

**SHIRE OF  
SERPENTINE JARRAHDALE**

AND

**[insert subdivider's details]**

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**Developer Contribution Deed**

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McLeods  
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REF:TF:SERP 21058

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THIS DEED is made

day of

2009

**B E T W E E N :**

[insert subdivider's details] )  
("the Subdivider") )

**A N D**

SHIRE OF SERPENTINE-JARRAHDALÉ )  
of 6 Paterson Street, Mundijong, Western )  
Australia ("the Shire")

**R E C I T A L S :**

- A. The Subdivider is registered as the proprietor of an estate in fee simple in the land described in **Item 1** of the Schedule ("the Land").
- B. The Land is situated within the district of the Shire and falls within an area of land subject to the provisions of the Byford Structure Plan ("the **Byford Structure Plan**").
- C. The Byford Structure Plan sets out, amongst other things, broad parameters and some degree of detail for future subdivision and development of land within the area of the Byford Structure Plan and in particular any requirements for the location and provision of common infrastructure such as drainage, sewerage and road upgrading ("the **Infrastructure**").
- D. The Byford Structure Plan outlines an implementation strategy, the principal component of which is the introduction of cost sharing arrangements for the Infrastructure in accordance with clause 5.19 of the Shire's Town Planning Scheme 2 ("**TPS 2**") ("the **DCP**").
- E. The DCP will prescribe the contribution to the cost of Infrastructure payable by each Subdivider within the Byford Structure Plan area ("the **Cost Contribution**").

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- F. The Shire has commenced the preparation of the DCP, which is yet to be finalised and included into TPS 2 as a scheme amendment (“**the Scheme Amendment**”).
- G. Upon gazettal of the Scheme Amendment to insert the final DCP into TPS 2 (“**the Gazettal**”), the actual Cost Contribution payable by the Subdivider for the Land will be determined (“**the Actual Cost Contribution**”).
- H. Clause 5.19.3 of TPS 2 provides that the Shire must not approve or support subdivision within the Byford Structure Plan area until the DCP is in effect, unless the Subdivider has made other arrangements satisfactory to the Shire in respect of the Subdivider’s Cost Contribution towards the provision of Infrastructure.
- I. The Subdivider applied to the Western Australian Planning Commission (“**WAPC**”) under Application                      for approval to subdivide the Land in accordance with the sketch annexed hereto as “Annexure 1” to create                      lots (“**the Subdivision**”).
- J. WAPC by letter dated      approved the Subdivision subject to conditions (“**the Approval**”) including the following:
- “X. The subdivider entering into a legally binding agreement with the Shire of Serpentine-Jarrahdale to the satisfaction of the Western Australian Planning Commission to contribute towards the cost of providing the common service and community infrastructure of the Byford Structure Plan as established through amendment to the Shire of Serpentine-Jarrahdale Town Planning Scheme No. 2 (when gazetted).”
- (**“Condition X”**)
- K. The parties enter into this Deed to set out the terms and conditions of the Shire’s agreement to recommend clearance of Condition 10 of the Approval.

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## OPERATIVE PART:

### 1. SUBDIVIDER'S COVENANTS

In consideration of the Shire agreeing to recommend clearance of Condition X of the Approval prior to the Gazettal, the Subdivider must

- (a) pay to the Shire a provisional Cost Contribution determined in accordance with **clause 2** of this Deed (“the **Provisional Cost Contribution**”); and
- (b) provide to the Shire sufficient security to the reasonable satisfaction of the Shire in accordance with the requirements of **clause 3** to protect the Shire against any shortfall between the Provisional Cost Contribution paid by the Subdivider and the Actual Cost Contribution (“the **Security**”).

### 2. CALCULATION OF PROVISIONAL COST CONTRIBUTION

The Shire and the Subdivider COVENANT and AGREE that the Provisional Cost Contribution will be:

- (a) the amount specified as the Subdivider's Cost Contribution in the draft DCP for the Subdivision, in the event the DCP has not yet been Gazetted but has been completed by the Shire's consultant; or
- (b) the amount estimated by the Shire's consultant (acting reasonably) as the Subdivider's Cost Contribution for the Subdivision, in the event the draft DCP has not been completed by the Shire's consultant.

### 3. PROVISION OF SUFFICIENT SECURITY

The Shire and the Subdivider COVENANT and AGREE:

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- (a) the Shire may require security up to the value of [Shire to instruct] of the Provisional Cost Contribution determined pursuant to **clause 2** of this Deed in the form of a bond or bank guarantee; and
  - (b) in the event the Subdivider wishes to provide the required security in the form of a bank guarantee, the following will apply:
    - (i) the bank guarantee must be an unconditional and irrevocable undertaking from a bank or financial institution authorised to carry on banking in Australia under the *Banking Act 1959*;
    - (ii) the bank guarantee must authorise the Shire to draw on the bank guarantee if the Subdivider fails to pay any shortfall amount, or any other amount payable by the Subdivider to the Shire pursuant to the terms of this Deed, within the time specified in this Deed; and
    - (ii) the bank guarantee must be in favour of the Shire and in a form that is satisfactory to the Shire, acting reasonably.

#### **4. ADJUSTMENTS UPON GAZETTAL**

Upon Gazettal of the DCP:

- (a) if the Actual Cost Contribution for the Subdivision is less than the Provisional Cost Contribution paid by the Subdivider pursuant to the provisions of this Deed, the Shire will within 60 days of the Gazettal:
  - (i) refund to the Subdivider the surplus amount;
  - (ii) relinquish, withdraw or release any Security provided by the Subdivider for the purposes of this Deed; and
  - (iii) **Clause 5** of this Deed shall apply to the surplus amount.

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(b) if the Actual Cost Contribution for the Subdivision is more than the Provisional Cost Contribution paid by the Subdivider pursuant to the provisions of this Deed:

- (i) the Subdivider must pay to the Shire the shortfall amount within 60 days of the Shire giving the Subdivider written notice requiring payment of the shortfall amount;
- (ii) **Clause 5** of this Deed shall apply to the shortfall amount; and
- (iii) upon payment of the shortfall amount, the Shire will within 10 Business Days relinquish, withdraw or release any Security provided by the Subdivider for the purposes of this Deed.

## **5. OUTSTANDING AMOUNTS**

The Shire and the Subdivider COVENANT AND AGREE that if any amount payable by:

- (a) the Subdivider to the Shire; or
- (b) the Shire to the Subdivider,

pursuant to the terms of the Deed is unpaid for 7 days after becoming due, such amount shall be a liquidated debt recoverable by the party owed the amount in a court of competent jurisdiction

## **6. SUBDIVIDER'S ACKNOWLEDGEMENTS**

The Subdivider ACKNOWLEDGES that the Shire will not provide clearance for the Subdivision, until the Subdivider has paid a Provisional Cost Contribution and provided the required Security in accordance with **clause 2**.

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## **7. CHARGE & CAVEAT UNTIL PAYMENT OF PROVISIONAL COST CONTRIBUTION**

Until payment of the the Provisional Cost Contribution and provision of the required Security in accordance with **clause 1**, the Subdivider HEREBY CHARGES its interests in the Land in favour of the City with the performance of its obligations undertaken hereunder and with the payment of all or any monies payable or which may become payable by the Subdivider to the City and for the purpose of securing the same authorises the City to lodge an absolute Caveat at Landgate against the Certificate of Title to the Land or any part thereof in order to protect the rights and interests of the City under this Deed.

## **8. DISPOSAL RESTRICTIONS UNTIL PAYMENT OF PROVISIONAL COST CONTRIBUTION**

### **8.1 No Disposal without City's consent**

Until payment of the Provisional Cost Contribution and provision of the required Security in accordance with **clause 1**, the Subdivider shall not sell, transfer, mortgage, charge, assign or otherwise dispose of or encumber the Land without the prior written consent of the City, which consent the City will not withhold if the Subdivider is not in default of any of its obligations under this Deed and the person to whom any such right or interest is to be granted, enters into a Deed (or in the case of a mortgagee, a specific undertaking) with the City, whereby such person covenants to observe and perform the covenants on the part of the Subdivider herein contained to ensure that any successor observes such obligations, such Deed or undertaking to be prepared by the City's solicitors at the expense of the Subdivider.

### **8.2 Temporary Withdrawal of City's Caveat**

Subject to the Subdivider complying with **clause 8.1** of this Deed, the City will at the request of the Subdivider and at the Subdivider's cost provide to the Subdivider a withdrawal of the City's Caveat lodged pursuant to **clause 7** to enable the registration

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of any transfer, mortgage or charge of the Land upon a written request from the Subdivider, PROVIDED that the City is entitled to relodge its absolute caveat following the registration of such transfer, mortgage or charge.

## **9. SUPPLEMENTAL TO POWERS UNDER TPS 2**

The Subdivider and the Shire AGREE that this Deed is supplemental to the provisions of TPS 2 (or any replacement local planning scheme in force) and further agree that notwithstanding any term of this Deed the Shire's rights and powers pursuant to TPS 2 are preserved.

## **10. NO FETTER**

Notwithstanding any other provision of this Deed, the Subdivider ACKNOWLEDGES that the Shire is a local government established by the *Local Government Act 1995*, and in that capacity, the Shire will be obliged to comply with statutory obligations imposed by law and the Shire will not be taken to be in default under this Deed by performing its statutory obligations or exercising its statutory discretions, nor shall any provision of this Deed fetter the Shire in performing its statutory obligations or exercising any discretion under any law, including without limitation the determination of items of Infrastructure and their priority and the preparation and finalisation of the DCP.

## **11. COSTS**

The Subdivider will pay the Shire's reasonable legal costs of and incidental to the preparation, negotiation, execution and stamping of this Deed, all duty payable hereon and the reasonable cost of preparing and lodging any Caveat(s) and any withdrawal(s) or replacements thereof.

## **12. VARIATION**

A variation to this Deed must be in writing and signed by the parties.



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### 13. FURTHER ASSURANCES

Each party must execute and deliver all such documents, instruments and writings and must do and must procure to be done all such acts and things as may be necessary or desirable to implement and give full effect to the provisions and purpose of this Deed.

### 14. SEVERANCE

If any part of this Deed is, or becomes, void or unenforceable that part is or will be, severed from this Deed to the intent that all parts that are not, or do not become, void or unenforceable remain in full force and effect and are unaffected by that severance.

### 15. WAIVER

The parties mutually COVENANT AND AGREE that:

- (a) no right under this Deed is waived or deemed to be waived except by notice in writing signed by the party waiving the right;
- (b) a waiver by one party under **clause 13(a)** of this Deed does not prejudice its rights in respect of any subsequent breach of this Deed by the other party; and
- (c) a party does not waive its rights under this Deed because it grants an extension or forbearance to the other party.

### 16. APPLICABLE LAW

This Deed shall be governed by the laws of the State of Western Australia, and where applicable the Commonwealth of Australia.

### 17. INTERPRETATION

In this Deed:

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- (a) Headings have been inserted for guidance only and shall be deemed not to form part of the text.
  - (b) Where a reference to a party includes more than one person the rights and obligations of those persons shall be joint and several.
  - (c) Reference to the parties includes their personal representatives, successors and lawful assigns.
  - (d) The Schedule and Annexures (if any) form part of the Deed.

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## SCHEDULE

### ITEM 1: THE LAND

Lot XXXX on Plan XXXX and being the whole of land comprised in Certificate of Title Volume XXXX Folio XXXX.

DRAFT

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EXECUTED BY the Parties as a Deed:

EXECUTED BY XXXXXXXXXX pursuant )  
to section 127 of the Corporations Act: )  
)

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Name of Director

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Signature of Director

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Name of Director/Secretary

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Signature of Director/Secretary

**(Delete whichever designation is incorrect)**

THE COMMON SEAL of the )  
SHIRE OF SERPENTINE )  
JARRAHDAL was hereunto )  
affixed in the presence of: )

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CHIEF EXECUTIVE OFFICER

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(PRINT FULL NAME)

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SHIRE PRESIDENT

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(PRINT FULL NAME)

21058-09.10.26-TF-Deed Revised