

Cozydevelopments Pty Ltd
ABN 11 669 107 206
[insert phone number or
email if you wish]

Expression of Interest – Unit [insert relevant unit #] 942 Beaufort Street, Inglewood WA

I/We the Shareholder/s confirm our details are:

Shareholder/s full legal name(s): _____

Address: _____

Telephone: _____ Mobile: _____ Email Address: _____

1. Background

- (a) Cozydevelopments Pty Ltd (**Developer**) is or is entitled to become the owner and registered proprietor of the land situated at 942 Beaufort Street, Inglewood, Western Australia (**Property**).
- (b) The Developer and the Shareholder/s, together with two to three other shareholders, propose to enter into a binding deed of agreement of shareholders (**Formal Agreement**), within 7 days of receipt of that agreement, whereby each of the shareholders, including the Shareholder/s will acquire shares in the project company that is intended to acquire the Property and undertake the proposed development of the Property.

2. Property Details

- (a) I/We, the Shareholder, hereby submit my/our expression of interest to:
 - (i) invest in the project to develop the Property described as [insert Unit #] 942 Beaufort Street, Inglewood (**Unit**); and
 - (ii) enter into the Formal Agreement, within 7 days of receipt of that agreement.

3. Payment of Deposit

- (a) I/We, the **Shareholder/s**, understand that (**Holding Deposit**):
 - (i) the initial fully refundable deposit to invest in the project is \$10,000, and which I/We the Shareholder agree to pay; and
 - (ii) the holding deposit is in consideration for the acceptance of my/our expression of interest and to hold or reserve my preferred unit or lot for the proposed project to develop the Property, for 90 days from signing this Expression of Interest Form (**Expiry Date**).
- (b) The Holding Deposit is payable by way of electronic transfer to the trust account of Nova Legal within two (2) days of signing this Expression of Interest Form, details of which are as follows:

Account Name: Nova Legal Law Practice Trust Account
BSB: 306 048
Account No.: 0833851
Reference: **23103 – Unit [insert Unit #] Holding Deposit**

4. Terms

- (a) I/We, the Shareholder/s, hereby agree to enter into the Formal Agreement within 7 days of receipt of that agreement.
- (b) The Holding Deposit remains fully refundable until the earlier of the Expiry Date or the Formal Agreement is fully executed by both the Shareholder/s and the Developer.
- (c) I/We, the Shareholder/s, may cancel this expression of interest and request in writing to the Developer a full refund of the Holding Deposit paid at any time prior to the Formal Agreement being fully executed by both the Shareholder and the Developer.
- (d) The Developer may in writing cancel or offer an extension to this expression of interest if the Formal Agreement is not executed by the Developer by the Expiry Date.

5. Developer to Hold Property

- (a) The Developer herein agrees to hold the Unit for the Shareholder/s and not to offer the Unit to another person or entity until either the Expiry Date or the Formal Agreement is fully executed by both the Shareholder/s and the Developer.

6. Acknowledgements by the Shareholder

- (a) I/We, the Shareholder/s, hereby acknowledge and agree that:
 - (i) This Expression of Interest is NOT a binding commitment to take part in the proposed development or to purchase the Unit.
 - (ii) No interest will be paid to the Shareholder/s or the Developer on the Holding Deposit paid pursuant to this Expression of Interest Form.
 - (iii) If the Formal Agreement is not fully executed by both the Shareholder/s and the Developer within 7 days of receipt of the Formal Agreement, this Expression of Interest Form will automatically terminate and the Developer will return the Holding Deposit to the Shareholder/s within 3 business days after such time.

7. General

- (a) Variation of any term of this Expression of Interest Form must be in writing and signed by all of the parties.
- (b) None of the parties may assign any of the rights or obligations conferred by this Expression of Interest Form, without the written consent of the other parties.
- (c) Each party shall bear their own legal costs of and incidental to the preparation, negotiation and execution of this Expression of Interest Form.
- (d) If applicable, the Shareholder/s will be responsible for paying all duty assessed on or in respect of this Expression of Interest Form and the transactions contemplated by it.
- (e) This Expression of Interest Form shall be governed by and construed in accordance with the laws in Western Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of Western Australia.

Signed by the Shareholder/s: _____

Date: _____

Signed by the Shareholder/s: _____

Date : _____

Sale of Land Act 1970

Approved form of statutory warning where the vendor of lot(s) to be created by subdivision of land is not the registered proprietor of the land

The following is the approved form of the statutory warning that is required to be included within any future lot contract by section 13C of the *Sale of Land Act 1970*:

Warning for Purchasers - Sale of Land Act 1970

This contract is a "future lot contract" for the purposes of Part 3 of the Sale of Land Act 1970,

That is because at the date of execution of this contract for the sale of land, the vendor is **not** the registered proprietor of the land which is to be subdivided to create the lot(s) to be transferred at settlement under this contract.

The vendor cannot transfer ownership of those lot(s) to the purchaser until after becoming the registered proprietor of that land (whether or not there are any other conditions to be satisfied before the transfer of ownership).

Accordingly, the purchaser should consider the potential risks of entering into this contract for sale of land and should consider seeking independent professional advice prior to entering into this contract.

Important Things to Note:

The following 7 points paraphrase some key requirements of sections 13A – 13I of the Sale of Land Act 1970. This information is provided to help the vendor and purchaser understand future lot contracts, but does not form a part of the contract itself. To understand the rights and obligations of all parties, refer to ss13A – 13I of the Sale of Land Act 1970.

1 Vendor's condition required in a contract

Section 13B of the *Sale of Land Act 1970* requires that a future lot contract be subject to a **vendor's condition**. That vendor's condition must make the contract conditional on the vendor becoming, or being entitled to become, the registered proprietor of the land which is to be subdivided to create the lot(s) to which the contract relates within 6 months from the date of execution of the contract, or by any other period as specified in the contract, or in a variation signed by both parties (**specified period**).

2 Reasonable endeavours must be used to satisfy vendor's condition

Section 13G of the *Sale of Land Act 1970* requires that all reasonable endeavours must be made to satisfy the vendor's condition before the expiry of the specified period. These reasonable endeavours include taking steps to obtain the necessary

regulatory approvals and lodging the necessary plans for the subdivision or proposed subdivision

3 Information required to be given to the purchaser

Under section 13G of the *Sale of Land Act 1970* the vendor is required to inform the purchaser of steps taken to satisfy the vendor's condition within a reasonable timeframe, if the purchaser requests this information in writing.

4 Requirement for vendor to notify purchaser if the vendor's condition is satisfied (section 13H of Sale of Land Act 1970)

After the date of, becoming, or being entitled to become, the registered proprietor of the lot(s) to which the contract relates, the vendor must notify the purchaser in writing of this within 10 working days. Failure to do this will be taken as the vendor's condition not being satisfied, and gives the purchaser (but not the vendor) the right to terminate the contract.

5 Consequences if vendor's condition is not satisfied (section 13I of Sale of Land Act 1970)

If the vendor's condition is not satisfied the:

- purchaser has the right to terminate the contract;
- vendor has the right to terminate the contract provided that the vendor has complied with section 13G and made all reasonable endeavours to satisfy the vendor's condition before expiry of the specified period.

In either case, the deposit must be returned to the purchaser.

6 Obligations relating to deposit or other money (section 13E of Sale of Land Act 1970)

The vendor must ensure that money payable by the purchaser under the contract is held in trust by a solicitor, licensed real estate agent, or licensed settlement agent in an authorised deposit-taking institution. The handling of such money must meet the requirements of sections 13B – 13F, 13H and 13I of the *Sale of Land Act 1970*.

7 Notification requirement for termination of contract (section 13I(1) and (2) of Sale of Land Act 1970)

If a party to the contract (vendor or purchaser), has the right to terminate the contract, they may do so by notifying the other party in writing of the termination.

Deed of Agreement of Shareholders

[TBC] (ACN [TBC])

(Company)

and

The parties specified as Shareholders in the Schedule

(each a **Shareholder** and together the **Shareholders**)

INDEX

1	DEFINITIONS AND INTERPRETATIONS.....	4
1.1	Definitions.....	4
1.2	Interpretations.....	8
2	SHAREHOLDERS' OBJECTIVES AND FORMATION OF THE JOINT VENTURE.....	9
2.1	Objectives and Joint Venture	9
2.2	Name	9
2.3	Term	9
2.4	Bank Account	9
2.5	Contributions and responsibilities	9
2.6	Commitment of Individual Interests	9
2.7	Shareholders will be just and faithful.....	9
2.8	No partnership.....	10
2.9	Interests are several.....	10
2.10	Shareholder's warranties.....	10
2.11	Financial information	10
3	LAND.....	11
3.1	Ownership	11
3.2	Company to act as trustee	11
3.3	Land Holding Costs	11
3.4	Dealings with the Land	11
3.5	Right to deal with allocated Dwellings.....	11
4	PROJECT FUNDING	12
4.1	Funding	12
4.2	Limitation on Recourse	12
4.3	Limitation on Application of Project Funding	12
5	MORTGAGE	12
6	DISPOSITION	12
6.1	Partition and Disposition.....	12
6.2	Duty	13
6.3	Registration	13
7	BUILDER AND PROJECT MANAGER.....	13
7.1	Appointment of Builder	13
7.2	Appointment of Project Manager.....	13
7.3	Appointment of Attorney	14
8	JV ASSETS	14
8.1	Ownership	14
8.2	No encumbrances	14
9	BUDGET	14
9.1	Budget Approval.....	14
9.2	Additional Contributions	15
10	ACCOUNTS	15
10.1	Financial records	15
10.2	Inspection	15
10.3	Copies	15
11	PROPERTY RECORDS, REPORTS AND INSPECTIONS.....	15
11.1	Access to the Land.....	15
11.2	Project Records.....	15
12	TRANSFER OF AN INTEREST.....	15
12.1	First right of refusal.....	15
12.2	If offer is accepted	16
12.3	If offer is not accepted	16
12.4	Revised Offer Notice	16

12.5	If revised offer is accepted	16
12.6	If revised offer is not accepted	16
12.7	Shareholders must purchase interest on a pro rata basis.....	16
12.8	Third parties must agree to be bound by Joint Venture Agreement.....	16
13	DEFAULT.....	16
13.1	Default in payment	16
13.3	Payment under clause 13.2 is a debt due.....	17
13.4	Failure of a Defaulting Shareholder to rectify a Default	17
14	CONCILIATION AND MEDIATION	18
14.1	Shareholders must confer	18
14.2	Negotiation	18
14.3	Mediation.....	18
15	CONFIDENTIALITY	19
16	NOTICES	19
16.1	Giving notices.....	19
16.2	Addresses	19
16.3	Time notice is given.....	19
17	MISCELLANEOUS	20
17.1	Assignment.....	20
17.2	Costs	20
17.3	Execution of separate documents.....	20
17.4	Further acts	20
17.5	Governing law and jurisdiction	20
17.6	Severability.....	20
17.7	Time for action.....	20
17.8	Variation	20
17.9	Waiver	20
17.10	Duty	21
17.11	Independent legal advice	21
	SCHEDULE.....	26
	ANNEXURE A – CONCEPT PLAN.....	27
	ANNEXURE B – DIRECTORS’ CONSENT	30
	ANNEXURE C – APPOINTMENT DOCUMENTS.....	34

THIS DEED is made on the

day of

2024.

BETWEEN:

Parties

[SHAREHOLDER NAME] of [address] ([Shareholder A])

AND

[SHAREHOLDER NAME] of [address] ([Shareholder B])

AND

[SHAREHOLDER NAME] of [address] ([Shareholder C])

AND

[SHAREHOLDER NAME] of [address] ([Shareholder D])

(collectively, Shareholders)

AND

[COMPANY NAME] (ACN XXX XXX XXX) of [address] (Company)

B A C K G R O U N D :

- A. The Shareholders have agreed to establish the Company to undertake the Project.
- B. The Shareholders have each subscribed for the Shares as set out in the Schedule, being the only the only shareholders of the Company.
- C. The Company is or is entitled to become the owner and registered proprietor of the Land and wishes to develop the Land.
- D. The Company intends on undertaking the Project on the Land and the Shareholders wish to invest and participate in the Project.
- E. The Parties have agreed to form and participate in the Joint Venture to undertake the Project and share in the resulting Dwellings, with the Shareholders to receive the Allocated Dwellings on the terms of this Agreement.
- F. The Shareholders and the Company acknowledge and agree that the Builder and Project Manager have been or are to be appointed to build the Project and manage the Project on the terms of the Building Contract and the Project Management Agreement.

O P E R A T I V E P A R T :

1 DEFINITIONS AND INTERPRETATIONS

1.1 Definitions

In this Agreement, unless the context otherwise requires, the following words have the following meanings:

Acquisition Contract means the contract of sale entered into by the Company and each of the Shareholders concurrently with this Agreement pursuant to which the Shareholders acquires the Shareholders' Initial Interest for the Acquisition Price, which shall be paid pursuant to clause 2.6(b)(ii);

Acquisition Price means the purchase price of the Allocated Dwelling as contained in the Acquisition Contract;

Additional Contribution means any additional contribution required to be made by the Shareholders under clause 9.2;

Agreement means the deed of agreement of shareholders comprising this document as varied from time to time and includes all annexures, schedules and attachments;

Allocated Dwellings means the proposed Dwellings on lot A, B, C or D on the Concept Plan;

Appointment Document means the power of attorney document comprising Annexure C;

Approval means any licence, permit, consent, approval or the like required to undertake and complete the Project including but not limited to any Approval required from an Authority such as the City of Stirling or West Australian Planning Commission to construct the Project and register the Disposition;

Authority means any government, statutory, municipal, environmental, ratepayer or other public or private body, association, commission or authority of any kind;

Bank Account means the bank account established for and on behalf of the Joint Venture pursuant to clause 2.5;

Budget means the budget for the Project as replaced or amended from time to time in accordance with this Agreement;

Builder means [TBC insert] ACN [insert] trading as [insert] ABN and builder registration number BC [insert];

Building Contract means the HIA HBCA Lump Sum Building Contract (Form 8D) building contract to be entered into by the Company and the Builder concurrently with this Agreement concerning construction of the Project for a contract of sum of [\$TBC plus GST] (subject to variations, provisional sums and other matters impacting on this price pursuant to such contract);

Cash Contribution means \$_____ which forms part of the Acquisition Price;

Consent to Act means the consent to act as a director forming Annexure B;

Contribution means an amount to be contributed by a Shareholder to the Joint Venture pursuant to this Agreement;

Commencement Date means [the date of assignment/novation of the Option or the Company exercising the Option as nominee], being the date on which the Company became entitled to become the owner and registered proprietor of the Land by the REIWA Option to Purchase Land agreement dated 31 October 2023;

Concept Plan means the proposed plan of subdivision of the Land for residential redevelopment and construction of a low rise apartment building forming Annexure A;

Consultant means any person or company reasonably engaged or hired by the Shareholders (including by the Project Manager on behalf of the Shareholders) to assist with the Project, including any surveyors, engineers, town planners, valuers, accountants, financial advisors and solicitors;

Contractor means any contractor or sub-contractor engaged or hired by the Company (including by the Project Manager on behalf of the Company) to undertake works in relation to the Project, including contractors engaged to undertake demolition, earthworks, rubbish removal, plumbing, electrical, or other service works;

Corporations Act means the *Corporations Act 2001* of the Commonwealth of Australia;

Defaulting Shareholder means a Shareholder who is in default under this Agreement;

Detailed Financial Statement means the statement to be provided to the Shareholders in accordance with clause 10.5;

Disposition means the partition and disposition of the Dwellings between the Company and the Shareholders pursuant to clause 6.1(d);

Dwellings mean the four strata titled apartments created in the Project, and **Dwelling** shall have a corresponding meaning;

Encumbrance means a mortgage, charge, bill of sale, lien, pledge, mining tenement, writ, warrant, caveat (and the claim stated in the caveat), title retention arrangement, conditional

sales agreement or other right or interest of any third party and **Encumber** shall have a corresponding meaning;

Event of Default means, for a Shareholder, any one of the following:

- (a) default by the Shareholder in the payment of any moneys payable by that Shareholder under this Agreement, where such default is not rectified within 14 days of receipt of a written demand to do so;
- (b) the Shareholder being in breach of any of its obligations under this Agreement not referred to in paragraph (a) and failing to remedy such breach within 28 days of receipt of written notice from the other Shareholder requiring remedy of the same;
- (c) it becomes unlawful for the Shareholder to perform any of its material obligations under this Agreement; or
- (d) the Shareholder being the subject of an Insolvency Event;

Financial Year means the twelve-month period from 1 July to 30 June;

Individual Interest when used in relation to a Shareholder means:

- (a) the percentage beneficial interest for the time being held by a Shareholder in the JV Assets and the Land; and
- (b) the rights and obligations of each Shareholder under or resulting from this Agreement;

Insolvency Event means the happening of any of the following events in relation to a Shareholder:

- (a) the Shareholder is wound up voluntarily or by the court, or a provisional liquidator or official manager is appointed;
- (b) the Shareholder proposes to enter into, or enters into, any form of arrangement (formal or informal) with its creditors or any of them;
- (c) a receiver, or receiver and manager, is appointed to any of the Shareholder's assets;
- (d) the Shareholder is, or is deemed to be under any provision of the Corporations Act, unable to pay its debts;
- (e) the Shareholder becomes an insolvent under administration, as defined in Section 9 of the Corporations Act;
- (f) in the case of a natural person, the Shareholder dying or having a trustee in bankruptcy appointed, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason; or
- (g) anything analogous or having a substantially similar effect to any of the events specified above;

Shareholders' Contributions means:

- (a) the Cash Contribution;
- (b) the Shareholders' proportionate share of any Additional Contributions which the Shareholders shall contribute pursuant to clause 9.2; and
- (c) the Shareholders' Individual Interest;

Shareholders' Initial Interest means a 250/1000 (25%) ownership interest in the Land;

Joint Venture means the association of the Shareholders for the purposes of this Agreement;

JV Assets means the Land, all plans, approvals and the like concerning the Project; the improvements constructed or carried out on the Land as part of the Project; the Bank Account and all monies from time to time held by or on behalf of the Joint Venture (including by reason of the Contributions); the Joint Venture Income; all rights and entitlements under any agreement or contract entered into for or on behalf of the Joint Venture including the Building Contract and Project Management Agreement;

JV Costs means all the costs of the Joint Venture incurred in relation to the Land and the

Project on or from the Commencement Date, including those associated with its establishment and operation and those of and incidental to carrying out and completing the Project including but not limited to:

- (a) all costs (including Contractor and Consultant costs) associated with:
 - (i) constructing the Project ;
 - (ii) subdividing the Land; and
 - (iii) completing the Disposition;
- (b) all costs and fees payable to the Builder and the Project Manager pursuant to the Building Contract and the Project Management Agreement;
- (c) all fees payable to any Authority concerning the Project; and
- (d) legal and accounting fees concerning the formation and administration of the Joint Venture and completion of the Project,

however, for the avoidance of doubt excluding:

- (e) any costs associated with the Company originally acquiring the Land or owning the Land prior to the Commencement Date (including any amount payable to the Foreign Investment Review Board);
- (f) any cost associated with the Project and paid for by the Company prior to the Commencement Date;
- (g) any Land Holding Costs; and
- (h) any transfer duty payable on the acquisition by the Shareholders of the Shareholders' Initial Interest pursuant to the Acquisition Contract and this Agreement;

JV Income means all income derived by the Joint Venture including but not limited to:

- (a) any rent or licence fee received for the Land; and
- (b) any interest received on any funds deposited in the Bank Account or any other account of, or held on behalf of, the Joint Venture;

Land means Lot 891 on Plan 405850 and being the land comprising Certificate of Title Volume 2892 Folio 27 and commonly known as 942 Beaufort Street, Inglewood, Western Australia;

Land Holding Costs means:

- (a) all monies both now and in the future payable concerning the Mortgage including the principal debt, interest and any bank fees and charges; and
- (b) all rates, taxes and other outgoings associated with the Land and its ownership prior to completion of the Disposition;

Lender means Reliance Capital Pty Ltd;

Mortgage means the mortgage to be registered over the Land in favour of the Lender, concurrently with entering into this Agreement concerning the finance loan for the construction of the Project;

Non-Defaulting Shareholder means the Shareholder not in default under this Agreement from time to time;

Objectives means the objectives of the Parties for this Joint Venture being the following subject to variation by unanimous agreement of the Shareholders from time to time:

- (a) undertaking and completing the Project;
- (b) attending to the Disposition; and
- (c) allocating/transferring the Dwellings to the Shareholders in accordance with the Disposition;

Prescribed Rate means 10% per annum calculated daily and compounded monthly;

Project means the undertaking of the development of the Land by way of subdivision in accordance with the Concept Plan into four strata titled lots and the construction of a low rise apartment building and the Disposition of the resulting Dwellings to the Shareholders;

Project Manager means Cozydevelopments Pty Ltd ACN 669 107 206 (which the Parties acknowledge is a related party to the proponent for this Joint Venture and the Project);

Project Management Agreement means the project management agreement entered into by the Company and the Project Manager concerning management of the Project, including the Project, and dated [TBC];

Schedule means the schedule to this Agreement;

Shareholders means the participants in the Joint Venture being the Company and the Shareholders at the date of this Agreement and **Shareholder** means any of them;

Project Records mean any and all:

- (a) records;
 - (b) reports;
 - (c) accounts;
 - (d) plans;
 - (e) surveys;
 - (f) books;
 - (g) correspondence; and
 - (h) documents,
- relating to the Project, the Joint Venture and all undertakings, activities and operations under this Agreement.

1.2 Interpretations

In this Agreement, unless the context otherwise requires:

- (a) a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
- (b) a reference to any agreement or document is to that agreement or document as amended, novated, supplemented or replaced from time to time;
- (c) reference to a clause, part or attachment is a reference to a clause, part or attachment of or to this Agreement unless otherwise stated;
- (d) an expression importing a natural person includes any company, trust, partnership, joint venture, association, corporation, body corporate or governmental agency;
- (e) a reference to a business day means a day (excluding a Saturday or Sunday) on which all banks are open for business generally in Western Australia;
- (f) the day on which any act, matter or thing is to be done under this Agreement is not a business day, that act, matter or thing may be done on the next business day;
- (g) an agreement on the part of two (2) or more persons binds them jointly and severally;
- (h) an agreement, representation or warranty in favour of two (2) or more persons is for the benefit of them jointly and severally;
- (i) a reference to any thing or any amount is a reference to the whole and each part of it. A reference to a group of persons is a reference to all of them collectively, to two (2) or more of them collectively and to each of them individually;
- (j) references to time are to time in Perth, Western Australia; and
- (k) references to money and the sign '\$' are references to the currency of Australia.

2 SHAREHOLDERS' OBJECTIVES AND FORMATION OF THE JOINT VENTURE

2.1 Objectives and Joint Venture

On and from the Commencement Date, the Shareholders agree to form and participate in an unincorporated Joint Venture and establish the Company for the sole purpose of undertaking the Project and achieving the Objectives.

The Shareholders, hereby and in executing the Consent to Act contained in Annexure B, agree and accept the appointment as directors of the Company.

2.2 Name

The name of the Joint Venture is "The 942 Beauford Street Joint Venture" [TBC]

2.3 Term

- (a) The Joint Venture and this Agreement takes effect and commences on and from the Commencement Date and shall continue in force until the first to occur of:
 - (i) this Agreement and the Objectives have been fulfilled, being the completion of the Project and with this the Disposition such that the Shareholders receives the Allocated Dwellings pursuant to the Disposition;
 - (ii) any one Shareholder becomes the owner of 100% of the Joint Venture; or
 - (iii) the Joint Venture is otherwise terminated in accordance with the provisions of this Agreement.
- (b) Unless all the Shareholders otherwise agree in writing, the Joint Venture will not extend beyond the purposes of the Project.

2.4 Bank Account

- (a) The Shareholders shall open and operate for and on behalf of the Joint Venture a bank account with an Australian banking institution.
- (b) All money received in respect of the Joint Venture including any Joint Venture Income must be paid into the Bank Account unless agreed in writing by all Shareholders otherwise.
- (c) The Project Manager shall be a signatory to the Bank Account.

2.5 Contributions and responsibilities

Unless otherwise agreed, each Shareholder shall make the Shareholders's Contribution and in doing so make the following contributions to the Joint Venture:

- (a) make the Shareholders's Initial Interest available for the Project within [xx insert days] days of entering into this Agreement;
- (b) pay the Land Holding Costs as and when they fall due;
- (c) pay the Cash Contribution (which includes the Acquisition Price) to the Bank Account for the purpose of funding part of the Joint Venture Costs; and
- (d) paying its proportionate share (based on the percentage of its Individual interest) of any Additional Contributions.

2.6 Commitment of Individual Interests

Each Shareholder commits to the Joint Venture its Individual Interest.

2.7 Shareholders will be just and faithful

- (a) The Project shall be conducted as a commercial venture and in accordance with good commercial, property development practice.
- (b) The Shareholders covenant and agree with each other to:
 - (i) be just and faithful in all their activities and dealings with each other;

- (ii) diligently observe and perform their obligations and commitments in respect of the Project, the JV Assets and under this Agreement;
- (iii) use their best endeavours to achieve the Objectives;
- (iv) not engage (whether alone or in association with others) in any activity in respect of the Project except as provided or authorised by this Agreement; and
- (v) except where specifically permitted by this Agreement otherwise, not do or permit to be done anything by which:
 - (A) any of the JV Assets might be rendered liable to be cancelled, forfeited, revised, not issued, not renewed or not extended;
 - (B) the Land or any of the JV Assets might become Encumbered; or
 - (C) the Land, Project and Disposition might be prejudiced or inhibited.

2.8 No partnership

Except as otherwise specifically provided in this Agreement neither this Agreement nor the activities of the Shareholders or any of them will, nor is it intended to:

- (a) create any authority to act for, or create or assume any responsibility or obligation on behalf of any other Shareholder;
- (b) create a partnership or other relationship where any Shareholder will be held responsible or liable for any act or omission of any other Shareholder, either jointly or otherwise in their capacity as Shareholder;
- (c) authorise any Shareholder to pledge the credit of any other Shareholder;
- (d) impair the individual status of any Shareholder; or
- (e) create any trust.

2.9 Interests are several

Unless the Shareholders otherwise agree, the obligations of each Shareholder under this Agreement and in respect of the Joint Venture will be separate and several in proportion to its Individual Interest. The obligations of the Shareholders will not be, or be construed to be, either joint or joint and several.

2.10 Shareholder's warranties

Each Shareholder warrants that:

- (a) it has the right, power and authority to enter into this Agreement and to carry out the transactions contemplated by it;
- (b) it is duly incorporated in accordance with the laws of the place of its incorporation;
- (c) it is not subject to an Insolvency Event and is not aware to the best of their knowledge, information and belief, of any likely or threatened Insolvency Event; and
- (d) it enters into this Agreement and participates in the Joint Venture in reliance solely upon its own due diligence and enquiries (including professional advice that it has independently obtained) and not upon any representation or warranty by the other Shareholder or Project Manager that is not an express term of this Agreement.

2.11 Financial information

Each Shareholder acknowledges that the financial information which has passed between them or provided to them by the Project Manager, including information relating to or contained in the Budget, is an estimate only.

3 LAND

3.1 Ownership

- (a) The Company is or is entitled to become the registered proprietor of the Land.
- (b) Concurrently with entering into this Agreement and for the purpose of facilitating the Joint Venture, the Company shall enter into the Acquisition Contract in doing so granting the Shareholders the right and entitlement to:
 - (i) become the registered proprietor of the Shareholders's Initial Interest; and
 - (ii) pursuant to this Agreement receive the Allocated Dwellings.
- (c) The Shareholders acknowledge and agree that:
 - (i) registration with Landgate of the Shareholders' Initial Interest is subject to and conditional upon the discharge of the Mortgage or the holder of the Mortgage consenting to the same; and
 - (ii) it is intended that registration of the Shareholders' Initial Interest will occur immediately prior to or at the time of the Disposition, however remains subject to clause 3.1(c)(i) which may be at the sale, transfer or disposition of the Dwellings.

3.2 Company to act as trustee

Until such time that the Shareholders becomes the registered proprietor of:

- (a) the Shareholders' Initial Interest; and/or
- (b) the Allocated Dwellings,

the Company shall own the Shareholders' Initial Interest and/or the Allocated Dwellings on bare trust for the Shareholders and shall only deal with these in accordance with the written directions of the Shareholders or as permitted under this Agreement.

3.3 Land Holding Costs

At all times up to and including the date of completion of the Disposition, the Shareholders must cause the Company to pay the Land Holding Costs, as and when they fall due.

3.4 Dealings with the Land

- (a) On and from the Commencement Date each Shareholder agrees to deal with the Land and the JV Assets and their interest in these only in accordance with this Agreement or as otherwise unanimously agreed in writing by the Shareholders.
- (b) For the avoidance of doubt, except as expressly permitted by this Agreement, including clause 3.5, on and from the Commencement Date a Shareholder shall not assign, transfer, sell, part with possession, licence, mortgage or otherwise Encumber, deal or attempt to do any of the aforementioned things with the Land or any JV Assets or their interest in these without the prior written consent of the other Shareholders (such consent may be given or withheld at the other Shareholder's absolute discretion).

3.5 Right to deal with allocated Dwellings

- (a) Subject to the terms of the Mortgage whilst that may apply, the Company shall:
 - (i) be free to deal with the Allocated Dwellings in its absolute discretion including granting any Encumbrance over any Dwelling and the Land; and
 - (ii) receive all proceeds from the same.
- (b) The Shareholders may not without the prior written consent of the Lender deal with its interest in the Land or any Allocated Dwelling (including granting any Encumbrance, other than the Mortgage) prior to the Shareholders being registered as the proprietor of the Allocated Dwelling or the Allocated Dwellings are free from the Mortgage or any other Encumbrance.

4 PROJECT FUNDING

4.1 Funding

- (a) On and from the Commencement Date the Project Funding will be limited to the initial Contributions, for this reason the Company has or will for the benefit of all Shareholders obtain and borrow additional funding by way of loan from the Lender to complete the Project to ensure that the Joint Venture can meet all expenses as and when they fall due.
- (b) The recourse of such debt funding shall be limited solely to the JV Assets and the financier shall be entitled to take a first ranking mortgage over the Land for this purpose.
- (c) Each of the Shareholders acknowledge and agree that the Lender may require each of the Shareholders to provide a guarantee in respect of the loan to the Company for the construction of the Project.

4.2 Limitation on Recourse

Subject to clause 4.1(c), recourse to the Project Funding shall be limited solely to the Joint Venture Assets. For the avoidance of doubt there shall be no personal recourse against a Shareholder.

4.3 Limitation on Application of Project Funding

Unless the Shareholders unanimously agree otherwise the drawing down of the Project Funding or application of any Project Funding shall be limited to the amounts necessary to pay the Joint Venture Costs for which it has been obtained/provided, as and when those Joint Venture Costs become payable, and shall be applied only for those purposes.

5 MORTGAGE

- (a) The Shareholders acknowledge and agree that:
 - (i) the Land is or will contemporaneously with entering into this Agreement become subject to the Mortgage in accordance with clause 4 of this Agreement;
 - (ii) it is intended that the Mortgage will only be discharged upon registration of the Disposition; and
 - (iii) the mortgagee or holders of the Mortgage is not obliged to discharge the Mortgage until such time that all monies owing thereunder have been received in full.
- (b) The Company must use its best endeavours, including providing additional security or refinancing the associated loan where possible, to secure a release and discharge of the Mortgage from the Allocated Dwellings upon registration of the Disposition.

6 DISPOSITION

6.1 Partition and Disposition

The Shareholders acknowledge and agree that:

- (a) on and from the Commencement Date they are entitled to the Land in the proportions set out in the table contained in clause 2.4(a); and
- (b) the respective interests in the Land shall entitle each Shareholder to the following Dwellings created in the Disposition;
 - (i) Shareholder A shall receive Dwelling A of the Allocated Dwellings;
 - (ii) Shareholder B shall receive Dwelling B of the Allocated Dwellings;
 - (iii) Shareholder C shall receive Dwelling C of the Allocated Dwellings; and

- (iv) Shareholder D shall receive Dwelling D of the Allocated Dwellings;
- (c) the aggregate value of the respective Dwellings that each Shareholder is to receive is proportionate to the value of each Shareholder's share of ownership/interest in the Land with no amount by which the value of the Dwellings any Shareholder is to receive exceeding the value of the share of the Land held by that Shareholder prior to partitioning the Land and effecting the Disposition, as set out in Section 39 of the Duties Act;
- (d) upon completion of the Project the Disposition shall occur and the resulting Dwellings shall be the subject of a partition and disposition between the Shareholders such that:
 - (i) Shareholder A shall become the sole registered proprietor of Dwelling A;
 - (ii) Shareholder B shall become the sole registered proprietor of Dwelling B;
 - (iii) Shareholder C shall become the sole registered proprietor of Dwelling C; and
 - (iv) Shareholder D shall become the sole registered proprietor of Dwelling D; and
- (e) the Dwelling that each Shareholder is to receive are of value equal to that Shareholder's ownership of the Land.

6.2 Duty

The Shareholders shall be responsible for any duty payable pursuant to the *Duties Act 2008 (WA)* on the transfer of any Allocated Dwelling to the Shareholders.

6.3 Registration

The Shareholders shall use their best endeavours and shall sign and lodge all necessary documents (including but not limited to transfers, applications for new titles and disposition statement) reasonably necessary to complete the Disposition in the manner intended by this Agreement.

7 BUILDER AND PROJECT MANAGER

7.1 Appointment of Builder

The Shareholders acknowledge and agree that:

- (a) the Builder has been or is to be appointed to construct the Project pursuant to the Building Contract; and
- (b) the terms of the Building Contract shall be valid and binding upon the Joint Venture.

7.2 Appointment of Project Manager

- (a) The Shareholders acknowledge and agree that the Project Manager has been or is to be appointed to manage and administer the Project pursuant to the Project Management Agreement. The tasks that the Project Manager shall undertake pursuant to the Project Management Agreement include:
 - (i) liaising with all relevant Authorities and taking all other action required to obtain and maintain all necessary Approvals;
 - (ii) managing all aspects of the Project including its design, planning, subdivision, construction, petition and disposition;
 - (iii) appointing, coordinating, managing and entering into contracts with such Consultants and Contractors as the Project Manager considers necessary in order to undertake and complete the Project (including but not limited to engineers, surveyors and architects);
 - (iv) completing, signing (including signing on behalf and/or in the name of the Company or Joint Venture) and submitting:
 - (A) any necessary application to obtain any Approval required for the Project;
 - (B) any contract with any Contractor or Consultant (including architect, engineer or surveyor however excluding the Builder) to be engaged in

the Project.

- (b) The Shareholders acknowledge and agree that payment to the Project Manager pursuant to the Project Management Agreement shall be JV Costs.
- (c) The Shareholders consents to the Company entering into the Project Management Agreement and agrees that:
 - (i) the Project Management Agreement is being entered into by the Company on behalf of the Joint Venture; and
 - (ii) the terms of the Project Management Agreement shall be valid and binding upon the Joint Venture.
- (d) The Shareholders acknowledge and agree that the proponent for this Joint Venture and the Project and the Project Manager are related entities.

7.3 Appointment of Attorney

Each of the Shareholders in their capacity as shareholder and as officers of the Company appoints the director of the Project Manager, to be their true and lawful attorney in accordance with the terms of the Appointment Document.

The Shareholders shall, on signing the Agreement, deliver to the Project Manager the Appointment Document duly executed.

8 JV ASSETS

8.1 Ownership

The Shareholders acknowledge and agree that:

- (a) all improvements constructed or carried out on the Land, on and from the Commencement Date, are JV Assets;
- (b) all plans, approvals, licenses or the like concerning the Project are JV Assets;
- (c) all income derived from the Land on and from the Commencement Date, including rent, is a JV Asset; and
- (d) at the date of this Agreement the JV Assets shall be beneficially owned by the Shareholders in proportion to their Individual Interests as outlined in Item 1 of the Schedule.

8.2 No encumbrances

A Shareholder must not, without the consent of the other Shareholders, give or agree to give any Encumbrance over its Individual Interest.

9 BUDGET

9.1 Budget Approval

- (a) The Shareholders shall in good faith agree upon the Budget within 28 days of the Commencement Date.
- (b) The Shareholders authorise the Project Manager to incur the JV Costs on behalf of and as the agent of the Joint Venture, without requiring additional approval from the Shareholders, on the condition that the total JV Costs don't exceed the total amount approved pursuant to the Budget (**Approved Amount**).
- (c) If the Project Manager is of the opinion that the JV Costs reasonably required to complete the Project will exceed the Approved Amount, the Project Manager shall request that the Shareholders approve those JV Costs or otherwise an amended budget in writing, and such approval is not to be unreasonably withheld.

9.2 Additional Contributions

- (a) If, excluding the Land Holding Costs (which the Company remains responsible for), the JV Costs reasonably required or otherwise incurred to complete the Project exceed the Cash Contribution and any JV Income, the Lender agreed to provide that additional funding to meet those JV Costs which increase the loan the subject of the Project Funding and the Mortgage.
 - (b) If, excluding the Land Holding Costs (which the Company remains responsible for), the JV Costs reasonably required or otherwise incurred to complete the Project exceed the Cash Contribution, any JV Income and the Lender does not agree to provide any additional funding as contemplated by subclause F.9.2(a) above, for any reason, the Shareholders shall provide that additional funding to meet those JV Costs (**Additional Contribution**).
 - (c) The Shareholders shall fund the Additional Contributions in proportion to their Individual Interests.
 - (d) A Shareholder must pay any Additional Contribution required from them into the Bank Account within 30 days of written demand by the Project Manager.
-

10 ACCOUNTS

10.1 Financial records

The Shareholders will cause the Project Manager to keep and maintain on behalf of the Joint Venture:

- (a) such financial accounts and records as may be reasonably required by a Shareholder; and
- (b) such other accounts as are usually and reasonably kept by ventures of a similar kind.

10.2 Inspection

All accounting records will be available for perusal or inspection by the Shareholders or any of them and their auditors, agents, advisers or solicitors at the premises that they are kept during ordinary business hours, unless agreed otherwise with the Project Manager.

10.3 Copies

Copies of all accounting records and other information relating to or providing the basis of the accounting records, will be made available to each Shareholder on request within a reasonable time at the discretion of the Project Manager.

11 PROPERTY RECORDS, REPORTS AND INSPECTIONS

11.1 Access to the Land

Each Shareholder, at its own risk and expense, may at all reasonable times have access to the Land. However, in exercising that right of access, each Shareholder must cause as little inconvenience as possible to the occupants of the Land (if any) and must not impede the works undertaken by the Builder or the Project.

11.2 Project Records

Each Shareholder is entitled at its own expense at all reasonable times to examine and make copies of any and all Project Records.

12 TRANSFER OF AN INTEREST

12.1 First right of refusal

- (a) No Shareholder shall transfer the whole or any part of its Individual Interest unless that Shareholder:
 - (i) complies with this clause 12; or
-

(ii) all other Shareholders agree in writing.

- (b) A Shareholder must not sell or offer to sell or otherwise dispose of the whole or any part of their Individual Interest without that Shareholder (**Vendor**) first giving an offer notice to the other Shareholders. The offer notice must set out particulars of the share of the Individual Interest and the price and terms upon which the Vendor is prepared to sell that interest (**Offer Notice**).

12.2 If offer is accepted

Within 30 days of service of the Offer Notice, the other Shareholders, if they wish to purchase the share of the Individual Interest referred to in the Offer Notice, must give notice to the Vendor of their acceptance of the Offer Notice (**Acceptance Notice**). Settlement of the sale of the share of the Individual Interest offered for sale will take place on the terms set out in the Offer Notice.

12.3 If offer is not accepted

If the other Shareholders, within 30 days of the date of service of the Offer Notice, fail to serve on the Vendor an Acceptance Notice, then the Vendor may offer that same share of its Individual Interest for sale to any other person on the same terms and conditions as those contained in the Offer Notice.

12.4 Revised Offer Notice

If the Vendor receives an offer from another party on terms less favourable to the Vendor than those contained in the Offer Notice, then the Vendor must not accept that offer unless and until it has first served on the other Shareholders a revised offer notice (**Revised Offer Notice**). The Revised Offer Notice must offer to sell that same share of its Individual Interest to the other Shareholders on such revised terms and conditions.

12.5 If revised offer is accepted

- (a) On service of a Revised Offer Notice, the other Shareholder must, if they wish to purchase the share of the Individual Interest offered for sale by the Vendor pursuant to the terms of the Revised Offer Notice, serve on the Vendor a notice accepting the terms of the Revised Offer Notice.
- (b) If the other Shareholders issue an Acceptance Notice in response to the Revised Offer Notice, then settlement of the sale of the share of the Individual Interest offered for sale in the Revised Offer Notice must take place on the terms of the Revised Offer Notice.

12.6 If revised offer is not accepted

If the other Shareholders fail to serve an Acceptance Notice in response to the Revised Offer Notice within 14 days of service of the Revised Offer Notice, then the Vendor is at liberty to accept the offer from that other party on the same terms and conditions as set out in the Revised Offer Notice.

12.7 Shareholders must purchase interest on a pro rata basis

If more than one Shareholder (where applicable) wishes to purchase the share of the Vendor's Individual Interest referred to in the Offer Notice or the Revised Offer Notice, then they must purchase that share on a pro rata basis in proportion to their own Individual Interests.

12.8 Third parties must agree to be bound by Joint Venture Agreement

For the transfer of the Individual Interest to be effective, it is a condition of the transfer of an Individual Interest to a third party that such transferee agrees in writing to be bound by and subject to the terms of this Agreement.

13 DEFAULT

13.1 Default in payment

If any Shareholder fails to pay the amount which they are liable to pay under this

Agreement (Unpaid Sum):

- (a) the Unpaid Sum constitutes a debt due and payable by the Defaulting Shareholder;
- (b) the Non-Defaulting Shareholders will be entitled to sue the Defaulting Shareholder to enforce payment of the Unpaid Sum; and
- (c) interest will be payable by the Defaulting Shareholder on any Unpaid Sum at the Prescribed Rate calculated on a daily basis from the due date for payment to the date of actual payment.

13.2 Non-Defaulting Shareholders may pay Defaulting Shareholder's debt

- (a) The Non-Defaulting Shareholders have the right, for as long as any Unpaid Sum remains unpaid, to make an advance of an amount equal to all or any part of the Unpaid Sum, including any accrued interest.
- (b) Interest shall accrue on and advance made on behalf of a Defaulting Shareholder at the Prescribed Rate from the date of advance until repaid.

13.3 Payment under clause 13.2 is a debt due

Any advance by a Non-Defaulting Shareholder made under clause 13.2 together with accrued interest constitutes a debt due and payable by the Defaulting Shareholder to the Non-Defaulting Shareholder and, subject to the remedies outlined in clause 13.4:

- (a) the Defaulting Shareholder irrevocably directs the Manager to pay to the Non-Defaulting Shareholder the amount of this debt from, and in priority to, any payments to which the Defaulting Shareholder is entitled under this Agreement; and
- (b) is otherwise recoverable in any court of competent jurisdiction.

13.4 Failure of a Defaulting Shareholder to rectify a Default

If a Shareholder:

- (a) suffers or incurs an Event of Default and the Event of Default continues for a period of fourteen (14) days after notice requiring rectification has been served by the Non-Defaulting Shareholder; or
- (b) then the Non-Defaulting Shareholder may, by notice in writing to the Defaulting Shareholder, immediately acquire the Defaulting Shareholder's Individual Interest in accordance with the following terms and conditions:
 - (i) a Non-Defaulting Shareholder may purchase the Defaulting Shareholder's Individual Interest at fair market value;
 - (ii) the fair market value must be determined by taking the average of two valuations received from independent qualified valuers (at the cost of the Defaulting Shareholder) appointed by the Non-Defaulting Shareholder;
 - (iii) the fair market value is the value determined by the valuer at the time of the valuation:
 - (A) having regard to the Land and JV Assets;
 - (B) after taking into account the sum of the JV Costs incurred up to the date of default; and
 - (C) the JV Costs assessed by the valuer to be required to implement and complete the Project;
 - (iv) the fair market value determined by the valuer is binding on all of the Shareholders including the Defaulting Shareholder;
 - (v) the Non-Defaulting Shareholder must pay, within 30 days of its determination, the fair market value of the Defaulting Shareholder's Individual Interest to the Defaulting Shareholder less:
 - (A) any amount owing by the Defaulting Shareholder to any Non-Defaulting

Shareholder or the Joint Venture; and

- (B) all fees incurred, adjustments for rates and taxes, stamp duty, transfer, registration and lodgement fees with respect to the Individual Interest);
- (vi) following the Defaulting Shareholder receiving payment in accordance with clause 13.4(b)(v):
 - (A) the Defaulting Shareholder will have no further interest, or entitlement of any description, in the Joint Venture;
 - (B) the Non-Defaulting Shareholders will be solely responsible and liable for payment of the remaining JV Costs and will be entitled to all JV Income and Dwellings in accordance with this Agreement; and
- (vii) If the Non-Defaulting Shareholder terminate this agreement as specified in clause 14 the Defaulting Shareholder is not released from any of its obligations which have not been fully performed up to the date of termination. All such obligations continue and are deemed to have survived termination until a written release is provided by the Non-Defaulting Shareholder.

14 CONCILIATION AND MEDIATION

14.1 Shareholders must confer

The Shareholders shall confer regularly throughout the term of this Agreement to discuss any matter affecting their respective obligations under this Agreement, so that each Shareholder's obligations may be performed as efficiently and expeditiously as possible.

14.2 Negotiation

A Party to this agreement may not commence legal proceedings, except proceedings seeking urgent interlocutory relief, in respect of any disputes in relation to this Agreement without first complying with the dispute resolution procedures in this clause F.14.

If any dispute or difference arises between the Shareholders in connection with or relating to this Agreement or its validity or anything referred to in or the subject of this Agreement or the Project, unless this Agreement specifies or contemplates otherwise:

- (a) the Party claiming that a dispute has arisen must give written notice to the other Shareholders specifying the nature of the dispute; and
- (b) the Shareholders undertake in good faith to use all reasonable endeavours to settle the dispute or difference by negotiation.

14.3 Mediation

- (a) If the Shareholders are unable to settle the dispute or difference by negotiation in accordance with clause 14.2, within 10 business days of receipt of the notice under clause 14.2(a), then the Shareholders must endeavour to settle the dispute by mediation using the following process:
 - (i) any Party can give written notice to the other Shareholders stating that the dispute has not been resolved and therefore the dispute should be referred to mediation; and
 - (ii) within 10 business days of receipt of the notice under clause F.14.3 (a)(i) the Shareholders must select a mediator and, if none can be agreed, then the Shareholders agree to refer the dispute to a mediator agreed upon by the Shareholders or where the Shareholders are unable to agree on such person nominated by the then President of the Law society of Western Australia.
- (b) The Shareholders will share the cost of the mediator equally but will each be responsible for their own costs of mediation.
- (c) This clause 14 survives termination of this Agreement.

15 CONFIDENTIALITY

- (a) No Shareholder may release:
 - (i) any of the contents of this Agreement;
 - (ii) any information relating to this Agreement or the negotiation of this Agreement;
 - (iii) any information relating to the Joint Venture;
 - (iv) any information relating to the JV Income or the JV Costs;
 - (v) any information relating to any of the Shareholders, without the prior written consent of each other Shareholder.
 - (b) This clause does not apply to:
 - (i) information which is available to the public generally (except as a result of a previous breach of this clause);
 - (ii) a disclosure which is required by law;
 - (iii) a disclosure which is necessary or advisable for the purpose of obtaining any Approval;
 - (iv) a disclosure which is made on a confidential basis to the officers, employees or agents of that Shareholder or to the professional advisers of that Shareholder for the purpose of obtaining professional advice in relation to this Agreement, the enforcement of this Agreement or for the purpose of consulting those professional advisers;
 - (v) a disclosure made to a party interested in acquiring the Individual Interest where that party agrees to maintain confidentiality of that information; or
 - (vi) a disclosure which is required or desirable to be made in relation to any procedure for discovery of documents in any proceedings before any court, tribunal or regulatory body.
-

16 NOTICES**16.1 Giving notices**

A notice, consent, information, application or request that must or may be given or made to a Shareholder under this Agreement is only given or made if it is in writing and:

- (a) delivered or posted to that Shareholder's at its address set out below; or
- (b) emailed to that Shareholder at its email address set out below.

If a Shareholder gives the other Shareholder three (3) business days' notice of a change of its address or email address, a notice, consent, information, application or request is only given or made by that other party if it is delivered, posted or emailed to the latest post or email address.

16.2 Addresses

The Shareholders' addresses for the purpose of this clause 17 are set out at Item 2 of the Schedule.

16.3 Time notice is given

- (a) A notice, consent, information, application or request is to be treated as given or made at the following time:
 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 3 business days after it is posted; or

- (iii) if it is sent by email, as soon as the sender receives a delivery receipt from the sender's email server of an error free transmission to the correct email address.
- (b) If a notice, consent, information, application or request is delivered, or an error free transmission report or delivery receipt in relation to it is received, after the normal business hours of the Shareholder to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

17 MISCELLANEOUS

17.1 Assignment

Except as expressly permitted by this Agreement, a Shareholder must not assign, transfer, sell part with possession, license, mortgage, Encumber or otherwise deal with any JV Asset, its Individual Interest or any of its rights under this Agreement without the prior written consent of the other Shareholder. That consent may be given or withheld at that Shareholder's absolute discretion.

17.2 Costs

- (a) Except as otherwise agreed by the Shareholders in writing, each Shareholder must pay its own costs in relation to preparing, negotiating and executing this Agreement and any document related to this Agreement.
- (b) The legal costs of Nova Legal associated with the preparation of this Agreement shall be a JV Cost.

17.3 Execution of separate documents

This Agreement is properly executed if each Shareholder executes either this Agreement or an identical document. In the latter case, this Agreement takes effect when the separately executed documents are exchanged between the Shareholders.

17.4 Further acts

The Shareholders will promptly do and perform all acts and things and execute all documents as may from time to time be required, and at all times will act in good faith, for the purposes of or to give effect to this Agreement.

17.5 Governing law and jurisdiction

This Agreement is governed by the law of the State of Western Australia. The Shareholders submit to the non-exclusive jurisdiction of its courts. The Shareholders will not object to the exercise of jurisdiction by those courts on any basis.

17.6 Severability

If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

17.7 Time for action

If the day on or by which something is required to be done or may be done is not a business day, that thing must be done on or by the next business day.

17.8 Variation

No variation of this Agreement will be of any force or effect unless it is in writing and signed by the Shareholders.

17.9 Waiver

The fact that a Shareholder fails to do, or delays in doing, something the Shareholder is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, the other Shareholder. A waiver by a Shareholder is only effective if it is in

writing. A written waiver by a Shareholder is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

17.10 Duty

All duty payable on this Agreement, excluding any duty associated with the Shareholders acquiring the Shareholders' Initial Interest, shall be a JV Cost.

17.11 Independent legal advice

Each Shareholder acknowledges and agrees that:

- (a) this Agreement has been prepared by Nova Legal on the instructions of the Project Manager; and
- (b) prior to executing this Agreement, the Shareholder has been advised to seek independent legal advice as to the meaning and effect of this Agreement and:
 - (i) taken and enters into this Agreement with the benefit of such advice; or
 - (ii) freely decided against taking such advice.

EXECUTED AS A DEED

SIGNED for and on behalf of **[Company TBC]** by authority of its directors in accordance with Section 127(1) of the *Corporations Act 2001*:

[Director/Secretary TBC]
Director and Secretary

[Director TBC]
Director

SIGNED for and on behalf of **Shareholder A** by authority of its directors in accordance with Section 127(1) of the *Corporations Act 2001*:

[TBC] Director

[TBC] Secretary

Full Name

Full Name

SIGNED by the

)

[Insert Shareholder A Name]

)

In the presence of:

)

[Insert Name]

WITNESS:

Signature

Full Name

Address

Occupation

SIGNED for and on behalf of **Shareholder B** by authority of its directors in accordance with Section 127(1) of the *Corporations Act 2001*:

[TBC] Director

[TBC] Secretary

Full Name

Full Name

SIGNED by the

)

[Insert Shareholder B Name]

)

In the presence of:

)

[Insert Name]

WITNESS:

Signature

Full Name

Address

Occupation

SIGNED for and on behalf of **Shareholder C** by authority of its directors in accordance with Section 127(1) of the *Corporations Act 2001*:

[TBC] Director

[TBC] Secretary

Full Name

Full Name

SIGNED by the

)

[Insert Shareholder C Name]

)

In the presence of:

)

[Insert Name]

WITNESS:

Signature

Full Name

Address

Occupation

SIGNED for and on behalf of **Shareholder D** by authority of its directors in accordance with Section 127(1) of the *Corporations Act 2001*:

[TBC] Director

[TBC] Secretary

Full Name

Full Name

SIGNED by the

)

[Insert Shareholder D Name]

)

In the presence of:

)

[Insert Name]

WITNESS:

Signature

Full Name

Address

Occupation

SCHEDULE

Item 1: Shareholders as participants and Interests in the Joint Venture

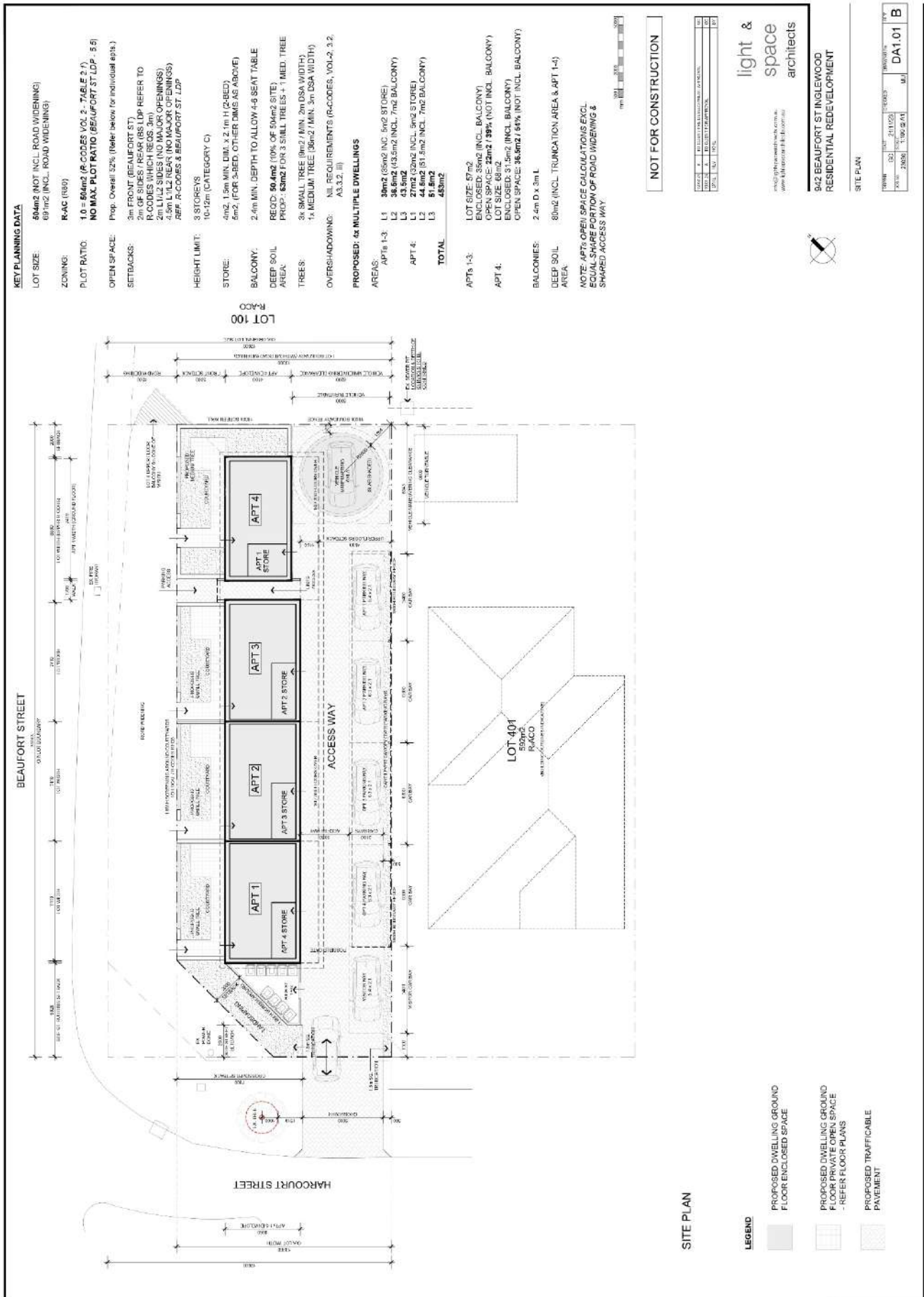
Shareholder/ Participant	Beneficiary	Proportionate Interest (%)
A	[if held beneficially/on trust and in what proportions]	25%
B	[if held beneficially/on trust and in what proportions]	25%
C	[if held beneficially/on trust and in what proportions]	25%
D	[if held beneficially/on trust and in what proportions]	25%
TOTAL		100 %

Item 2: Addresses

Shareholder/ Participant	Postal Address	Email Address
A		
B		
C		
D		







ANNEXURE B – DIRECTORS’ CONSENT
SHAREHOLDER A - CONSENT TO ACT AS DIRECTOR

To: The board of Directors of [TBC] (ACN [TBC]).

I hereby consent to act as Director of [TBC] (ACN [TBC]) and provide the following information:

Full Name:

Former Names:

Date of Birth:

Place of Birth: (Town/City)
..... (State/Country)

Residential Address:
.....
.....

.....
Signature

.....
Date

SHAREHOLDER B - CONSENT TO ACT AS DIRECTOR

To: The board of Directors of [TBC] (ACN [TBC]).

I hereby consent to act as Director of [TBC] (ACN [TBC]) and provide the following information:

Full Name:

Former Names:

Date of Birth:

Place of Birth: (Town/City)
..... (State/Country)

Residential Address:
.....
.....

.....
Signature

.....
Date

SHAREHOLDER C - CONSENT TO ACT AS DIRECTOR

To: The board of Directors of [TBC] (ACN [TBC]).

I hereby consent to act as Director of [TBC] (ACN [TBC]) and provide the following information:

Full Name:

Former Names:

Date of Birth:

Place of Birth: (Town/City)

..... (State/Country)

Residential Address:

.....

.....

.....
Signature

.....
Date

SHAREHOLDER D - CONSENT TO ACT AS DIRECTOR

To: The board of Directors of [TBC] (ACN [TBC]).

I hereby consent to act as Director of [TBC] (ACN [TBC]) and provide the following information:

Full Name:

Former Names:

Date of Birth:

Place of Birth: (Town/City)
..... (State/Country)

Residential Address:
.....
.....

.....
Signature

.....
Date

ANNEXURE C – APPOINTMENT DOCUMENTS

Power of Attorney

In relation to: [insert company name]

DRAFT

THIS POWER OF ATTORNEY is made the _____ day of 2024 by each of the parties listed in Schedule 3 (each a **Principal** and together the **Principals**).

1. Appointment

Each of the Principals appoints Nicholas Pagano (**Attorney**) as the attorney of the Principal, the signatures of which Attorney appears in Schedule 2.

2. Powers

The Attorney is empowered to:

- (a) execute under hand or under seal and deliver (which delivery may be conditional or unconditional) any document:
 - (i) relating to;
 - (ii) making an agreement or settlement in relation to;
 - (iii) pursuing claims arising out of; or
 - (iv) otherwise impacting,

(each of which document is an Approved Document), a document described in Schedule 1, each in a form and of substance as the Attorney thinks fit;

- (b) amend or vary an Approved Document as the Attorney thinks fit (including but not limited to, amending or varying the parties), and execute under hand or seal and deliver (which delivery may be conditional or unconditional) any document which effects or evidences the amendment or variation;
- (c) do any thing which in the opinion of the Attorney is necessary, expedient or incidental to or in any way relates to:
 - (i) any document referred to in clauses 2(a) and 2(b); or
 - (ii) any transaction contemplated by any document referred to in clauses 2(a) and 2(b); and
- (d) do any other thing (whether or not of the same kind as the above) which in the opinion of the Attorney is necessary, expedient or desirable for giving effect to the provisions of this deed poll.

3. Use of name

The Attorney may exercise its powers under this deed poll in the name of the Principal or in the name of the Attorney and as the act of the Principal.

4. Benefit to Attorney

The Attorney may exercise its powers under this deed poll even if the Attorney benefits from the exercise of that power.

5. Ratification

The Principal undertakes to ratify and confirm any act of the Attorney in exercise of its powers under this deed poll.

6. Delegation and substitution

The Attorney may, at any time, appoint or remove any substitute or delegate or sub-attorney.

7. No warranty

The exercise by the Attorney of any power under this deed poll does not connote:

- (a) a warranty, express or implied, on the part of the Attorney as to:
 - (i) the Attorney's authority to exercise the power; or
 - (ii) the validity of this deed poll; or
- (b) an assumption of personal liability by the Attorney exercising the power.

8. Conflict of Interest

The Attorney may execute any document or do anything in accordance with this deed even if the Attorney is in any way:

- (a) interested in the document or thing; or
- (b) connected with a person who is in any way interested in the document or thing.

9. Counterparts

- (a) This deed may be entered into in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.
- (b) A revocation by a Principal constitutes a revocation only by such Principal and does not in any manner affect the validity of this deed with each other party who has executed and delivered a counterpart.

10. Governing law and jurisdiction

- (a) This deed is governed by and must be construed in accordance with the laws of Western Australia.
- (b) The parties submit to the exclusive jurisdiction of that State and the Commonwealth of Australia in respect of all matters arising out of relating this deed, its performance or subject matter.

Schedule 1 –Approved Documents

In respect of any resolutions, documents, deeds, forms, which the Principal can prepare, finalise, sign or execute in respect of the Principal's role as a director of [insert Company Name] (**Company**), as relates to the development of the land and the project contemplated by the Principals at Lot 891 on Deposited Plan 405850 and being the land comprising Certificate of Title Volume 2892 Folio 27 and commonly known as 942 Beaufort Street, Inglewood, Western Australia (**Project**), including but not limited to:

- (a) completing, amending and finalising any agreements, deeds or documents which relates to the Project;
- (b) any other document which is contemplated by, incidental to, related to, ancillary or supplemental to, or necessary or desirable to be entered into in connection with an Approved Document and/or the Project; and
- (c) any other document or type of document which a Principal from time to time states in writing is an Approved Document for the purposes of this deed.

Schedule 2 – Signature

Nicholas Pagano

Schedule 3 – Principals

Name of Principal	Address of Principal
[insert company name] Pty Ltd ACN [insert]	
[insert Shareholder A]	
[insert Shareholder B]	
[insert Shareholder C]	
[insert Shareholder D]	

EXECUTED by the Principals as a deed poll:

Executed by [insert company name] Pty
Ltd ACN [insert] in accordance with section
127 of the *Corporations Act 2001* (Cth):

Director

*Director/*Company Secretary

Name of Director

Name of *Director/*Company Secretary

*please strike out as appropriate

Executed by [insert name of shareholder
A] in the presence of:)
)

Signature of Witness

Signature of [shareholder A]

Print Witness Name

Date

Witness Address

Date

Executed by [insert name of shareholder B])
in the presence of:)

Signature of Witness

Signature of [shareholder B]

Print Witness Name

Date

Witness Address

Date

Executed by [insert name of shareholder C])
in the presence of:)

Signature of Witness

Signature of [shareholder C]

Print Witness Name

Date

Witness Address

Date

Executed by **[insert name of shareholder D]**)
in the presence of:)

Signature of Witness

Signature of **[shareholder D]**

Print Witness Name

Date

Witness Address

Date

EXECUTED by the Attorney:

Executed by **Nicolas Pagano** in the)
presence of:)

Signature of Witness

Nicolas Pagano

Print Witness Name

Date

Witness Address

Date