
Doors and Woodwork		Semi Gloss Enamel Paint Finish to Flush Panel Doors and Skirtings
Thermal Insulation	-	Insulation Batts & Sarking to Roof Space.
	-	Insulation Batts to Exterior Walls
Woodwork	-	Painted MDF Skirting

EXTERIOR PAINTING

Down pipes / Gutters / Rain Heads	Colorbond
Exterior Timber	Full Gloss Acrylic
Front Doors	Full Gloss Enamel

INTERIOR PAINTING

Ceilings	Low Sheen Acrylic
Walls	Washable Acrylic
Living and Dining	Washable Acrylic
Kitchen	Washable Acrylic
Bathroom / Ensuite / Powder Room	Low Sheen Acrylic
Doors / Skirting / Architrave	Semi Gloss Enamel

**STAGE 2A
MAIN DRIVE KEW**

GENERAL

Heating/Cooling	-	Reverse Cycle Heating & Cooling
Hot Water Service	-	Gas Hot Water Service
Clothes Line	-	Retractable Clothes Line
Door Bell / Intercom	-	Video Security Intercom
Door Hardware	-	Entry Door - Stainless Steel Handle
	-	Internal doors - Satin Chrome
TV / Telephone / Data Points	-	To Kew Development Corporations Specifications
Internal Light Fittings	-	Downlights
	-	Fluorescent Light Fittings to Garage
External Light Fittings	-	Wall Mounted Lighting to Rear Courtyard
	-	Downlight to Porch
Irrigation System	-	Landscape Irrigation System to Plants in Front Yard
Gas Point	-	Bayonet Gas Point to External Living Area
Rain Water Tank	-	2000 litre Colourbond Tank - Connected to Garden Tap
Stairs	-	Timber Treads with Glass Balustrade
Ducted Vacuum	-	Ducted Vacuum System
Alarm System	-	Alarm System
Fireplace	-	Gas Fire

"ANNEXURE B"

GUARANTEE AND INDEMNITY

(Name): _____

(Address): _____

and

(Name): _____

(Address): _____

(hereinafter called "the Guarantor") In Consideration of the Vendor having agreed at the Guarantor's request (as is hereby acknowledged) to enter into the Contract to which this Guarantee is annexed with the Purchaser Hereby Guarantees to the Vendor payment of the whole of the purchase money interest and other moneys due and payable under the Contract and the due observance and performance by the Purchaser of all covenants and provisions binding on the Purchaser thereunder or pursuant to any other agreement made between the Purchaser and the Vendor. To the extent (if any) that the Guarantee set forth above may be void or unenforceable in whole or in part by reason of the infancy or any other incapacity of the Purchaser or want of writing or other failure to comply with any law the Guarantor agrees to indemnify the Vendor in respect of any failure by the Purchaser to make any such payment as would otherwise have formed part of the moneys the subject of the Guarantee and in addition the Guarantor agrees to indemnify the Vendor in respect of any claim by the Purchaser to any refund to which the Purchaser may become entitled by virtue of all or any of the above described facts.

The Guarantor agrees and covenants that:

- 1 In this Guarantee unless the context otherwise requires:
 - 1.1 **"this Guarantee"** and **"the Guarantee"** shall mean this document of Guarantee and Indemnity and the guarantee and indemnity herein contained;
 - 1.2 **"Guarantor"** shall mean and include each or the person or persons or companies described above and their respective heirs, executors and administrators, successors and assigns;
 - 1.3 **"Insolvent Administration"** means the appointment of a controller or administrator (as those terms are defined in the Corporations Act), provisional liquidator or liquidator in respect of a corporation or the undertaking or any part thereof of a corporation;
 - 1.4 **"Purchaser"** shall mean the person or company being the Purchaser described in the Contract and that person or company's executors, administrators, successors and assigns;
 - 1.5 **"Vendor"** shall mean the person or company being the Vendor described in the Contract and that person or company's executors, administrators, successors and assigns;
 - 1.5 **"Contract"** shall mean the Contract of Sale of Land to which this Guarantee is annexed.
- 2 This Guarantee and Indemnity shall be a continuing Guarantee and Indemnity and shall be without prejudice to and shall not be affected nor shall the rights or remedies of the

Vendor against any Guarantor be in any way prejudiced or affected by any of the following:

- (a) any security negotiable or otherwise which may now or hereafter be held from any person in respect of the payment of any moneys or from the Purchaser of any other person in respect of any sum hereby guaranteed or indemnified;
 - (b) any release variation exchange renewal or modification made or any other dealing by the Vendor with any judgement speciality instrument negotiable or otherwise or other security whatsoever recovered held or enforceable by him in respect of all or any of the moneys hereby guaranteed and indemnified or any agreement at any time by the Vendor in the Vendor's discretion with respect to any of such matters;
 - (c) any time given to the Purchaser in connection with the payment of any moneys hereby guaranteed and indemnified or any other indulgence or variation or revision agreement granted to or composition compromise or arrangement made with the Purchaser or any other person whether with or without the consent of or notice to the Guarantor nor by the death bankruptcy or winding up of the Purchaser nor by the Vendor receiving any payment which it is not legally entitled to retain; and
 - (d) Any variation modification amendment or novation of the Contract or any substitution thereof.
- 3 The Guarantor will waive any rights under the law of suretyship inconsistent with the terms hereof.
 4. The Vendor's acceptance hereof shall not preclude the Vendor from exercising the Vendor's rights in respect of any continuing recurring or future default by the Purchaser.
 5. In the event of a composition or arrangement by the Purchaser with the Purchaser's creditors or the Purchaser's bankruptcy or (if the Purchaser be a company) an order being made or resolution passed for its winding up or the Purchaser being placed under official management or an administrator being appointed with respect to the Purchaser until the Vendor has received one hundred cents in the dollar in respect of the moneys the subject of this Guarantee the Guarantor shall prove for any debt or liability due to the Guarantor by the Purchaser if and only if the Vendor so requires, and the Guarantor shall hand the fruits of any proof to the Vendor.
 6. The service of a demand shall not be a condition precedent to the enforcement of the Guarantor's liability hereunder.
 7. No sum or sums of money received by the Vendor to the credit of the account of the Purchaser or the Guarantor which the Vendor may thereafter become liable to repay or for which the Vendor is or may thereafter become liable to account in any liquidation official management bankruptcy scheme of arrangement or similar administration to any liquidator official manager trustee in bankruptcy or other person (as a preference or otherwise) or which or for which the Vendor (in its discretion exercised in good faith) may so repay or so account shall be considered as received by the Vendor or discharge or diminish the Guarantor's liability and the Guarantor hereby jointly and severally agrees to indemnify the Vendor in respect of any such repayment or payments that the Vendor may make.
 8. In the event that the liability of the Purchaser to pay all or any part of the moneys the subject of this Guarantee and Indemnity is released or deferred under any scheme of arrangement between the Purchaser and its creditors (or in any other way whatsoever)

the Guarantor agrees to indemnify the Vendor against any failure by the Purchaser to pay all or any part of the moneys the subject of this Guarantee and Indemnity at the time or times that money should have been paid apart from such scheme of arrangement or other event or any release or deferral of the Purchaser's liability thereunder.

9. The Guarantor shall pay to the Vendor the Vendor's costs (including solicitor/own client legal costs and disbursements) of and incidental to the execution and enforcement of this Guarantee.
10. The within covenants by the Guarantor shall if consisting of more than one person or company be deemed to mean and include each Guarantor jointly and severally.

Dated the day of

2009

SIGNED SEALED and DELIVERED by)
)
in the presence of)

Signature of witness

Name of witness (print)

SIGNED SEALED and DELIVERED by)
)
in the presence of)

Signature of witness

Name of witness (print)

SIGNED SEALED and DELIVERED by)
)
in the presence of)

Signature of witness

Name of witness (print)

"ANNEXURE C"
SURFACE LEVEL PLAN
(SC 6.2)

Schedule 4

Amendment Protocol

Lot Sale Contract for KRS Site

The following amendments may be made to the Lot Sale Contract by the Developer without obtaining the State's consent:

1. completion of the particulars of sale and certain definitions with stage specific information, such as plan details, title details, address details and details of encumbrances;
2. extension of the date for payment of the second instalment of the 10% deposit, or changes to the amount and terms of payment of the deposit generally;
3. extension of the time allowed for payment of the balance of price;
4. inclusion of any stage specific conditions precedent to settlement in special condition 2 and consequential amendments;
5. special condition 3 – inclusion of stage specific matters to which land is subject, including references to owner's corporation rules and lot entitlement and lot liability, where an owner's corporation is created by the stage plan;
6. special condition 5.3 – inclusion of further matters about which the purchaser cannot object;
7. special condition 5.4 – change to the percentage;
8. special condition 6.2 – inclusion of specific details of works affecting the natural surface level of the land and/or deletion of the reference to engineering plans;
9. special condition 7 – amendments to reflect changes in the *Building Act 1993* or *Domestic Building Contracts Act 1995* and to deal with any stage specific changes to building plans and specifications under special condition 7.2;
10. deletion of special condition 14;
11. amendment of special condition 15 (and consequential amendments throughout the contract) to exclude the right for the purchaser to pay the deposit by way of bank guarantee and/or deposit bond. Amendments to the definitions of bank guarantee and/or deposit bond to include further parameters of acceptability (for example, requiring deposit bond issuer to have a certain Moody's rating);
12. special condition 16 – amendment to the warranties made by the vendor to reflect stage specific matters to which the land is subject;
13. if requested by a purchaser, amendments to special condition 20 (and the particulars of sale) to make the price GST exclusive and the purchaser liable to pay GST on the price at settlement;
14. inclusion of a confidentiality clause;
15. any changes necessary due to changes in legislation (including those mentioned at 9 above);
16. where necessary, specific conditions making the contract subject to agreements under section 173 of the Planning and Environment Act, section 143 of the Melbourne &



Metropolitan Board of Works Act and to other agreements with adjoining land owners, Council, supply authorities and companies and other competent authorities (including definitions and annexing draft documentation to the contract);

17. where necessary, specific conditions making the contract subject to the Memorandum of Common Provisions including inclusion of definitions and annexing draft Memorandum of Common Provisions to the contract;
18. completion of expiry dates for the registration and construction periods for each stage;
19. attachment of relevant annexures;
20. amendment of the provisions changing or deleting general conditions or conditions under Table A;
21. any other amendment of a minor nature provided that the amendment does not give the purchaser a right to rescind (that the purchaser did not otherwise have);
22. where clause C2 applies, inclusion of a special condition (and various definitions) dealing with owner's corporation matters, including:
 - (a) conduct of the inaugural meeting and passage of owner's corporation rules;
 - (b) controls on the purchaser's voting rights, supported by proxy rights and a power of attorney;
23. including the definition of 'Building' and use of that term in special conditions 4.1 and 6.2 (and wherever else relevant), where the relevant stage includes apartments;
24. deletion of all definitions and special conditions relating to the registration of the plan of subdivision and construction, where the Lot was sold after registration of the plan and construction of the property (and all consequential amendments);
25. the inclusion of provisions dealing with optional finishes, fittings, floor plans and the like.

Schedule 5

Recreation Centre Design

General comments:

- the buildings and facilities should all be accessible for people with a disability, including those using wheelchairs. This will be of benefit to ex-KRS residents, but also to other members of the community who have a disability, mobility issues or use prams etc.
- The buildings should also have disability accessible bathrooms/change rooms etc.

Pool/recreation facility:

- accessibility would be the key requirement for these facilities, including bathroom/change rooms

Consulting rooms

- based on experience in the design of other community health/allied health facilities, it is ideal to maximise the flexibility of these spaces. The recommended size for each consulting room is 16 sq metres. The rooms should include a basin - then they can be used for practitioners requiring this. The basin should be built in behind cupboards/doors that can be closed to conceal the basin. This way, the room can be converted to a "counselling" type room or used for other functions such as small meetings.
- it is recommended that a reception counter/space be included - this allows any providers to use a reception function to organise their work and appointment flows, greet service users, take enquiries etc.

Kiosk/Cafe

- disability access to this facility is critical, including accessible bathroom
- there is a strong expectation that the cafe serves a range of food that is affordable for people on limited incomes such as pensions.

Community facilities

- the community facility spaces should be flexible enough to cater for small or large groups participating in meetings or activities. At least one large meeting space should be provided, along with a range of medium to smaller rooms. It would be ideal if some of the smaller spaces could be opened up to form a larger space. As well as being used for community meeting facilities, these spaces should be appropriate for running classes and activities that respond to community need. The inclusion of some in built benches/sinks would therefore be useful.
- Consideration has previously been given to using some of the community spaces to display/exhibit items related to the history of the KRS site, art work etc. Therefore some areas that could be used for display/exhibition purposes would be useful. These would obviously then also be available for other community members for similar purposes.

Car Parking

- adequate car parking space will be important, including some disability accessible spaces. These should be of a size to enable small buses to park and assist people using wheelchairs to alight.

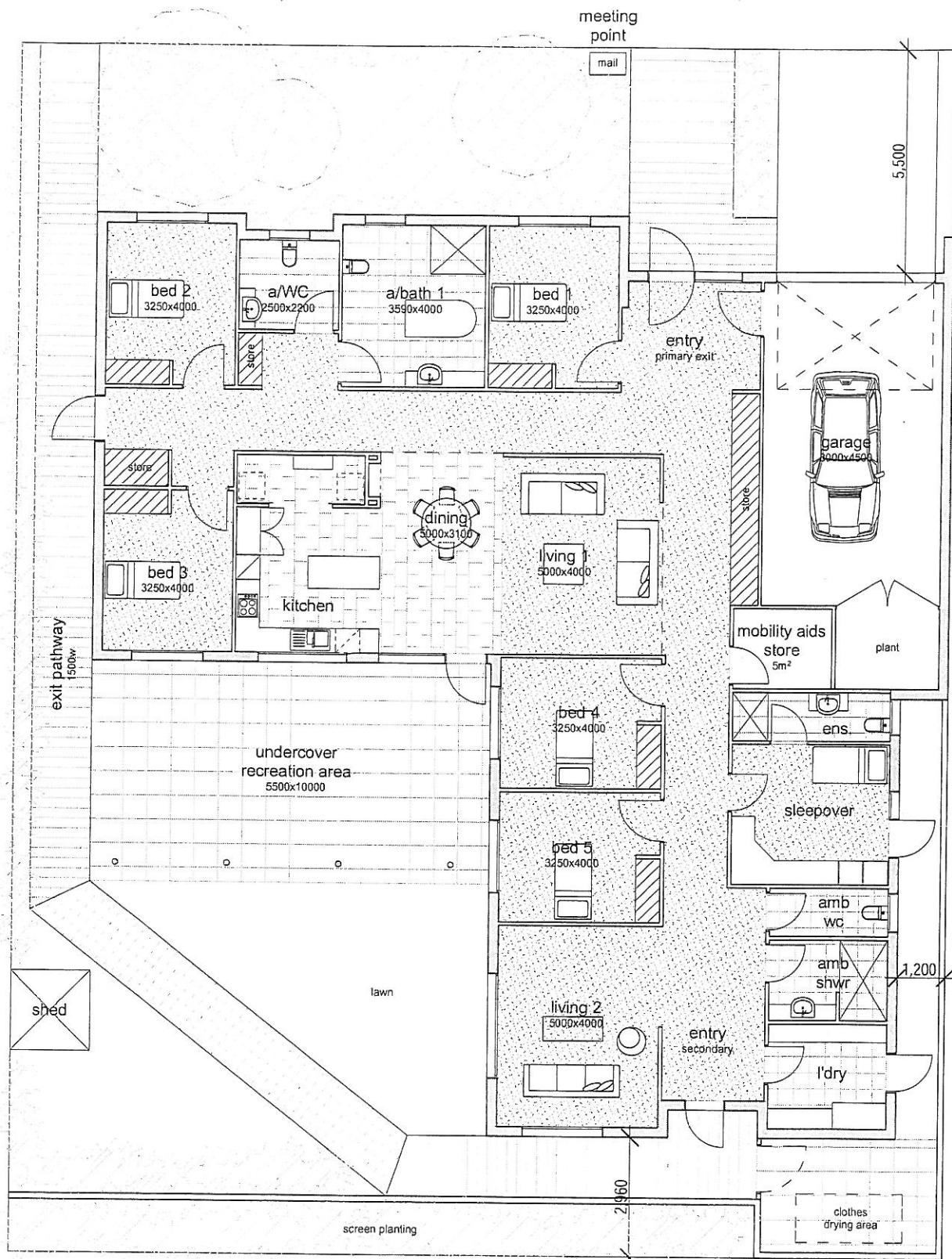
Hydrotherapy pool

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Schedule 6

Initial Stage 2 Community House Design



PARKLAND

Kew Stage 3a - KRS Housing
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