

Planning Agreement

The Hills Shire Council

Council

Stamford House 88 Pty Ltd

Developer

Gadens Lawyers

Skygarden Building
77 Castlereagh Street
SYDNEY NSW 2000

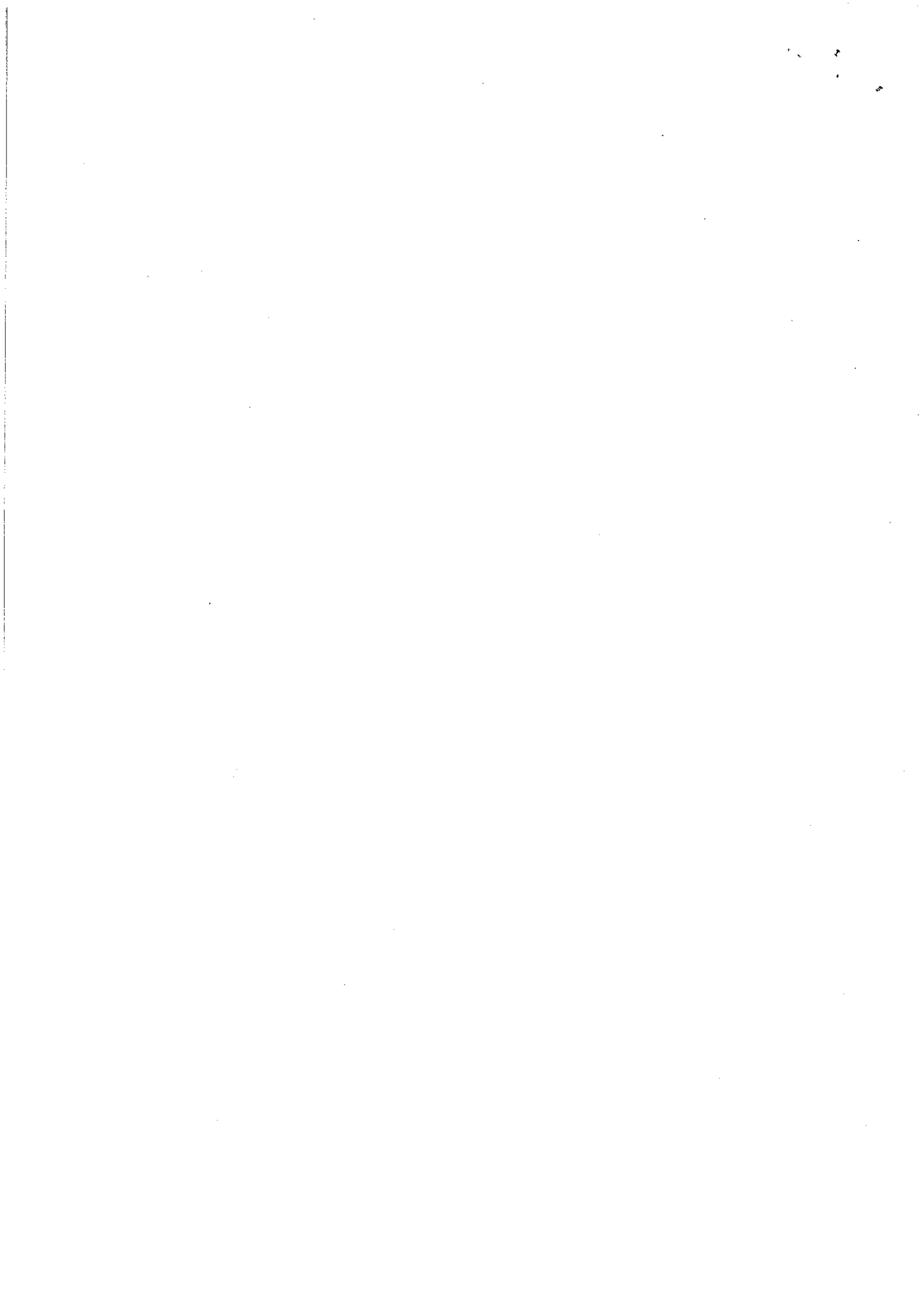
T +61 2 9931 4999

F +61 2 9931 4888

Ref CAR/30602727

6455941.1 CAR CAR

[5688100: 7096758_3]



Contents

1.	Defined meanings	1
2.	Planning agreement under the Act.....	1
3.	Application of this Agreement.....	1
4.	Operation of this Agreement	2
5.	Monetary Contribution	2
6.	Application of s94 and s94A of the Act	2
7.	Public purpose	2
8.	Modifications.....	2
9.	Joint and individual liability and benefits	3
10.	No fetter	3
11.	Representations and warranties	3
12.	Severability	3
13.	Private Certifiers.....	3
14.	Termination.....	4
15.	Default	4
16.	Dispute resolution.....	5
17.	Registration of Agreement on Title	6
18.	Security.....	7
19.	General provisions.....	8
20.	Definitions and interpretation.....	11
	Schedule 1 – Monetary Contributions.....	14
	Schedule 2 – The Land	15



Planning Agreement

Dated

Parties

1. The Hills Shire Council
(“Council”)
2. Stamford House 88 Pty Ltd
(“Developer”)

Background

- A. The Developer owns the Land.
- B. On 30 April 2009 the Developer lodged a Development Application (HB 1379/2009) with Council seeking development consent for Development on the Land.
- C. Council is the consent authority for the Development Application.
- D. On 13 November 2009 the Developer offered to enter into a voluntary planning agreement in connection with the Development Application.
- E. The Development Application is therefore accompanied by an offer by the Developer to enter into a planning agreement on the terms set out below to make the Monetary Contributions if Development Consent in respect of the Development Application is granted by the Council.

Operative provisions

1. Defined meanings

Words used in this document and the rules of interpretation that apply are set out and explained in the definitions and interpretation clause at the back of this document.

2. Planning agreement under the Act

The Parties agree that this document is a planning agreement within the meaning of section 93F of the Act.

3. Application of this Agreement

This document is made in respect of the Development Application and applies to the Land.

4. Operation of this Agreement

- 4.1 Until the planning agreement operates, this document constitutes the Developers' offer to enter into the planning agreement if consent under s80 of the Act is granted to the Development Application.
- 4.2 The planning agreement operates only if:
- (a) the carrying out of the Development is subject to a condition imposed under s93I(3) of the Act requiring this planning agreement to be entered into, and
 - (b) the planning agreement is entered into as required by the condition in accordance with clause 25C(1) of the Regulation.

5. Monetary Contribution

5.1 Payment

The Developer must pay the Monetary Contributions upon the making of this Agreement.. Payment of the Monetary Contributions may be made by cheque or electronic bank transfer to Council's nominated bank account.

5.2 Annual Increases

On each anniversary of the date of this document the Monetary Contributions payable immediately prior to that anniversary will be increased by the same percentage increase, if any, as the annual percentage increase in the Price Index most recently published prior to the relevant anniversary. The increased Monetary Contributions will be the Monetary Contributions in the subsequent 12 months.

6. Application of s94 and s94A of the Act

For the purpose of s93F(5) this document excludes the operation of sections 94 and 94A of the Act in considering the Development Applications for the Development.

7. Public purpose

Council must use the Monetary Contributions for the public purpose of providing community infrastructure and facilities in the suburb of Carlingford as determined by the General Manager of Council from time to time.

8. Modifications

- 8.1 In the event that the Development is changed, modified or amended prior to completion of the development, and a modification application is made for the development of the Land, then any Monetary Contributions made pursuant to this document shall, to the extent that it is lawful:
- (a) be taken into account as part of any development contribution for the purpose of any planning agreement relating to a later application in respect of the Land; and

- (b) be taken into account in determining any development contribution under s94 and s94A of the Act; and
- (c) be taken into account in determining whether or not any planning agreement excludes the operation of s94 and/or s94A of the Act; and
- (d) be taken into account for the purposes of s94(6) of the Act; and
- (e) be taken into account for the purposes of s79C of the Act.

9. Joint and individual liability and benefits

Except as otherwise set out in this document, any agreement, covenant, representation or warranty under this document by 2 or more persons binds them jointly and each of them individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

10. No fetter

Nothing in this document shall be construed as requiring the Council to do anything that would cause it to be in breach of their respective obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

11. Representations and warranties

The Parties represent and warrant that they have power to enter into this document and comply with their obligations under the document and that entry into this document will not result in the breach of any law.

12. Severability

If a clause or part of a clause of this document 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 document, but the rest of this document is not affected.

13. Private Certifiers

Where Council is not the certifying authority for any aspect of the Development the Developer must on the appointment of a private certifier provide a copy of this Planning Agreement to the private certifier.

14. Termination

14.1 Development Consents

If Development Consent is granted by the Council with respect to the Development Application, this document terminates:

- (a) on the lapse of the Development Consent; or
- (b) on the formal surrender of the Development Consent; or
- (c) on the final determination by a Court of competent jurisdiction issuing a declaration that the Development Consent is invalid.

14.2 Consequences

- (a) On the date of termination or rescission of this document, subject to the following sub-paragraph each party releases each other from any obligation to perform any term, or any liability arising out of, this document after the date termination.
- (b) Termination or rescission of this document does not release either party from any obligation or liability arising under this document before termination or rescission.

15. Default

15.1 Notice of Default

The Developer will be in default under this document if the Developer fails to comply with an obligation under this document within 14 days after receiving a written request from the Council.

15.2 Costs on Default

The Developer must pay Council's expenses including internal management costs and legal fees and disbursements on an indemnity basis in connection with any breach of a provision of this document or default by the Developer.

15.3 Interest on Overdue Payments

The Developer must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

15.4 Power of Attorney

The Developer irrevocably appoints Council to be the attorney of the Developer to do on behalf of the Developer only if the Developer is in default under this document, anything the Developer may lawfully authorise an attorney to do including anything which confers a benefit on the Council.

15.5 Council's Certificate

A certificate signed by the General Manager of Council is, in the absence of manifest error notified to Council within 7 days of receipt, conclusive evidence of the matters stated in the certificate including any costs and expenses and interest payable.

16. Dispute resolution

16.1 Determination of disputes

If there is any dispute, difference of opinion or failure to agree relating to or arising from this document (**Dispute**) that dispute must be referred for determination under this clause.

16.2 No legal proceedings

The parties must not bring or maintain any action on any Dispute (except for urgent injunctive relief to keep a particular position) until it has been referred and determined as provided in this clause.

16.3 Notice of disputes

A party referring a Dispute for determination must do so by written notice to the other parties (**Dispute Notice**) which must specify the nature of the Dispute and a nominated officer of the referring party with sufficient authority to determine the Dispute.

16.4 Negotiated resolution and selection of expert

- (a) On service of the Dispute Notice the receiving parties must refer the Dispute to an officer with sufficient authority to determine the Dispute. The nominated officers of each party must meet at least once and use reasonable endeavours to resolve the Dispute by negotiation within seven days of service of the Dispute Notice. Any resolution must be recorded in writing and signed by each nominated officer. By agreement, the nominated officers may employ the services of a mediator to assist them in resolving the Dispute.
- (b) If the nominated officers are unable to resolve the Dispute within seven days of service of the Dispute Notice they must endeavour within the following seven-day period to appoint an expert by agreement. That appointment must be recorded in writing and signed by each nominated officer.
- (c) If the nominated officers do not record the appointment of an expert within that second seven day period, the expert must be appointed, at the request of any party, by the President for the time being (or if none, the senior elected member) of the Law Society of New South Wales.

16.5 Assistance to the Expert

- (a) Once the Expert has been appointed (the **Expert**), the parties must:
 - (i) each use their best endeavours to make available to the Expert all information the Expert requires to settle or determine the Dispute; and

- (ii) ensure that their employees, agents or consultants are available to appear at any hearing or enquiry called by the Expert.
- (b) The parties may give written submissions to the Expert but must provide copies to the other parties at the same time.

16.6 Expert's decision

- (a) The decision of the Expert must:
 - (i) be in writing and give reasons; and
 - (ii) be made and delivered to the parties within one month from the date of submission of the dispute to the Expert or the date of completion of the last hearing or enquiry called by the Expert, if later.
- (b) The Expert may conduct the determination of the Dispute in any way it considers appropriate but the Expert may, at its discretion, have regard to the Australian Commercial Disputes Centre's guidelines for expert determination of disputes or such other guidelines as it considers appropriate.
- (c) The Expert's decision is final and binding on the parties.
- (d) The Expert must act as an expert and not as an arbitrator.

16.7 Expert's costs

- (a) The Expert must also determine how the expenses relating to the reference of the Dispute (including the Expert's remuneration) should be apportioned between the parties and in default of a decision by the Expert those expenses must be borne by the parties equally.
- (b) In determining the apportionment of costs the Expert may have regard to what the Expert, in its reasonable opinion, considers to be a lack of good faith or a failure to use reasonable endeavours by any party in assisting the Expert or resolving the dispute between the parties' nominated officers as required by this clause.

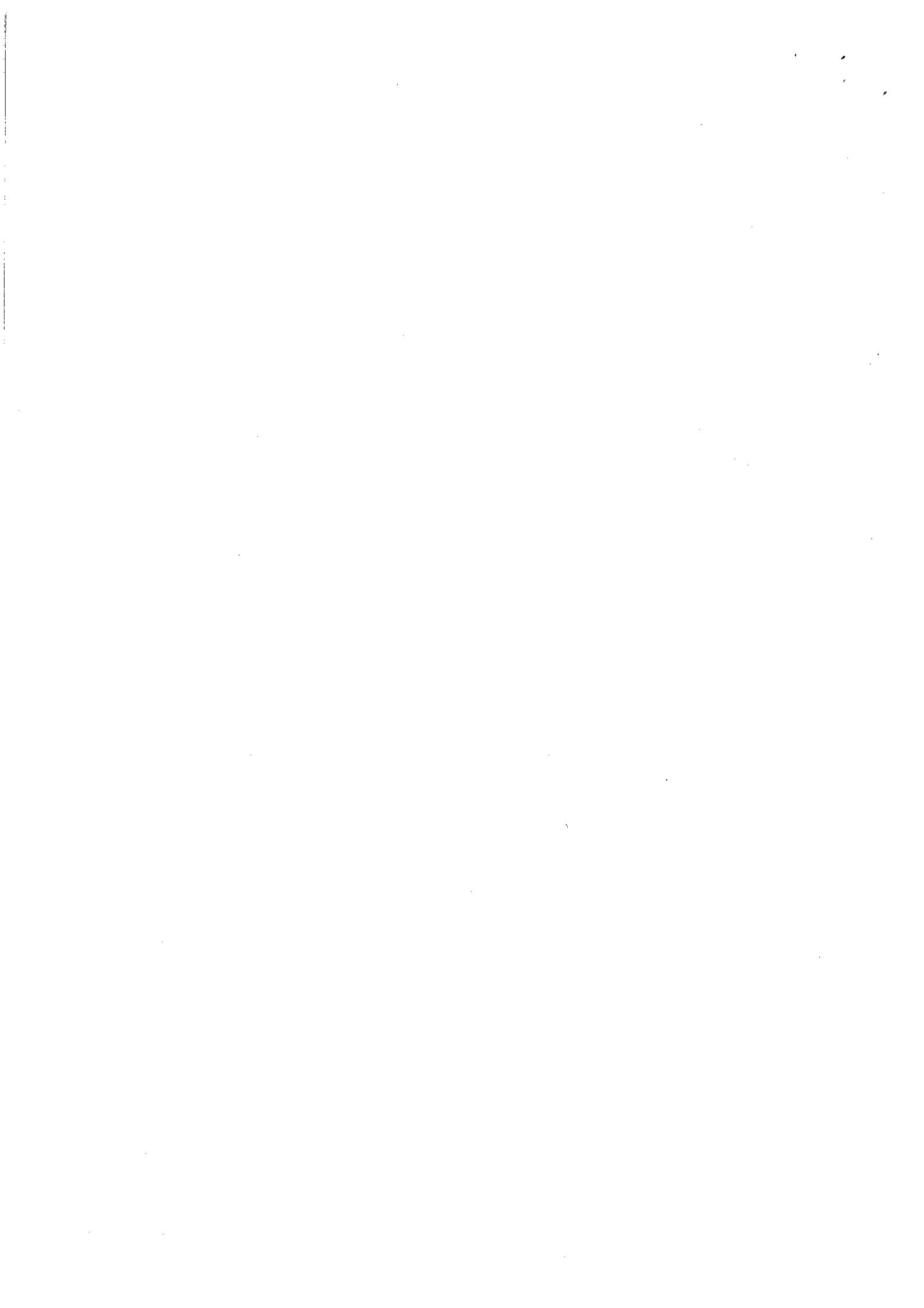
16.8 Continual performance

Each party must continue to perform its obligations under this document while any dispute is being determined under this clause.

17. Registration of Agreement on Title

17.1 Acknowledgement

The Developer acknowledges that Council intends to register this document under section 93H of the Act on the Lands and on registration by the Registrar-General the document will be binding on and enforceable against the owners of the Lands from time to time as if each owner for the time being had entered into this document.



17.2 Consents to Registration

This document must be registered on the title of the Land as soon as practicable after it is made. Each Party must promptly execute any document and perform any action necessary to affect the registration of this document on the title of the Land.

17.3 Release from Registration

Council will at the request of the Developer execute the relevant forms to remove the registration of this document from the Certificates of Title for the Land on completion of the Developer's obligations under this document including payment of the Monetary Contributions in accordance with this document. The obligations of the Council are satisfied when Council provides the Developer with a signed request in registrable form for the release of registration of this document.

17.4 Sale of land

If the Developer sells or otherwise disposes of the Land without the prior written consent of Council, notwithstanding any other provision of this Agreement, the full payment of any outstanding monies owing to the Council at the time of the sale or disposal become due and payable on the date of the sale or disposal.

17.5 Registration Expenses

The Developer must pay Council's expenses including registration fees, legal costs and disbursements on an indemnity basis, for the registration of this document and the subsequent removal of registration.

17.6 Caveatable Interest

The Developer acknowledges and agrees that the rights under this document give Council a caveatable interest in the Land.

17.7 Payment of Monetary Contributions

Notwithstanding clauses 17.1 and 17.2, if the Monetary Contribution is paid on the date of this Agreement then this document will not be registered on the title of the Land.

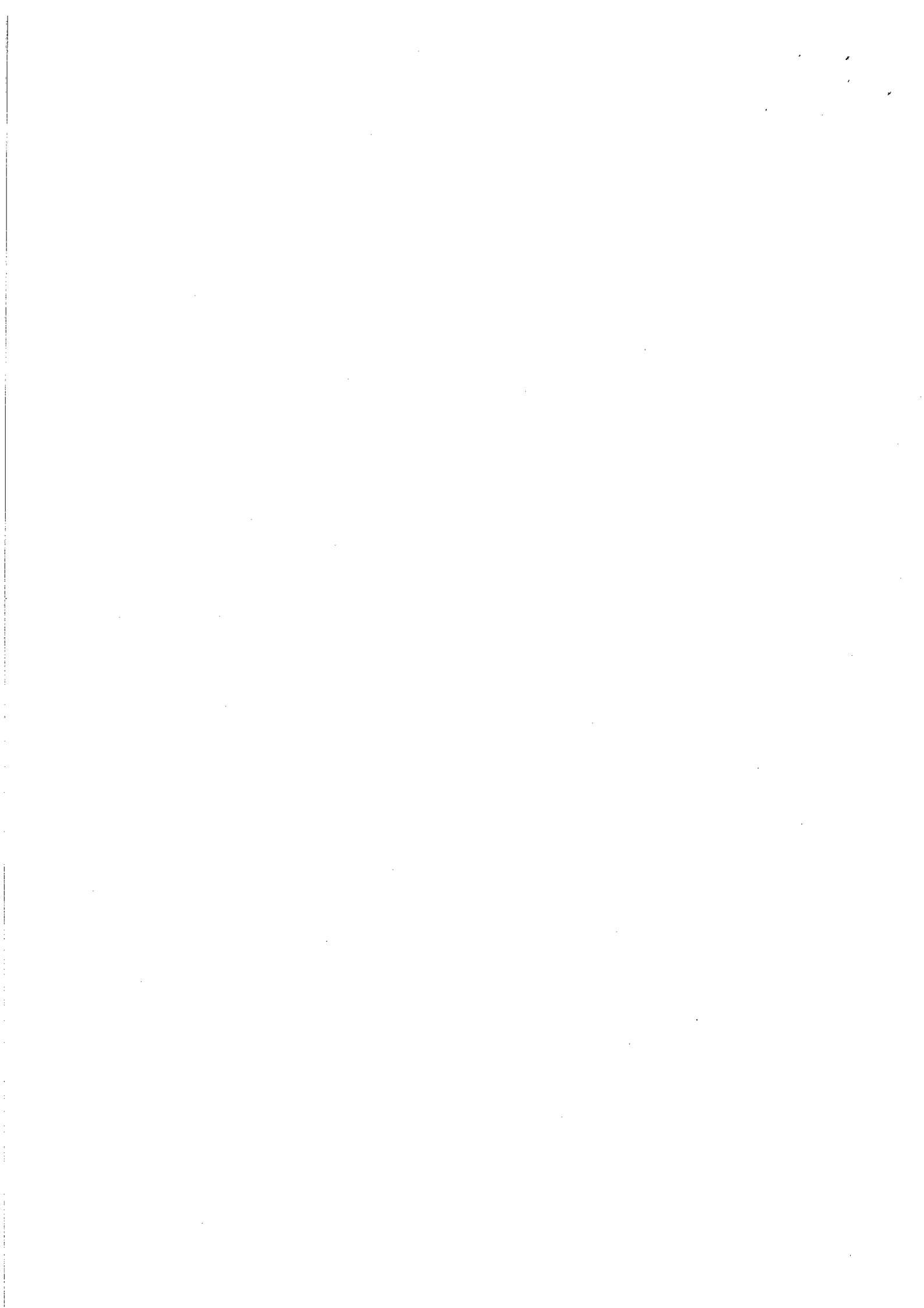
18. Security

18.1 Provision of Security

The Developer will, on the signing of this document, provide to Council either the payment of a bond or a Bank Guarantee for \$877,762.09 (**Security Amount**) as security for the due, prompt and proper observance and performance by the Developer of its obligations under this Planning Agreement.

18.2 Form of Security

In the event of any failure by the Developer to perform its obligations under this Planning Agreement, the Council may, without further notice to the Developer, call up the Bank Guarantee or apply the bond for any amount payable to Council. If at any time any money is paid under the Bank Guarantee or the bond or the Security Amount increases, the Developer



must at the request of the Council provide the Council with a supplementary or replacement Bank Guarantee or make further payment for the bond so that the amount of the Bank Guarantee or bond held by the Council is the amount properly required to be provided under this Planning Agreement.

18.3 Price Index Increases

On each anniversary of the date of this document the Security Amount applicable immediately prior to that anniversary will be increased by the same percentage as the annual percentage increase, if any, in the Price Index most recently published prior to the relevant anniversary. The increased Security Amount will be the Security Amount in the subsequent 12 months.

18.4 Release of Security

Council agrees to release the Bank Guarantee or repay the bond held by Council under this document to the Developers on the completion of the Developers' obligations under this Planning Agreement.

18.5 Payment of Monetary Contribution

Notwithstanding clause 18.1, if the Monetary Contribution is paid on the date of this Agreement then the Developer does not have to provide a bond or Bank Guarantee for the Security Amount.

19. General provisions

19.1 Costs of document

The Developer must pay Council's fees and expenses, including legal costs and disbursements on an indemnity basis in relation to:

- (a) the negotiation, preparation, execution and amendment of this document; and exhibition fees or fees payable to the NSW Department of Planning in any way associated with this document,

under this document, or any agreement or document executed or effected under this document, unless this document provides otherwise.

19.2 GST

If any payment made by one party to any other party under or relating to this document constitutes consideration for a taxable supply for the purposes of GST or any similar tax, the amount to be paid for the supply will be increased so that the net amount retained by the supplier after payment of that GST is the same as if the supplier was not liable to pay GST in respect of that supply. This provision is subject to any other agreement regarding the payment of GST on specific supplies, and includes payments for supplies relating to the breach or termination of, and indemnities arising from, this document.

19.3 Assignment

A party must not transfer any right or liability under this document without the prior consent of each other party, except where this document provides otherwise.

19.4 Notices

- (a) Any notice to or by a party under this document must be in writing and signed by the sender or, if a corporate party, an authorised officer of the sender.
- (b) Any notice may be served by delivery in person or by post or transmission by facsimile to the address or number of the recipient specified below or most recently notified by the recipient to the sender:

Stamford House 88 Pty Ltd

Att: Vincent M Aboud

Rotary House

43 Hunter Street

Parramatta NSW 2150

The Hills Shire Council

Att: Matthew Pearce

129 Showground Road

Castle Hill NSW 2154

- (c) Any notice is effective for the purposes of this document upon delivery to the recipient or production to the sender of a facsimile transmittal confirmation report before 4.00pm local time on a day in the place in or to which the written notice is delivered or sent or otherwise at 9.00am on the next day following delivery or receipt.

19.5 Governing law and jurisdiction

- (a) This document is governed by and construed under the law in the State of New South Wales.
- (b) Any legal action in relation to this document against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.
- (c) Each party by execution of this document irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

19.6 Amendments

Any amendment to this document has no force or effect, unless effected by a document executed by the parties.

19.7 Third parties

This document confers rights only upon a person expressed to be a party, and not upon any other person.

19.8 Precontractual negotiation

This document:

- (a) expresses and incorporates the entire agreement between the parties in relation to its subject matter, and all the terms of that agreement; and
- (b) supersedes and excludes any prior or collateral negotiation, understanding, communication or agreement by or between the parties in relation to that subject matter or any term of that agreement.

19.9 Further assurance

Each party must execute any document and perform any action necessary to give full effect to this document, whether before or after performance of this document.

19.10 Continuing performance

- (a) The provisions of this document do not merge with any action performed or document executed by any party for the purposes of performance of this document.
- (b) Any representation in this document survives the execution of any document for the purposes of, and continues after, performance of this document.
- (c) Any indemnity agreed by any party under this document:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this document or any other agreement; and
 - (ii) survives and continues after performance of this document.

19.11 Waivers

Any failure by any party to exercise any right under this document does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

19.12 Remedies

The rights of a party under this document are cumulative and not exclusive of any rights provided by law.

19.13 Severability

Any provision of this document which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this document or the validity of that provision in any other jurisdiction.

19.14 Counterparts

This document may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.



19.15 Party acting as trustee

If a party enters into this document as trustee of a trust, that party and its successors as trustee of the trust will be liable under this document in its own right and as trustee of the trust. Nothing releases the party from any liability in its personal capacity. The party warrants that at the date of this document:

- (a) all the powers and discretions conferred by the deed establishing the trust are capable of being validly exercised by the party as trustee and have not been varied or revoked and the trust is a valid and subsisting trust;
- (b) the party is the sole trustee of the trust and has full and unfettered power under the terms of the deed establishing the trust to enter into and be bound by this document on behalf of the trust and that this document is being executed and entered into as part of the due and proper administration of the trust and for the benefit of the beneficiaries of the trust;
- (c) no restriction on the party's right of indemnity out of or lien over the trust's assets exists or will be created or permitted to exist and that right will have priority over the right of the beneficiaries to the trust's assets.

20. Definitions and interpretation

20.1 Definitions

In this document unless the context otherwise requires:

Act means the *Environmental Planning and Assessment Act 1979*.

Business Day means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

Construction Certificate has the same meaning as in the Act.

Developer means the party responsible for carrying out or causing to carry out development on the Land pursuant to a Development Consent or otherwise.

Development means the development of the Land for 114 residential units as described in the Development Application.

Development Application means development application for the Development, being HB 1379/2009 lodged with Council on 30 April 2009.

Development Consent means the approval of the Development Application.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

Land has the same meaning as defined in the *Real Property Act 1900* and comprises the whole of the land or as relevant any part of it described in Schedule 2.

Monetary Contributions means the amount or amounts specified in Schedule 1.

Party means a party to this document, including their successors and assigns;

Price Index means:

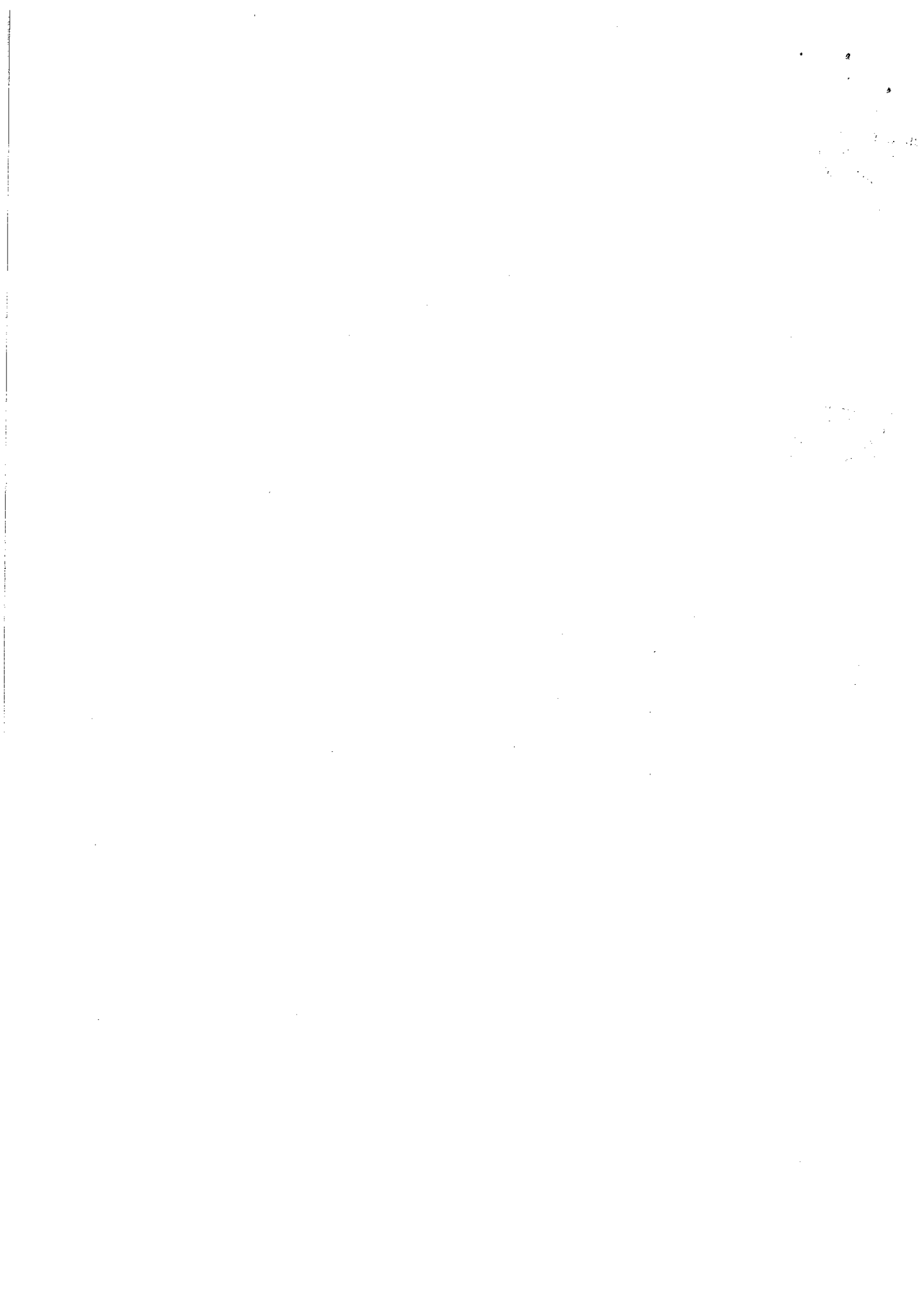
- (a) the Tender Price Index (TPI) for Sydney published by Rider Levett Bucknall (formerly Rider Hunt); or
- (b) if this price index is discontinued or abolished or if the items or weighting of the items whose prices are considered varied so as to change the basis of the price index then such price index as Council may select that, as nearly as practicable, serves the same purpose.

Prescribed Rate means the rate prescribed from time to time under the *Uniform Civil Procedure Rules 2005* as the rate of interest on judgment debts plus 2%, calculated daily and compounded on the last day of each month.

20.2 Interpretation

In this document unless the context otherwise requires:

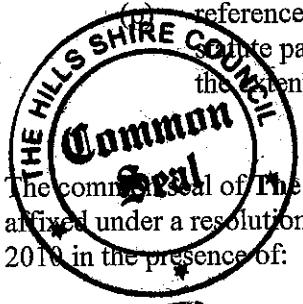
- (a) clause and subclause headings are for reference purposes only;
- (b) the singular includes the plural and vice versa;
- (c) words denoting any gender include all genders;
- (d) reference to a person includes any other entity recognised by law and vice versa;
- (e) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (f) any reference to a party to this document includes its successors and permitted assigns;
- (g) any reference to a provision of an Act or Regulation is a reference to that provision as at the date of this document;
- (h) any reference to any agreement or document includes that agreement or document as amended at any time;
- (i) the use of the word **includes** or **including** is not to be taken as limiting the meaning of the words preceding it;
- (j) the expression **at any time** includes reference to past, present and future time and the performance of any action from time to time;
- (k) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally;
- (l) an agreement, representation or warranty on the part of two or more persons is for the benefit of them jointly and severally;
- (m) reference to an exhibit, annexure, attachment or schedule is a reference to the corresponding exhibit, annexure, attachment or schedule in this document;



- (n) reference to a provision described, prefaced or qualified by the name, heading or caption of a clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment in this document means a cross reference to that clause, subclause, paragraph, schedule, item, annexure, exhibit or attachment;
- (o) when a thing is required to be done or money required to be paid under this document on a day which is not a Business Day, the thing must be done and the money paid on the immediately following Business Day; and

(p) reference to a statute includes all regulations and amendments to that statute and any other statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

The common seal of The Hills Shire Council was affixed under a resolution passed by council on 9 November, 2010 in the presence of:



[Signature]

 Witness General Manager
29/11/10

[Signature]

 Mayor -

Signed for and on behalf of Stamford House 88 Pty Ltd:

[Signature]

 Director
 TONY MERHI

 Print name

X *J. KHADLAR*

 Secretary/Director
 X *Joe Khadlar*

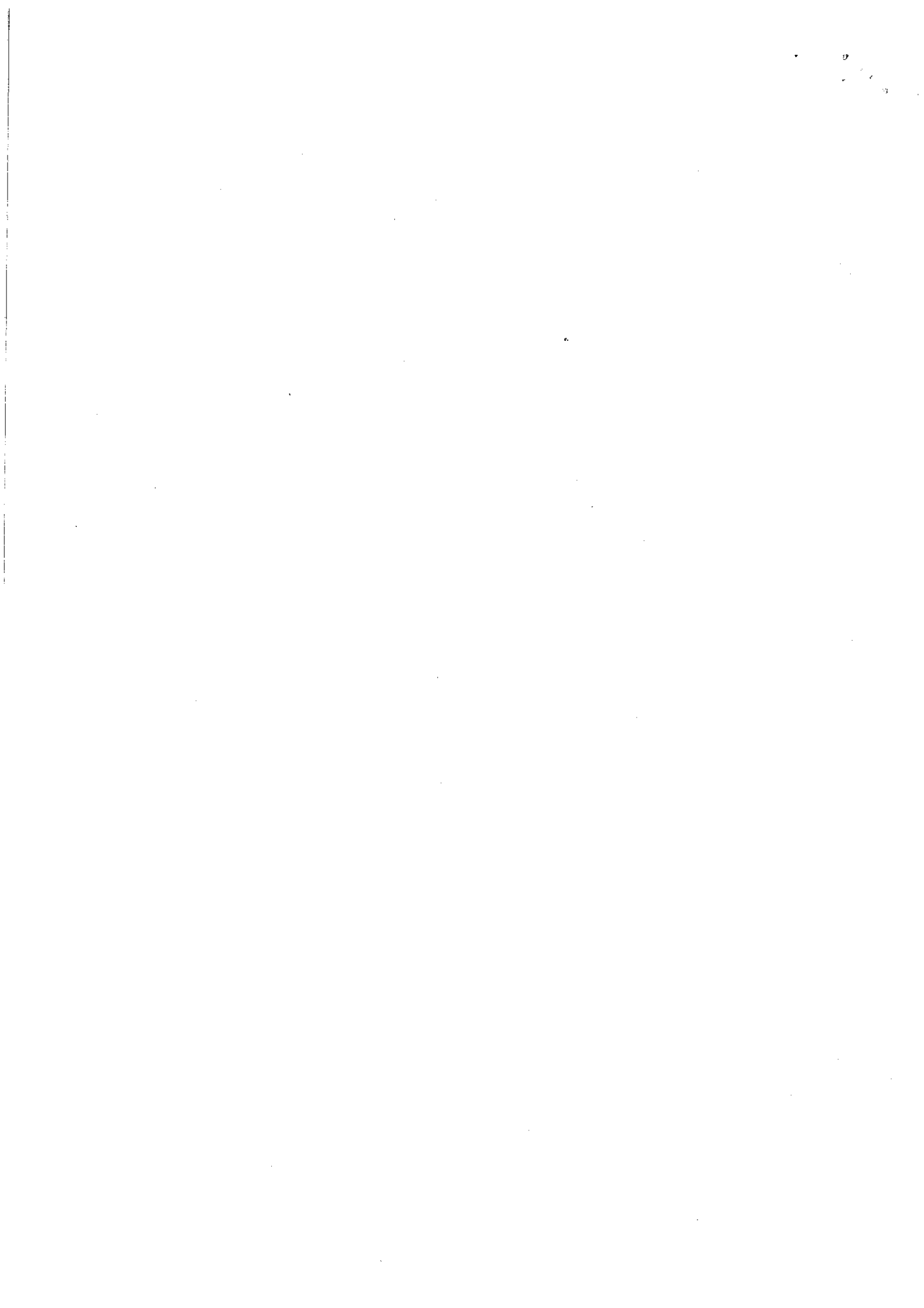
 Print name

DATE 29 NOV 2010



Schedule 1 – Monetary Contributions

The sum of \$877,762.09 upon the making of this Agreement.



Schedule 2 – The Land

Legal description	Address
Lot 22 DP 223523	1 Correy Place
Lot 16 DP 223523	2 Correy Place
Lot 21 DP 223523	3 Correy Place
Lot 17 DP 223523	4 Correy Place
Lot 20 DP 223523	5 Correy Place
Lot 18 DP 223523	6 Correy Place
Lot 19 DP 223523	7 Correy Place
Lot 6 DP 135965	774 Pennant Hills Road
Lot 7 DP 135965	776 Pennant Hills Road
Lot 9 DP 653779	778 Pennant Hills Road
Lot 1 DP 1099431	13 Young Road

