

PARTICULARS CONTRACT AND CONDITIONS OF SALE

for

Lots 503-505, 508-510, 518-520, 525-527, 536, 537

OCEAN MIA, CITY BEACH

TO BE SOLD BY PUBLIC AUCTION

by

DTZ (WA) Pty Ltd
(Seller Agent)

on

Saturday 8 March 2008 at 10:30am

under instructions from

TOWN OF CAMBRIDGE

PARTICULARS OF PROPERTY TO BE SOLD BY AUCTION

An estate in fee simple in each of the following Lots

LOTS 503-505, 508-510, 518-520, 525-527, 536, 537 ON DEPOSITED PLAN 57858 OCEAN
MIA,
CNR KALINDA DRIVE AND THE BOULEVARD, CITY BEACH

to be offered for sale separately by Public Auction

on

Saturday 8 March 2008

at

10:30am

subject to the provisions of the Contract and on the conditions specified in the Auction
Conditions attached.

AUCTION CONDITIONS

1 Sale of Lots

The Lots described in the foregoing Particulars are offered for sale separately subject to these conditions and the highest bidder accepted by the Auctioneer shall be the Buyer with the Auctioneer having the right to refuse any bid which in the Auctioneer's opinion, is not in the best interests of the Seller.

2 Amount of each bid

The amount of the advance of each bid shall be regulated by the Auctioneer and no person shall retract their bid or advance a lesser sum than that which may be named or accepted by the Auctioneer.

3 Reserve price and bidding

There will be a reserve price in respect of each Lot and the Seller reserves the right:

- (a) to refuse any bid;
- (b) to withdraw any Lot from sale at any time without declaring the reserve price; and
- (c) to bid not more than ten (10) times by itself or by its Agent or by the Auctioneer in respect of each Lot.

4 Disputes

If any dispute arises as to any bid the Auctioneer shall immediately resume the bidding at the last undisputed bid stipulated by the Auctioneer or the Auctioneer may determine the dispute and the Auctioneer's determination shall be final and binding.

5 Sale and purchase

Subject to these Auction Conditions, the highest bidder for the Lot being offered for sale (**Property**) shall be the Buyer of the Property and the Seller agrees to sell and the Buyer agrees to purchase the Property for the highest bid accepted by the Auctioneer (**Purchase Price**) and upon and subject to provisions of the Contract.

6 Deposit payable on fall of hammer

The Buyer shall, immediately after the fall of the hammer, sign the Contract attached and thereupon pay to the Seller Agent an amount equal to \$50,000 as and by way of deposit (**Deposit**) to be held as stakeholder pending Settlement and thereafter complete the purchase in accordance with the Contract. The Auctioneer may re-open the bidding or may re-submit the Property to bidding if the highest bidder is unable or unwilling to pay the Deposit or to sign the Contract. The Auctioneer's decision is final.

CONTRACT

At the sale by Public Auction made this _____ day of _____ 2008 in respect of Lot _____ (Property),

_____ of _____

(as joint tenants/tenants in common) (**Buyer**) was the highest bidder for and was declared the purchaser of the Property at the price of \$_____ (inclusive of GST) (**Purchase Price**) and the Buyer has paid to the Seller Agent for and on behalf of Town of Cambridge (**Seller**) the sum of \$50,000 by way of deposit (**Deposit**) and in part payment of the Purchase Price. The Buyer HEREBY AGREES to complete the purchase according to the above terms and conditions and the attached Conditions of Sale which form part of this Contract and the Seller HEREBY CONFIRMS the sale.

DATED the _____ day of _____ 2008

BUYER (If a corporation, then the Buyer executes this Contract pursuant to s127 of the Corporations Act)

Buyer Signature

Witness

Buyer Signature

Witness

SELLER

As authorised agent for Seller

CONVEYANCER (Legal Practitioner/Settlement Agent)

The Buyer nominates their Representative named below to act on behalf of the Buyer in respect of the settlement of the purchase of the Property and consents to Notices being served on that Representative.

Name:

Address:

Buyer Signature: _____

A true copy of the Particulars, Contract and Conditions of Sale together with the Design Guidelines and the 2002 General Conditions has been received by each of the signatories hereto.

Buyer

Buyer

As authorised agent for Seller

CONDITIONS OF SALE

1 Interpretation

1.1 Definitions

In this document:

Buyer's Covenants means all of the terms, covenants and conditions on the part of the Buyer contained in the Contract;

Contract means the contract made between the Buyer and the Seller in which this document is incorporated and includes this document, the 2002 General Conditions and the Design Guidelines;

Contract Date means the date of execution of the Contract by the Buyer;

Deposit means \$50,000;

Design Guidelines means the Ocean Mia Design Guidelines adopted as policy under the Scheme and as amended from time to time;

Development Application has the meaning ascribed to it in **condition 9**;

Development Completion means development of the Property ready for habitable occupation with all finishes, external building treatments and landscaping in place;

Hazardous Substances means anything which represents or potentially represents an adverse health or environmental impact or is dangerous and includes:

- (a) hazardous potentially hazardous substances or things and includes without limitation the presence of any chemical or any explosive, flammable toxic infectious or other dangerous substance or thing or;
- (b) substances or produce which may be obnoxious or unduly offensive to human beings;
- (c) any thing or aspect which is or may be detrimental to any beneficial use being made of the Property; and
- (d) any other substance or state which is deemed to be hazardous, or a pollutant or contaminant by virtue of any law;

Landgate means the Western Australian Land Information Authority;

Notification means a notification pursuant to section 70A of the Transfer of Land Act, substantially in the form of the Notification – Deposited Plan 57858 or the Notification – Deposited Plan 58139 (as the case may be) in **schedule 1**;

Planning Policies means the planning policies from time to time established by the Seller under the Scheme relating to the Property;

Property means the lot (or lots) described in the Contract as the Property;

Purchase Price means the purchase price specified in the Contract and is inclusive of GST;

Restrictive Covenant means, in relation only to:

- (a) Lots 508-513 (inclusive), 522-526 (inclusive), 534-538 (inclusive), on Deposited Plan 57858; and
- (b) Lots 539-550 (inclusive), 551-559 (inclusive), 561-572 (inclusive) on Deposited Plan 58139

a restrictive covenant pursuant to section 129BA of the Transfer of Land Act, substantially in the form of the Restrictive Covenant Deed – Deposited Plan 57858 or the Restrictive Covenant Deed – Deposited Plan 58139 (as the case may be) in **schedule 2**.

Scheme means Town of Cambridge Town Planning Scheme No 1;

Seller means Town of Cambridge;

Seller Agent means DTZ (WA) Pty Ltd;

Seller Representative means the representative appointed by the Seller to act in relation to the Settlement;

Settlement Date means the date being 30 days from the Contract Date or 21 days from the date of the issue of a separate Certificate of Title for the Property, whichever is the later date; and

2002 General Conditions means the Joint Form of General Conditions for the Sale of Land 2002 Revision.

1.2 Construction

Unless expressed to the contrary, in the Contract:

- (a) any gender includes the other genders;
- (b) if a word or phrase is defined its other grammatical forms have corresponding meanings;
- (c) “includes” means includes without limitation;
- (d) no rule of construction will apply to a clause or condition to the disadvantage of a party merely because that Party put forward the clause or condition or would otherwise benefit from it;
- (e) a reference to:
 - (i) a person includes a partnership or joint venture and an Authority;
 - (ii) a person includes the person’s assigns and persons substituted by novation;
 - (iii) any legislation includes subordinate legislation under it and includes that legislation and subordinate legislation as modified or replaced;

- (iv) an obligation includes a warranty or representation and a reference to a failure to comply with an obligation includes a breach of warranty or representation;
 - (v) a right includes a benefit, remedy, discretion or power;
 - (vi) time is to local time in Perth, Western Australia;
 - (vii) "\$" or "dollars" is a reference to Australian currency;
 - (viii) this or any other document includes the document as novated, varied or replaced and despite any change in the identity of the parties;
 - (ix) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes fax transmissions;
 - (x) this document includes all schedules and annexures to it; and
 - (xi) a clause, condition, schedule or annexure is a reference to a clause, condition schedule or annexure, as the case may be, of the Contract; and
- (f) where time is to be calculated by reference to a day or event, that day or the day of that event is excluded.

1.3 Definitions: 2002 General Conditions

Unless the context otherwise requires, or unless otherwise defined in this document, words and expressions which are defined in the 2002 General Conditions have the same meaning in this document.

1.4 Inconsistencies

If there is any inconsistency between a provision of this document and the 2002 General Conditions, the provision of this document prevails.

1.5 Excluded provisions of 2002 General Conditions

The following provisions of the 2002 General Conditions are excluded and shall not apply:

- (a) clauses 2.4, 2.5, 2.6 and 2.7 (easement, restrictive covenant, Title Restriction, Buyer right to terminate);
- (b) clauses 4.2 and 4.5 (Seller delay in Settlement);
- (c) clause 9 (Seller Representation and Warranty);
- (d) clause 10 (Strata title);
- (e) clause 12 (Sewer/Septic Tank);
- (f) clause 14 (Terms Contract);
- (g) clause 15 (Error and Misdescription);
- (h) clause 16 (Requisition on Title); and
- (i) clause 24.17 (Rule in Bain v Fothergill excluded).

2 Encumbrances

The Property is sold subject to the following encumbrances:

- (a) all easements, restrictive covenants and Title Restrictions affecting the Property whether or not appearing on the Certificate of Title at Settlement;
- (b) the Cambridge Endowment Lands Act 1920;
- (c) all interests and notifications shown on Deposited Plan 57858 (in respect of Lots 503-537) and Deposited Plan 58139 (in respect of Lots 539-572) including but not limited to:
 - (i) the Notification; and
 - (ii) the Restrictive Covenant.

3 GST

3.1 Interpretation

(a) Definitions

In this document:

GST means GST within the meaning of the GST Law and includes penalties and interest.

GST Law has the meaning given to that expression in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended).

(b) Construction

Except where the contrary intention appears, expressions used in this document and in the GST Law have the same meanings as when used in the GST Law.

3.2 Amounts inclusive of GST

Subject to **condition 3.4**, each amount specified for payment under the Contract includes GST (if any).

3.3 Margin scheme

The Seller and Buyer agree that the margin scheme is to apply to the supply of the Property made under the Contract.

3.4 Reimbursements

If the Contract requires a Party to pay for, reimburse or contribute to any expense, loss or outgoing (**Reimbursable Expense**) suffered or incurred by another Party, the amount required to be paid, reimbursed or contributed by the first Party will be the amount of the Reimbursable Expense net of input tax credits (if any) to which the other Party is entitled in respect of the Reimbursable Expense plus any GST payable by the other Party.

3.5 Early liability for GST

If the Seller is required to include GST on a taxable supply which it makes under the Contract in a GST return for a tax period which ends on a date that is earlier than the Settlement Date, the Buyer must pay the GST component of the Price, as notified by the Seller in writing, on that earlier date.

4 Settlement

4.1 Delivery of Transfer

The Buyer must at the Buyer's expense, deliver or cause to be delivered a stamped Transfer, duly executed by the Buyer, together with a copy of the stamped Contract to the Seller Representative at least ten (10) days before the Settlement Date.

4.2 Registration

Immediately following Settlement, the Buyer agrees to effect or cause to be effected a joint registration with the Seller Representative at Landgate (Perth) to enable the Seller Representative to lodge a caveat or caveats immediately following the Transfer in accordance with **conditions 14.1 and 15.6**.

5 Buyer's acknowledgments and warranties

5.1 Acknowledgments: general

The Buyer acknowledges to the Seller that (except for the specific warranties made by the Seller in the Contract):

- (a) the Buyer has entered into the Contract and will proceed to Settlement relying entirely upon the Buyer's own independent appraisal and assessment of the Property;
- (b) the Buyer has satisfied itself by enquiry of the relevant Authority as to the zoning of the Property, any restrictions which may be imposed on the Property, any development which may take place on the Property (including, without limitation, any restrictions imposed pursuant to the Heritage of Western Australia Act 1990 and the Australian Heritage Commission Act 1975) and as to the location of the boundaries of the Property and relies solely on that enquiry;
- (c) the Buyer does not rely on any account, letter, document, correspondence or arrangements whether oral or in writing as adding to or amending the terms and arrangements set out in the Contract;
- (d) the Buyer does not rely upon any warranty, statement or representation made or given by or on behalf of the Seller;
- (e) all information contained in any document provided by any person to the Buyer (including, without limitation, any sales brochures and other sales material) is for the assistance of the Buyer but no representation or

warranty in any such document or by any other means made by or on behalf of the Seller or any agent of the Seller is binding on any of them or actionable by the Buyer and furthermore the Buyer acknowledges that no responsibility is accepted as to the accuracy of such information or for the omission of any relevant information nor for any representations made or purported to be made by the Seller or any agent of the Seller;

- (f) the Buyer is fully aware of the contents of the Contract and the documents referred to in the Contract and in particular with the requirements of the Scheme and the terms and conditions of the Design Guidelines; and
- (g) to the fullest extent possible the Buyer waives any possible cause of action or rights the Buyer may have under or in respect of Part V of the Trade Practices Act 1974 or Part 5 of the Fair Trading Act 1987 or any other legislation which is to any extent similar to such Part V or Part 5 or any portion of such legislation touching or concerning anything the subject of or incidental to the Contract and releases and indemnifies to the fullest extent possible the Seller and all persons or entities associated with the Seller from and against (as the case may be) any claim or liability (if any) arising out of or incidental to any such cause of action or right or any like cause of action or right of any other person or entity whatsoever.

5.2 Condition of Property

The Buyer has inspected the Property and admits that the Property is identical with that described in the Contract.

Subject to any other provision of the Contract the Buyer must not make any objection, requisition, claim for compensation or fail to pay the Purchase Price or rescind or terminate the Contract in respect or as a consequence of:

- (a) any misdescription of the Property, the improvements thereon or of its area or measurements;
- (b) the condition or state of repair of the Property or any defect in the Property (whether latent or patent) or any dilapidation, contamination or infestation of the Property which may affect the Property between the Contract Date and Settlement;
- (c) any encroachments by or upon the Property by any improvements or other thing or in respect of any other matter fact or thing which may be disclosed by survey;
- (d) any non compliance of the Property with any law relating to land or a requirement of any public or statutory authority;
- (e) the present ownership use or location of any dividing fence or wall or any part thereof;
- (f) any water, sewerage, drainage, electricity, gas, telephone or telecommunications service to the Property being a joint service with any other property or passing through any other land;

(g) any water, sewerage, drainage, electricity, gas, telephone or telecommunications service for any other property passing through the Property or any proposal for same;

(h) any wall being a party wall in any sense of that term;

and accepts the Property subject to such matters.

5.3 Planning Controls

The Buyer buys the Property subject to the Scheme, the Design Guidelines and any existing and proposed restrictions under or provisions of any applicable or proposed planning controls or permits, schemes, zones, orders or other permits.

5.4 Building Permits

The Buyer acknowledges that the Seller makes no representations or warranties as to the procuring of a building permit, building approval, final inspection, certificate of occupancy or any other permits approvals or inspections in relation to the Property and the Seller shall not be required to obtain or to furnish the same to the Buyer prior or subsequent to or as a condition of Settlement.

5.5 Hazardous Substances

The Buyer relies on its own inspection and enquiries to satisfy itself that there are no Hazardous Substances on, in or emanating from any part of the Property or if there are any, the level and nature thereof, and will not make any requisition objection or claim for compensation or refuse or delay payment of the Purchase Price because of the existence of any Hazardous Substances.

5.6 Use, fitness etc

The Buyer acknowledges that the Seller has not made any representation or warranty that the Property is suitable for any purpose which the Buyer may have indicated as its intention to pursue or that any permit of any nature whatsoever has been obtained or is available from any Authority and that in entering into the Contract the Buyer has made its own enquiry and relies entirely on its own judgement in respect of such matters.

6 Title and Requisitions

6.1 Title

The Certificate of Title may be searched at Landgate and the Buyer shall not require the Seller to produce the Duplicate Certificate of Title or any other evidence of the Seller's title or right to the Property.

6.2 Requisitions on Title

The Seller shall not be required to answer any objections to or requisitions on title.

7 Additional rights to terminate

7.1 For a body corporate

If the Buyer (or, if more than one, any one of them) is a body corporate and:

- (a) is insolvent or admits or is presumed to be so;
- (b) an application or order is made for its winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for its winding up or dissolution;
- (c) an administrator, provisional liquidator, liquidator or person having a similar or analogous function under the laws of any relevant jurisdiction is appointed in respect of it or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within seven days;
- (d) a receiver or receiver and manager is appointed in respect of any of its property;
- (e) is deregistered under the Corporations Act 2001 (Cth) or notice of its proposed deregistration is given to it;
- (f) a distress, attachment or execution is levied or becomes enforceable against any of its property;
- (g) enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of its creditors or members or a moratorium involving any of them; or
- (h) anything analogous to or of a similar effect to anything described above under the law of any relevant jurisdiction occurs,

then the Seller may terminate the Contract by giving a Notice to the Buyer Representative.

7.2 For a natural person

If a Party (or if the Party consists of more than one person, one of them):

- (a) dies; or
- (b) becomes intellectually, physically or psychologically disabled so as, in the reasonable opinion of the other Party, to be unable to complete the Contract on time,

the other Party may terminate the Contract by giving a Notice to the Party's Representative.

7.3 If either Party terminates

If either Party terminates the Contract under this **condition 7**, then **clauses 13.7(b)(1) to (4)** of the 2002 General Conditions apply.

8 Warranty as to foreign investment approval

The Buyer warrants to the Seller that any approval or statement of non-objection to enter the Contract required under:

- (a) the Foreign Acquisitions and Takeovers Act 1975; or
- (b) any real estate policy guidelines of the Commonwealth Government; or
- (c) the Banking (Foreign Exchange) Regulations,

has been obtained and that full details of those approvals or statements have been submitted to the Seller. If this warranty is breached, the Buyer must indemnify the Seller against any loss (including consequential loss) the Seller suffers by relying on this warranty.

9 Submission of Development Application

- (a) Within one hundred and twenty (120) days of the Settlement Date the Buyer shall lodge with the Seller (in its capacity as the relevant planning authority) or its nominated representative a formal application for approval to construct a building on the Property with such application to be in triplicate and to include plans and specifications together with a landscaping plan in sufficient detail to obtain approval of such application which shall, in all respects, be in compliance with the Scheme, the Planning Policies and the Design Guidelines (**Development Application**).
- (b) The Seller shall notify the Buyer whether it approves or does not approve of the Development Application (and in the case of approval, with or without conditions) within sixty (60) days of the date of lodgement of the Development Application.
- (c) In the event that the Seller notifies the Buyer that it does not approve of the Development Application as submitted the Buyer shall within thirty (30) days of notification from the Seller make such amendments to the Development Application as may be required to have the Development Application approved and shall do all things necessary to obtain the approval of the Development Application including re-submitting to the Seller an amended Development Application.
- (d) If:
 - (i) the Buyer fails to submit the amended Development Application within the timeframe specified and as required by **condition 9(c)**; or
 - (ii) the amended Development Application is submitted within that timeframe but is not in accordance with the requirements of the Seller; or
 - (iii) in any event and for whatever reason the Buyer has not obtained approval to the Development Application within nine (9) months of the Settlement Date,

then the Buyer shall be in breach of the Buyer's Covenants and in default under the Contract.

10 Development of Property

- (a) Within sixty (60) days of approval of the Development Application by the Seller the Buyer shall submit full working drawings and apply to the Seller (in its capacity as the relevant planning authority) for a building licence.
- (b) Within fourteen (14) days of the Buyer being notified by the Seller that all relevant clearances have been given to enable the issue of a building licence, the Buyer must collect the building licence from the Seller and pay the applicable fees and charges to the Seller.
- (c) If the Seller does not approve the working drawings or grant the building licence the Buyer shall forthwith amend the working drawings and/or the application for a building licence so submitted to the Seller in order to comply with the requirements of the Seller and shall resubmit such amended working drawings and application for a building licence for approval no later than fourteen (14) days after being notified by the Seller that the working drawings or application for a building licence has not been approved.
- (d) If:
 - (i) the Buyer fails to submit the amended working drawings and/or application for a building licence within the timeframe specified and as required in **condition 10(c)**; or
 - (ii) such working drawings and/or application for a building licence are resubmitted within such timeframe but are not in accordance with the requirements of the Seller; or
 - (iii) in any event and for whatever reason the Buyer has not obtained a building licence within fifteen (15) months of the Settlement Date,then the Buyer shall be in breach of the Buyer's Covenants and in default under the Contract.
- (e) Subject to the Seller's prior approval of the Development Application and the grant of the building licence the Buyer shall proceed with construction of the development on the Property in accordance with the Development Application within ninety (90) days of the date of issue of the building licence.
- (f) The Buyer must cause Development Completion to be effected within forty two (42) months of the Settlement Date and strictly in accordance with the approved Development Application and the building licence, failing which the Buyer shall be in breach of the Buyer's Covenants and in default under the Contract.

11 No limitation on Seller

The Buyer agrees that nothing in **conditions 9 and 10** or any other **condition** in any way limits or affects the Seller exercising its powers duties and discretions under the Local Government Act 1995, the Scheme, the Planning Policies or the Design Guidelines.

12 Sale and disposition of Property

12.1 Restriction on sale

Subject to **conditions 12.2 and 13**, the Buyer agrees with the Seller that the Buyer will not sell, agree to sell, assign, lease, license, part with possession of, transfer or otherwise dispose of the Property or any part thereof or any estate or interest in the Property or in the Contract prior to effecting Development Completion in accordance with **condition 10** without the prior written consent of the Seller, which consent may be withheld by the Seller in its absolute discretion.

12.2 Deemed Assignment

The following shall be deemed to be an assignment of the Property and the benefit of the Contract for the purposes of **condition 12.1**:

- (a) if the Buyer is a corporation (other than a company listed on the Australian Stock Exchange), any change in the beneficial ownership of any shareholding in the corporation (whether by the transfer of shares or the issue or allotment of further shares); and
- (b) if the Buyer is a trustee of any trust, any change in any beneficial interest in the trust.

13 Mortgage of Property

The Buyer agrees with the Seller that the Buyer will not mortgage, charge or encumber the Property or any part thereof or any estate or interest in the Property or the Contract unless:

- (a) the person to whom any such right or interest is to be granted (**Mortgagee**) has first executed a deed of covenant in such form as the Seller requires to be prepared by the Seller's solicitors at the cost and expense in all respects of the Buyer or the Mortgagee (as the case may be) which deed contains (among other things) covenants by the Mortgagee in favour of the Seller that (so long as the Mortgagee has any interest in the Property):
 - (i) should the Mortgagee pursuant to its security or encumbrance ("**Mortgage**") exercise its rights to deal with the Property whether by way of entering into possession or into the receipt of the rents and profits from the Property, the appointment of a receiver of the income from the Property, the foreclosure of the Mortgage, the ejection of the occupier of the Property from the Property, the

carrying on of any business on the Property or the managing or controlling of the Property in any manner however, the Mortgagee shall perform and observe the Buyer's Covenants within the time frames specified in the Contract in like manner as if the Mortgagee were named in the Contract as the Buyer;

- (ii) in the exercise of its rights under the Mortgage, the Mortgagee will not sell or otherwise dispose of the Property without the prior written consent of the Seller, which consent will not be withheld if Development Completion in accordance with **condition 10** has been effected;
 - (iii) the Mortgagee will not assign the Mortgage or any of its rights under the Mortgage without first procuring the execution by the proposed assignee of a deed of covenant between the proposed assignee and the Seller prepared by the Seller's Solicitors at the cost and expense in all respects of the Buyer or the Mortgagee (as the case may be) pursuant to which the proposed assignee agrees to perform and observe the provisions of the Contract within the time frames specified in the Contract on the part of the Mortgagee to be performed and observed; and
 - (iv) in the event the Seller exercises the option to re-purchase pursuant to **condition 15**, the Mortgagee will discharge the Mortgage and deliver up the Certificate of Title to the Property in exchange for payment of an amount equal to the re-purchase price specified in **condition 15.2** less Costs as defined in **condition 15**; and
- (b) there shall not then be any existing unremedied breach by the Buyer of the Buyer's Covenants.

14 Charge and caveat

14.1 Charge and Caveat

The Buyer hereby charges the Property in favour of the Seller for the purpose of securing the due and punctual observance and performance by the Buyer of the Buyer's Covenants and authorises the Seller, at the cost of the Buyer, to lodge an absolute caveat at Landgate against the Certificate of Title in order to protect the rights and interests of the Seller under the Contract and the Buyer shall not take any action to remove such caveat. The Seller will, at the cost of the Buyer, prepare and execute and deliver to the Buyer a withdrawal of the caveat upon Development Completion being effected in accordance with **condition 10**.

14.2 Withdrawal of Caveat

The Seller agrees with the Buyer that the Seller will at the cost and expense of the Buyer in all respects withdraw the caveat referred to in **condition 14.1** to permit the registration of a Mortgage to a Mortgagee who has executed the deed of covenant referred to in **condition 13**, provided that the Seller is

permitted to lodge a substitute absolute caveat immediately following the registration of that Mortgage.

15 Option to Re-Purchase

15.1 Option

If at any time after Settlement the Buyer breaches any of the Buyer's Covenants including but not limited to the covenants contained in **conditions 9 and 10** and such breach is not remedied within fourteen (14) days after written notice to the Buyer specifying the breach then the Seller shall have the option upon giving to the Buyer thirty (30) days notice in writing to re-purchase the Property for an estate in unencumbered fee simple in possession from the Buyer for the re-purchase price (as determined pursuant to **condition 15.2**).

15.2 Price

The re-purchase price to be paid by the Seller will be inclusive of GST and will be the Purchase Price paid for the Property by the Buyer.

15.3 Margin scheme

The Seller and the Buyer agree that the margin scheme is to apply in respect of the re-purchase of the Property pursuant to **condition 15.1**.

15.4 Buyer pays Costs

If the Seller exercises its option to re-purchase the Property pursuant to **condition 15.1**, the Buyer must at settlement of the re-purchase pay the Costs to the Seller in accordance with **condition 15.7**.

15.5 Costs

For the purposes of this **condition 15** "Costs" means:

- (a) the Seller Agent's commission, advertising costs and other costs and expenses paid by the Seller upon the sale of the Property to the Buyer;
- (b) the Seller's settlement costs and disbursements upon the sale of the Property to the Buyer;
- (c) the Seller's settlement costs and disbursements upon the re-purchase of the Property by the Seller (including the cost of preparation of the transfer and withdrawal of caveat and registration fees for the transfer and withdrawal of caveat and all stamp duty payable (if any) in respect of the re-purchase); and
- (d) the cost to the Seller (if any) of making good and reinstating the Property to the state it was in at Settlement.

15.6 Caveat

The Buyer acknowledges and agrees that the Seller will at the cost of the Buyer lodge an absolute caveat against the title to the Property in respect of the option granted to the Seller pursuant to this Condition and the Buyer will not take any action to remove such caveat. The option hereby granted shall

continue notwithstanding any transfer or other dealing with the Property. The Seller will, at the cost of the Buyer, prepare and execute a withdrawal of the caveat upon Development Completion being effected in accordance with **condition 10**.

15.7 Settlement pursuant to Option

Upon the exercise of the option to re-purchase by the Seller under **condition 15**:

- (a) settlement shall take place at the place nominated by the Seller on the date being thirty (30) days after the notice to re-purchase is given under **condition 15.1**;
- (b) the Seller shall prepare and the Buyer shall execute forthwith a registrable transfer of the Property in favour of the Seller;
- (c) the Seller shall notify the Buyer as to the amount of the Costs (as determined by the Seller whose determination is final and binding on the Buyer);
- (d) the re-purchase price as determined pursuant to **condition 15.2** shall be paid to the Buyer, the transfer registered and possession given and taken on the date of settlement;
- (e) the Buyer shall simultaneously pay the Costs to the Seller by way of bank cheque at settlement of the re-purchase;
- (f) rates and taxes shall be adjusted as at the date of settlement and any amount payable by one party to the other paid at settlement or at a later time agreed by the parties in writing; and
- (g) the Buyer shall sell the Property to the Seller free of all encumbrances including any mortgage, charge, lien, caveat or other right or interest of any third party affecting the Property or any part thereof but excluding any service easement affecting the Certificate of Title.

15.8 No waiver

The Seller may exercise the option hereby granted in its absolute discretion at any time after being entitled to do so hereunder and may elect not to exercise the option immediately notwithstanding that it may be entitled to do so provided that any delay on the part of the Seller in exercising the option hereby granted shall not be a waiver of or amount to a termination of the right to exercise the option.

15.9 Consideration

The consideration for the option to purchase hereby granted is the execution of the Contract.

15.10 Set-Off

- (a) The Seller may set-off any money payable by the Buyer to the Seller pursuant to this **condition 15** against any amount payable by the Seller to the Buyer in respect of the re-purchase price.

- (b) **Condition 15.10(a)** does not operate as a release or waiver by the Seller of any default by the Buyer under these Conditions.

16 Severance

Each clause, sub-clause and condition of the Contract shall be severable from each other clause, sub-clause and condition and the invalidity or unenforceability of any clause, sub-clause or condition for any reason shall not prejudice or in any way affect the validity or enforceability of any other clause, sub-clause or condition.

17 No Merger

Notwithstanding completion of the Contract the Parties hereby expressly acknowledge and agree that to the extent that any of the provisions hereof are capable of being given effect to after Settlement then the provision of the Contract shall not merge on Settlement, and such provisions shall be given force and effect to in accordance with their tenor.

18 Buyer as Trustee

18.1 Warranties and Representations

If the Buyer enters into the Contract as the trustee of a trust:

- (a) the Buyer agrees that the Buyer has entered into the Contract in both its personal capacity and as trustee of the trust and is liable to the Seller in both capacities; and
- (b) the Buyer warrants and represents to the Seller that the trust deed constituting the trust does not contain any restrictions or limitations upon the Buyer's power or authority to enter into the Contract or to purchase the Property.

18.2 No Trust Interest

The Buyer shall not without the consent in writing of the Seller hold the Buyer's interest in the Property or the Contract on trust for any party other than pursuant to the trust (if any) described in this **condition 18** nor declare a trust of the Buyer's interest pursuant to the Contract.

Schedule 1

S70A Notification

NOTIFICATION UNDER SECTION 70A

DESCRIPTION OF LAND (Note 1)

Lots 503-513 (inclusive) and Lots 515-537 (inclusive) on Deposited Plan 57858

EXTENT

Whole

VOLUME

FOLIO

REGISTERED PROPRIETOR (Note 2)

Town of Cambridge of 1 Bold Park Drive, Floreat

LOCAL GOVERNMENT / PUBLIC AUTHORITY (Note 3)

Town of Cambridge

FACTOR AFFECTING USE OR ENJOYMENT OF LAND (Note 4)

Development on the above described land is to be carried out in accordance with the Ocean Mia Design Guidelines (as amended from time to time) adopted by the Town of Cambridge

Dated this

day of

Year 2007

LOCAL GOVERNMENT/PUBLIC AUTHORITY ATTESTATION (Note 5)

REGISTERED PROPRIETOR/S SIGN HERE (Note 6)

The Common Seal of)
Town of Cambridge)
was hereunto affixed by)
authority of a resolution)
of the Council in the)
presence of:)

.....)
Mayor) Chief Executive Officer

.....)
Name of Mayor (print)) Name of Chief Executive Officer (print)

The Common Seal of)
Town of Cambridge)
was hereunto affixed by)
authority of a resolution)
of the Council in the)
presence of:)

.....)
Mayor) Chief Executive Officer

.....)
Name of Mayor (print)) Name of Chief Executive Officer (print)

NOTIFICATION UNDER SECTION 70A

DESCRIPTION OF LAND (Note 1)

Lot 501 and Lots 539-572 (inclusive) on Deposited Plan 58139

EXTENT

Whole

VOLUME

FOLIO

REGISTERED PROPRIETOR (Note 2)

Town of Cambridge of 1 Bold Park Drive, Floreat

LOCAL GOVERNMENT / PUBLIC AUTHORITY (Note 3)

Town of Cambridge

FACTOR AFFECTING USE OR ENJOYMENT OF LAND (Note 4)

Development on the above described land is to be carried out in accordance with the Ocean Mia Design Guidelines (as amended from time to time) adopted by the Town of Cambridge

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Mayor Chief Executive Officer

.....)
Name of Mayor (print) Name of Chief Executive Officer (print)

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.....)
Mayor Chief Executive Officer

.....)
Name of Mayor (print) Name of Chief Executive Officer (print)

Schedule 2

S129 BA Restrictive Covenant

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED.

BLANK INSTRUMENT FORM

RESTRICTIVE COVENANT DEED Deposited Plan 57858

(Note 1)

THIS DEED POLL is made on 2007

BY **TOWN OF CAMBRIDGE** of 1 Bold Park Drive, Floreat, Western Australia ("**Local Government**")

RECITALS

- A. The Local Government is registered as the proprietor of the Land which is situated in the district of the Local Government.
- B. The Local Government has made application to the Western Australian Planning Commission ("**WAPC**") for planning approval to the subdivision of the Land.
- C. WAPC has granted planning approval to the subdivision of the Land subject, among other things, to the following condition:
"Pursuant to section 129BA of the Transfer of Land Act (as amended), a restrictive covenant preventing motor vehicle access onto Kalinda Drive, The Boulevard and Roads 3, 4 and 5, benefiting the local government, being lodged on the Certificates of Title of proposed lots identified on the attached plan, at the full expense of the applicant".
- D. The "proposed lots identified on the attached plan" referred to in Recital C include the Restricted Lots.
- E. The Local Government wishes to impose a restrictive covenant burdening the Restricted Lots for compliance with the condition of planning approval identified in Recital C on the terms set out in this document.

IT IS AGREED

1 DEFINITIONS

In this document:

"**Restricted Lots**" means Lots 508-513 (inclusive), Lots 522-526 (inclusive), and Lots 534-538 (inclusive) on Deposited Plan 57858 and each of them.

"**Land**" means:

- (a) Lot 723 on Plan 22685 and being the whole of the land in Certificate of Title Volume 2138 Folio 25; and
- (b) Lot 724 on Plan 22685 and being the whole of the land in Certificate of Title Volume 2138 Folio 26.

"**Lot**" means any one or more of the lots on Deposited Plan 57858 created or to be created following subdivision of the Land.

2. CREATION OF RESTRICTIVE COVENANT

The Local Government as registered proprietor of the Land hereby creates the following restrictions set out in this document to burden the Restricted Lots and to benefit the Local Government pursuant to section 129BA of the Transfer of Land Act 1893 (WA).

3. ACCESS RESTRICTION

The registered proprietor or proprietors of the Restricted Lots from time to time and for the time being must not access by motor vehicle or permit access by motor vehicle to or from the Restricted Lots as follows:

| Restricted Lots | Restriction |
|-----------------------------|---|
| Lots 508-513 (inclusive) | No access by motor vehicle to or from the Restricted Lots between points I and J as shown on Deposited Plan 57858 |
| Lots 522-526 (inclusive) | No access by motor vehicle to or from the Restricted Lots between points K and L as shown on Deposited Plan 58758 |
| Lots 534-538 (inclusive) | No access by motor vehicle to or from the Restricted Lots between points A and B as shown on Deposited Plan 57858 |

4. TRANSFER OF LAND ACT 1893 SECTION 129BA

The restrictive covenant in **clause 3** is created and made binding in respect of the Restricted Lots pursuant to section 129BA of the Transfer of Land Act 1893 for the benefit of the Local Government being the local government in whose district the Restricted Lots are situated notwithstanding that the benefit of that restrictive covenant is not in respect of land.

5. BURDEN OF RESTRICTIVE COVENANT

The burden of the restrictive covenant contained in this document shall run with the Restricted Lots for the benefit of the Local Government and shall be enforceable against every subsequent registered proprietor of a Restricted Lot.

EXECUTED as a deed

The Common Seal of Town of Cambridge)
was hereunto affixed by authority of a)
resolution of the Council in the presence of:)

.....
Mayor

.....
Name of Mayor (print)

.....
Chief Executive Officer

.....
Name of Chief Executive Officer (print)

WESTERN AUSTRALIA
TRANSFER OF LAND ACT 1893 AS AMENDED.

BLANK INSTRUMENT FORM

RESTRICTIVE COVENANT DEED Deposited Plan 58139

(Note 1)

THIS DEED POLL is made on 2007

BY TOWN OF CAMBRIDGE of 1 Bold Park Drive, Floreat, Western Australia ("Local Government")

RECITALS

- A. The Local Government is registered as the proprietor of the Land which is situated in the district of the Local Government.
- B. The Local Government has made application to the Western Australian Planning Commission ("WAPC") for planning approval to the subdivision of the Land.
- C. WAPC has granted planning approval to the subdivision of the Land subject, among other things, to the following condition:
"Pursuant to section 129BA of the Transfer of Land Act (as amended), a restrictive covenant preventing motor vehicle access onto Kalinda Drive, The Boulevard and Roads 3, 4 and 5, benefiting the local government, being lodged on the Certificates of Title of proposed lots identified on the attached plan, at the full expense of the applicant".
- D. The "proposed lots identified on the attached plan" referred to in Recital C include the Restricted Lots.
- E. The Local Government wishes to impose a restrictive covenant burdening the Restricted Lots for compliance with the condition of planning approval identified in Recital C on the terms set out in this document.

IT IS AGREED

1 DEFINITIONS

In this document:

"**Restricted Lots**" means Lots 539-550 (inclusive), Lots 551-559 (inclusive) and Lots 561-572 (inclusive) on Deposited Plan 58139 and each of them.

"**Land**" means:

- (a) Lot 723 on Plan 22685 being the whole of the land in Certificate of Title Volume 2138 Folio 25; and
- (b) Lot 724 on Plan 22685 and being the whole of the land in Certificate of Title Volume 2138 Folio 26.

"**Lot**" means any one or more of the lots on Deposited Plan 58139 created or to be created following subdivision of the Land.

2. CREATION OF RESTRICTIVE COVENANT

The Local Government as registered proprietor of the Land hereby creates the following restrictions set out in this document to burden the Restricted Lots and to benefit the Local Government pursuant to section 129BA of the Transfer of Land Act 1893 (WA).

3. ACCESS RESTRICTION

The registered proprietor or proprietors of the Restricted Lots from time to time and for the time being must not access by motor vehicle or permit access by motor vehicle to or from the Restricted Lots as follows:

| Restricted Lots | Restriction |
|-----------------------------|---|
| Lots 539-550 (inclusive) | No access by motor vehicle to or from the Restricted Lots to or from The Boulevard or Alkoomie Terrace (as the case may be) between points C and D as shown on Deposited Plan 58139 |
| Lots 551-559 (inclusive) | No access by motor vehicle to or from the Restricted Lots to or from Balandi Way between points G and H on Deposited Plan 58139 |
| Lots 561-572 (inclusive) | No access by motor vehicle to or from the Restricted Lots to or from Alkoomie Terrace between points E and F on Deposited Plan 58139 |

4. TRANSFER OF LAND ACT 1893 SECTION 129BA

The restrictive covenant in **clause 3** is created and made binding in respect of the Restricted Lots pursuant to section 129BA of the Transfer of Land Act 1893 for the benefit of the Local Government being the local government in whose district the Restricted Lots are situated notwithstanding that the benefit of that restrictive covenant is not in respect of land.

5. BURDEN OF RESTRICTIVE COVENANT

The burden of the restrictive covenant contained in this document shall run with the Restricted Lots for the benefit of the Local Government and shall be enforceable against every subsequent registered proprietor of a Restricted Lot.

EXECUTED as a deed

The Common Seal of Town of Cambridge)
was hereunto affixed by authority of a)
resolution of the Council in the presence of:)

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Mayor

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Name of Mayor (print)

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Chief Executive Officer

.....
Name of Chief Executive Officer (print)