



**Maddocks**

Lawyers  
140 William Street  
Melbourne Victoria 3000 Australia

Telephone 61 3 9288 0555  
Facsimile 61 3 9288 0666

info@maddocks.com.au  
www.maddocks.com.au

DX 259 Melbourne

Date 18 / 06 / 2014

## **Kew Residential Services Development Agreement Fourth Deed of Variation**

**Secretary to the Department of State Development, Business and Innovation  
and**

**Kew Development Corporation Pty Ltd**  
ACN 119 766 264  
**and**

**Walker Group Holdings Pty Ltd**  
ACN 001 215 069





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## Kew Residential Services Development Agreement Fourth Deed of Variation

**Dated** 18 / 06 / 2014

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### Parties

Name	Secretary to the Department of State Development, Business and Innovation, acting pursuant to a Nomination Order issued in respect of the Project on 30 August 2005 by the Governor in Council on the recommendation of the Premier, for and behalf of the Crown in right of the State of Victoria
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Address	121 Exhibition Street, Melbourne, Vic 3000
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Short name	State
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Name	Kew Development Corporation Pty Ltd ACN 119 766 264
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Address	Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000
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Short name	Developer
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Name	Walker Group Holdings Pty Ltd ACN 001 215 069
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Address	Level 21, Governor Macquarie Tower, 1 Farrer Place, Sydney, NSW 2000
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Short name	Guarantor
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### Background

- A. This Deed is supplemental to an agreement titled 'Kew Residential Services Development Agreement' entered into between the State, the Developer and the Guarantor dated 27 October 2006 (**Principal Agreement**) as varied by:
- A.1 Deed of Variation between the State, the Developer and the Guarantor dated 28 August 2009;
  - A.2 Deed of Release between the State, the Developer and the Guarantor dated 28 August 2009;
  - A.3 Second Deed of Variation between the State, the Developer and the Guarantor dated 13 June 2012; and
  - A.4 Third Deed of Variation between the State, the Developer and the Guarantor dated 8 April 2013.





- B. The State, the Developer and the Guarantor have agreed to further vary the Principal Agreement to amongst other matters:
- B.1 amend the land value for the purposes of calculating the margin scheme to the taxable supply of all Lots and the Site generally;
  - B.2 establish a process for determining whether there is an alternative method available for calculating the GST payable on the taxable supply of all Lots and the Site generally;
  - B.3 amend the terms and conditions governing payment of the Stage 2 Community Houses Payment and the Liquidated Damages; and
  - B.4 vary the terms and conditions governing the Developer's obligations in relation to the Community Facilities and the Heritage Buildings,
- on the terms and conditions set out in this Deed.

## The Parties Agree

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### 1. Definitions and interpretation

- 1.1 Capitalised terms which are used but not expressly defined in this Deed have the meanings given in the Principal Agreement.
- 1.2 The provisions of clauses A1.2 (Construction), A1.11 (Delegation), A4.2 (Interpretation of Agreement), A7.1 (Representations and Warranties), A7.3 (Reliance on Representations and Warranties), A25 (Disputes), A26 (GST), A28 (Confidentiality and Publicity), A29 (Communications) and A30 (Miscellaneous) of the Principal Agreement form part of this Deed as if set out at length in this Deed.

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### 2. Variation of Principal Agreement

With effect from the date of this Deed, the Principal Agreement is varied as follows:

#### 2.1 GST

- 2.1.1 The following new definitions are inserted into the Principal Agreement:
  - (a) **Margin Scheme** means the margin scheme as defined in the GST Law.
  - (b) **Government GST Margin Scheme** means the government margin scheme provisions contained at item 4 of section 75-10(3) of the GST Law.
- 2.1.2 Clause A26.5 is amended to read as follows:
  - 'A26.5 **Margin Scheme**
    - (a) Subject to clause A26.6, the State and the Developer agree that the State shall apply the Margin Scheme to the taxable supply of all Lots and the Site generally, unless they agree otherwise with respect to any part of the Site. The State and the Developer agree that for the purposes of the Margin Scheme, the value of the Site as at 15 March 2007 (excluding the Community Houses) is \$90.2 million in accordance with the





'value at transfer date' valuation prepared by RM2 Rogers Milne Marshall as delegated contract valuer for the Valuer General and dated 14 March 2013 (**GST Valuation**).

- (b) The State shall seek a refund for the overpayment of GST paid by the State in relation to Stages 1, 2, 3A and 3B as a consequence of the value of the Site used by the State for the purposes of the Margin Scheme being lower than the GST Valuation.
- (c) If the State obtains a refund of any overpayment of GST from the Commonwealth as a consequence of the State using the GST Valuation for the purposes of calculating the GST payable on the supply of all Lots and the Site generally (**GST Valuation Refund**), the GST Valuation Refund will be paid to the Developer and will constitute Project Revenue.
- (d) The State is liable for any additional GST payable by the State if:
  - (i) the valuation of the Site as at 1 July 2001 (excluding the Community Houses) is less than \$50 million; or
  - (ii) the State fails to comply with any Margin Scheme requirements under the GST law.'

2.1.3 A new clause A26.6 is inserted as follows:

**'A26.6 Government GST Margin Scheme**

- (a) Notwithstanding clause A26.5, the State and the Developer agree that in accordance with the process outlined in this clause A26.6, the State will investigate whether the Government GST Margin Scheme is eligible to be applied to the taxable supply of all Lots and the Site generally in lieu of the Margin Scheme.
- (b) The State will undertake an initial assessment to determine whether the State considers it is eligible to apply the Government GST Margin Scheme to the taxable supply of all Lots and the Site generally in lieu of the Margin Scheme.
- (c) If the State determines that the State is eligible to use the Government GST Margin Scheme and there are benefits from electing to do so, the State will engage by tender an external qualified consultant to undertake all work required to obtain a refund from the Commonwealth of any overpayment of GST as a consequence of the State using the Government GST Margin Scheme in lieu of the Margin Scheme.
- (d) Subject to paragraph (f), the State will be solely responsible for:
  - (i) undertaking the initial assessment in accordance with paragraph (b);
  - (ii) appointing an external consultant in accordance with paragraph (c);
  - (iii) managing the process for obtaining a refund (if applicable) in accordance with paragraph (c); and





- (iv) paying all costs incurred by the State in accordance with paragraphs (b) and (c).
- (e) The State may at any time determine in its absolute discretion to cease any further action in accordance with this clause A26.6 and continue use of the Margin Scheme in accordance with clause A26.5.
- (f) If the State elects to apply the Government GST Margin Scheme in lieu of the Margin Scheme and obtains a refund of any overpayment of GST from the Commonwealth (**Government GST Margin Scheme Refund**) as a consequence, then the Government GST Margin Scheme Refund will be distributed as follows:
  - (i) firstly, all costs incurred by the State under this clause A26.6 will be reimbursed to the State from the Government GST Margin Scheme Refund. The State will provide the Developer with a written summary of all costs incurred by the State and which are to be repaid from the Government GST Margin Scheme Refund;
  - (ii) secondly, the Developer will be entitled to be paid that proportion of the Government GST Margin Scheme Refund (if any) representing the GST Valuation Refund in accordance with clause A26.5 (to the extent not already paid under clause A26.5); and
  - (iii) the balance of the Government GST Margin Scheme Refund (after deduction of the amounts payable under subparagraphs (i) and (ii)) will be paid equally to the State and the Developer.
- (g) If the State elects to apply the Government GST Margin Scheme in lieu of the Margin Scheme in accordance with this clause A26, the State and the Developer agree that for the purposes of clause A26.5 the State shall apply the Government GST Margin Scheme and not the Margin Scheme and the principles in subparagraphs (f) (ii) and (iii) will apply to any GST savings made as a consequence.

2.1.4 Clause A26.6 is renumbered as clause A26.7.

## 2.2 Construction of Car Park

2.2.1 Clause B21(a) is amended to read:

"(a) The Developer must construct a permanent car park comprising 12 car spaces in the location of the existing temporary car park in Stage 1 as denoted on the Car Park Plan by 30 September 2014."

2.2.2 The Car Park Plan attached as schedule 20 to the Principal Agreement is deleted and replaced by the plan attached as Attachment 1 to this Deed.

2.2.3 The definition of 'Car Park Plan' is amended to change the reference from 'schedule 19' to 'schedule 20'.

2.2.4 For the avoidance of doubt, the land comprised in the Car Park Plan and each certificate of title relating to the land comprised in the Car Park Plan, is to be issued to and held by the State absolutely.





## 2.3 Project Office Development

The following new clause is inserted into the Principal Agreement:

### 'C14 Redevelopment of Project Office Precinct

- (a) 'Project Office Precinct' means that part of the Site used by the Developer as a project office for the Project and which comprises Stage 8 on the Staging Plan.
- (b) The Developer will undertake an assessment to determine whether the developable area of the Site allows for Additional Sale Lots to be constructed in the Project Office Precinct (**Additional Sale Lots**).
- (c) If the Developer confirms to the State that Additional Sale Lots would be permissible (subject to any approvals required), the State will use its reasonable endeavours to assist the Developer to obtain all relevant Planning Permits and other Authorisations which are necessary or desirable to facilitate the Additional Sale Lots in the Project Office Precinct (**Planning Approvals**).
- (d) The Developer must obtain the consent of the State to the form and content of any application for the Planning Approvals prior to submission to the Planning Authority. Nothing in this clause imposes any obligation on the State as Planning Authority to grant or approve any Planning Approvals.
- (e) The Developer bears the risk should the Developer not obtain the Planning Approvals, and the Developer is solely responsible for paying all costs incurred in obtaining the Planning Approvals.
- (f) If the Developer obtains the Planning Approvals, any payment due to the State for each Additional Sale Lot will be calculated in accordance with schedule 12. For the avoidance of doubt, when calculating any payment due to the State for each Additional Sale Lot, all payments previously made to the State on the Settlement of the existing Lots will be taken into account in determining any payment due to the State for each Additional Sale Lot.
- (g) For the avoidance of doubt the Lot Sale Price for each Additional Sale Lot (exclusive of GST) will constitute Project Revenue and the costs in constructing any Additional Sale Lot will constitute Project Expenditure for the purposes of calculating any Revenue Share Land Payment under the Development Agreement.'

## 2.4 Stage 2 Community Houses Payment

2.4.1 Clause 2.5 of schedule 12 is amended to read as follows:

'The Developer must pay to the State an amount of \$4,850,000 (plus GST) on the Revised Developer Payment Date together with interest calculated from 1 July 2014 up to and including the day of payment at the Developer Interest Rate.'





2.4.2 The definitions of 'Initial Stage 2 Community Houses Payment', 'Initial Stage 2 Community Houses Payment Guarantee' and 'Final Stage 2 Community Houses Payment' are deleted.

2.4.3 The definition of 'Stage 2 Community Houses Payment' is amended to read as follows:

**'Stage 2 Community Houses Payment'** means the amount payable by the Developer to the State in accordance with clause D1.2(c) and clause 2.5 of schedule 12.

## 2.5 Liquidated Damages

2.5.1 For the purposes of clause B14.10 of the Principal Agreement, the State and the Developer agree that the amount of Liquidated Damages payable by the Developer to the State in accordance with clause B14.10 is \$915,747.45 (**Liquidated Damages Amount**).

2.5.2 The Developer must pay to the State the Liquidated Damages Amount (together with interest calculated in accordance with clause A27 of the Development Agreement to be calculated on and from 31 December 2011) on 1 July 2014. The State and the Developer agree that the applicable interest rate for the purposes of calculating interest in accordance with clause A27 being the rate calculated in accordance with clause A27 as at 31 December 2011 is 6.46% per annum.

2.5.3 The State and the Developer agree that the Liquidated Damages Amount (together with interest) as at 1 July 2014 is \$1,063,884.36.

## 2.6 Community Facilities

2.6.1 The following definitions are deleted:

- (a) Community Facilities;
- (b) Community Facilities Area;
- (c) Community Facilities Date for Completion;
- (d) Community Facilities Obligations;
- (e) Recreation Centre; and
- (f) Recreation Centre Specifications.

2.6.2 The following definitions are amended:

- (a) paragraph (c) of the definition of 'Community Houses Default' is deleted and replaced with 'deleted';
- (b) paragraph (c) of the definition of 'Completion' is deleted;
- (c) paragraph (bb) of the definition of 'Termination Events' is deleted.

2.6.3 Clause A5.5 is amended as follows:

- (a) by deleting 'and Community Facilities' from the heading of the clause;





- (b) by deleting the words 'and/or the Community Facilities Date for Completion' from paragraph (a);
- (c) by deleting the words 'and/or the Community Facilities Date for Completion' from the introductory words of paragraph (b);
- (d) by deleting the words 'and/or the Community Facilities Date for Completion' from paragraph (b)(i);
- (e) by deleting the words 'for each of Stage 2 and the Community Facilities' in paragraph (b)(ii) and replacing them with the words 'for Stage 2';
- (f) by deleting the words 'and/or completion of the Community Facilities by the Community Facilities Date for Completion' in paragraph (b)(iii);
- (g) by deleting the words 'and/or the Community Facilities Date for Completion' in paragraph (c).

2.6.4 Clause A18 is amended by deleting:

- (a) the words 'if, at the date of assignment, the Developer has not Completed the Community Facilities' from the end of the introductory paragraph of clause A18.4(b);
- (b) paragraphs (b)(i), (ii), (iv) and (v);
- (c) paragraph (e);
- (d) the words in clause A18.6(b)(iv) from '... provided that in the event' to the end of the paragraph.

2.6.5 Clause A18A is deleted.

2.6.6 Clause A20.2 is amended as follows:

- (a) by deleting the words 'or the Community Facilities Obligations by the Community Facilities Date for Completion' in paragraph (b)(ii);
- (b) by deleting the words 'and the Developer demonstrating in the case of a Community Houses Default that Completion of the Community Facilities Obligations will occur no later than the Community Facilities Date for Completion' in paragraph (f).

2.6.7 Clause A21.1 is amended by deleting the words 'or the Community Facilities Obligations' and 'or the Community Facilities Date for Completion' from paragraph (c)(ii).

2.6.8 Clause B7 is amended as follows:

- (a) by deleting the words 'Completion of the Community Facilities by the Community Facilities Date for Completion' from clause B7.2(a);
- (b) by deleting the words 'and the Community Facilities' where twice occurring in clause B7.3.

2.6.9 Clause B8.3 is amended by deleting the words 'and the Community Facilities Obligations to Completion by the Community Facilities Date for Completion' from paragraph (c).





2.6.10 Clause B13 is amended as follows:

- (a) by deleting the words 'and the Community Facilities Obligations' in clause B13.2(b)(i) and (iii);
- (b) by deleting the words 'or the Community Facilities' in clauses B13.2(b)(ii)(B) and (D);
- (c) by deleting the words 'the Community Facilities Date for Completion' in clauses B13.2(d) and B13.3(d);
- (d) by deleting the words 'and Community Facilities' in clauses B13.3(a) and (b)(iii)(B);
- (e) by deleting the words 'or the Community Facilities' in clause B13.3(a).

2.6.11 Clause B14 is amended as follows:

- (a) by deleting the words 'and the Community Facilities' in clause B14.2(a);
- (b) by deleting the words 'and the Completion of the Community Facilities ...' to the end of that paragraph in clause B14.3(c);
- (c) by deleting clause B14.3(d).

2.6.12 Clause B15 is deleted and replaced with the following clause:

**'B15 Heritage Buildings**

- B15.1 The State and the Developer agree that the Development Budget includes an allowance of \$5,000,000 (plus GST) for the design, site preparation and building costs associated with the repair and construction of associated facilities in the Heritage Buildings (**Heritage Building Allowance**).
- B15.2 Prior to the Revised Developer Payment Date, the Developer must engage an independent auditor (to be approved by the State) to verify the expenditure which has been incurred by the Developer in relation to the Heritage Buildings (including expenditure incurred in maintaining the Heritage Buildings in accordance with clause B15.6) (**Expended Amount**) and must provide a copy of the auditor's report to the State as soon as practicable after the audit report is received and in any event by no later than the Revised Developer Payment Date. The cost incurred in obtaining the audit report will form part of Project Expenditure.
- B15.3 On the Revised Developer Payment Date, the Developer must pay to the State an amount calculated by deducting the Expended Amount from the Heritage Building Allowance (**Heritage Building Repayment**) together with interest in accordance with clause B15.4. On payment of the Heritage Building Repayment together with interest in accordance with clause B15.4, the State releases the Developer from any future obligations in relation to the Heritage Core.
- B15.4 Interest shall accrue on the unexpended portion of the Heritage Building Allowance from 1 July 2014 until payment of the Heritage Building Repayment. Interest will be calculated on





the daily balance of the unexpended portion of the Heritage Building Allowance at the Developer Interest Rate

- B15.5 The State and the Developer must agree on that part of the Site which constitutes the Heritage Core and in the event the parties are unable to agree, the dispute will be determined in accordance with clause A25. For the purposes of this clause, 'Heritage Core' comprises the Heritage Buildings and all other surrounding land which Heritage Victoria requires to be retained or maintained in conjunction with the use or development of the Heritage Buildings.
- B15.6 For the avoidance of doubt, the land comprising the Heritage Core and each certificate of title relating to the land comprised in the Heritage Core is to be issued to and held by the State absolutely and may be dealt with by the State in its absolute discretion.
- B15.7 The Developer must maintain the Heritage Buildings up until the earlier of the completion of the sale by the State of the Heritage Buildings or the Revised Developer Payment Date including carrying out all repair and maintenance reasonably required to ensure that the Heritage Buildings are maintained in their current state of repair. The Developer must seek written approval from the State prior to expending any further funds from the Heritage Building Allowance in relation to the Heritage Buildings. The State must not unreasonably withhold approval to any expenditure reasonably required to ensure that the Heritage Buildings are maintained in their current state of repair.
- B15.8 Notwithstanding clause B15.7, the State is responsible for and bears the risk of:
- (a) compliance with the terms of the Heritage Permit and the Heritage Guarantee Conditions;
  - (b) dealing with and satisfying the Planning Authority in respect of any reduction in the provision of public open space which results or may result:
    - (i) from an alternative re-development of the Heritage Core to that which is currently specified in the Development Plan including any additional area required under clause B15.4 (which must not include any area within the Project Office Precinct which the Developer may develop in accordance with clause C14); or
    - (ii) from the construction of the Car Park.
- B15.9 The State will use its reasonable endeavours to obtain the return to the State of the Heritage Guarantee from Heritage Victoria. If the State is unable to procure the return of the Heritage Guarantee from Heritage Victoria, then the provisions of clause A23.7 will apply.





- B15.10 Without limiting the provisions of clause A14, the Developer agrees that all materials and documents created by or on behalf of the Developer or the Guarantor in relation to the Heritage Buildings and the Community Facilities (as defined in the Development Agreement prior to the Fourth Deed of Variation) constitute Materials and/or Pre-Existing Matter to which the provisions of clause A14 apply.
- B16.11 For the purposes of this clause B15, 'Heritage Permit', 'Heritage Guarantee' and 'Heritage Guarantee Conditions' have the same meaning as in clause A23.12.'

2.6.13 Schedules 18 and 19 of the Principal Agreement are deleted.

## 2.7 Security

Clause A23 is amended to read as follows:

### 'A23. Security

#### A23.1 Guarantees

The Developer must provide each Project Guarantee on the date specified in schedule 7.

#### A23.2 Failure to Provide Security

- (a) If the Developer does not provide each Project Guarantee on the date specified in schedule 7, the State may by written notice terminate this Agreement.
- (b) If the State terminates this Agreement in accordance with this clause A23.2, the State will not be liable to pay any Compensation or other moneys to the Developer, other than reimbursement for any Project Expenditure incurred by the Developer whether before or after the Operative Date up to the date of termination.
- (c) Any termination of this Agreement by the State under this clause A23.2 will:
- (i) not in any way prejudice the State's Rights to claim and recover damages for any breach of contract by the Developer; and
  - (ii) entitle the State to recover all Loss that the State may suffer in connection with the termination of this Agreement.

#### A23.3 Release of Project Guarantee

- (a) Each Project Guarantee shall be released to the Developer on the date specified in schedule 7.
- (b) Subject to clause A23.3(c), at the end of an Applicable Cure Period, if a Default Event has not been cured or deemed to have been cured, the State may deduct from the Project Guarantee any amounts:





- (i) for which the Developer must pay or reimburse the State;
  - (ii) which the State has paid or will pay on the Developer's behalf; or
  - (iii) which the Developer owes to the State under or arising from a breach of this Agreement,
- including, without limitation, the Stage 2 Community Houses Payment, the Heritage Building Repayment and the Liquidated Damages Amount.
- (c) Notwithstanding any other provision of this Agreement, if the Developer fails to pay the Stage 2 Community Houses Payment, the Heritage Building Repayment and the Liquidated Damages Amount on the due date for payment under this Agreement:
- (i) the State is not required to issue a Default Event Notice with respect to that default in accordance with clause A20;
  - (ii) the Developer does not have an Applicable Cure Period with respect to that default in accordance with clause A20; and
  - (iii) the State is not required to provide notice to the Developer of its intention to deduct amounts from the Project Guarantee in accordance with clause A23.3(d) before doing so.
- (d) Subject to clause A23.3(c), where the State intends to deduct any amounts from the Project Guarantee pursuant to paragraph (b), the State shall provide notice of such intention to the Developer not less than 1 Business Day before such deduction is to be made.

#### **A23.4 Replacement Guarantees**

- (a) The Developer must give a further or replacement Project Guarantee to the State when the State demands a payment under the Project Guarantee to replace the amount demanded or used. The State must give a notice to the Developer stating the amount of the further or replacement Project Guarantee required, and the State's determination is final and binding on the parties unless manifestly wrong. The Developer must give the further or replacement Project Guarantee to the State within 10 Business Days after the State gives a notice to the Developer.
- (b) A failure by the Developer to provide a further or replacement Project Guarantee in accordance with paragraph (a) will constitute a Termination Event.

#### **A23.5 Developer not to injunct**

The Developer must not take any steps to injunct or otherwise restrain:





- (a) any issuer of the Project Guarantee provided under this clause A23 from paying the State pursuant to the Project Guarantee;
- (b) the State from taking any steps for the purpose of making demand under the Project Guarantee, or receiving payment under the Project Guarantee; or
- (c) the State using the money received under the Project Guarantee,

unless the State seeks to exercise its rights to call up the Project Guarantee other than in accordance with the terms of this Agreement.

#### **A23.6 Developer's Rights**

If the State makes demand or receives payment under the Project Guarantee and is not entitled to do so under this Agreement, the Developer may exercise any legal or equitable Rights available to it in respect of that demand or receipt of payment.

#### **A23.7 Heritage Guarantee**

- (a) The Developer agrees that the State has returned the Existing Project Guarantee to the Developer in return for the Developer:
  - (i) delivering the New Project Guarantee to the State; and
  - (ii) delivering the Heritage Guarantee to Heritage Victoria in satisfaction of condition 1 of the Heritage Permit.
- (b) The State and the Developer agree that if the State is unable to procure the return of the Heritage Guarantee from Heritage Victoria in accordance with clause B15.8:
  - (i) the Developer will not seek the return of the Heritage Guarantee from Heritage Victoria or reach any agreement with Heritage Victoria for the return of the Heritage Guarantee to the Developer except with the prior written consent of the State;
  - (ii) the Developer will direct Heritage Victoria that on the Heritage Guarantee Satisfaction Date the Heritage Guarantee is to be delivered to the State and not returned to the Developer;
  - (iii) notwithstanding clauses A23.7(b)(i) and (ii), if Heritage Victoria returns the Heritage Guarantee to the Developer without the prior written consent of the State, the Developer will immediately deliver the Heritage Guarantee to the State.
- (c) If Heritage Victoria delivers the Heritage Guarantee to the State or the Developer in accordance with clause A23.7(b), the Developer must immediately deliver to the State a replacement bond in favour of the State on the same terms and conditions as the New Project Guarantee except that the amount of the bond will be an amount of \$800,000 ('**Replacement Bond**').





- (d) On receipt of the Replacement Bond, the State will return the Heritage Guarantee to the Developer.

#### **A23.8 Balance Payment Guarantee**

On the date specified in schedule 7, the Developer must deliver to the State the Balance Payment Guarantee.

#### **A23.9 Retention Guarantee**

- (a) Subject to clause A23.9(b), on the date specified in schedule 7, the Developer must deliver to the State the Retention Guarantee.
- (b) If the End Date has occurred on or before the date specified in schedule 7 for the delivery of the Retention Guarantee, the Developer will not be required to deliver the Retention Guarantee to the State, and clause A23.9(a) will not apply.

#### **A23.10 Definitions**

In this clause A23:

**Existing Project Guarantee** means the Project Guarantee in the amount of \$5,000,000.00 provided by the Developer on the Operative Date.

**Heritage Guarantee** means the insurance bond VPFB-M60-248 in the amount of \$800,000.00 provided by the Developer to Heritage Victoria as security for the performance of the Developer's obligations under the Heritage Permit and, to the extent applicable, includes the Replacement Bond to be provided by the Developer in accordance with clause A23.7.

**Heritage Permit** means Heritage Permit P18328 issued by Heritage Victoria.

**Heritage Guarantee Conditions** means those heritage works which must be satisfactorily completed by the Developer under the Heritage Permit prior to release of the Heritage Guarantee by Heritage Victoria.

**Heritage Guarantee Satisfaction Date** means the date on which Heritage Victoria confirms that all of the Heritage Guarantee Conditions have been satisfied and the Heritage Guarantee may be released.

**New Project Guarantee** means the Project Guarantee VPFB-M60-249, in the amount of \$4,200,000.00 provided by the Developer in accordance with clause A23.7(a).

**Retention Guarantee** means the Project Guarantee for \$1,000,000 in favour of the State to be provided by the Developer in accordance with clause A23.9.

**Balance Payment Guarantee** means the Project Guarantee for \$1,700,000 in favour of the State to be provided by the Developer in accordance with clause A23.8.

#### **A23.11 Alternative Security**





- (a) At any time prior to the Revised Developer Payment Date, the Developer may request in writing that the State substitute one or more Project Guarantees for an alternative form of security granted over the Stage 8 Sale Lots (**Alternative Security**).
- (b) The State will discuss in good faith with the Developer the terms and conditions of any Alternative Security. Without limiting the State's right in relation to the Alternative Security, the State may require as a condition of agreeing to any Alternative Security that:
  - (i) the State retain one or more Project Guarantees until the Stage 2 Community Houses Payment, the Heritage Building Repayment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) is paid in full;
  - (ii) the State retain the proceeds from the sale of some or all of the Stage 8 Sale Lots (including any deposits) until the Stage 2 Community Houses Payment, the Heritage Building Repayment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) is paid in full;
  - (iii) when the Stage 2 Community Houses Payment, the Heritage Building Repayment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) is paid in full, the proceeds from any Stage 8 Sale Lots will be distributed in accordance with clause D1 and clause 2 of schedule 12; and
  - (iv) the State and the Developer enter into a deed amending the Development Agreement to incorporate the terms and conditions governing the provision of any Alternative Security.
- (c) The State is not required to agree to any request to the provision of Alternative Security unless the State is satisfied (in its absolute discretion) that the proposed Alternative Security provides equivalent security for the repayment of the Stage 2 Community Houses Payment, the Heritage Building Repayment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) as provided to the State by the Project Guarantees.

## 2.8 Schedule 6

The Development Plan forming Schedule 6 to the Principal Agreement is amended by deleting the Staging Plan included in Schedule 6 and replacing it with a copy of the Staging Plan in the form attached at Attachment 2 to this Deed.

## 2.9 Schedule 7

Schedule 7 is amended to read as follows:





## Maddocks

<b>Project Guarantee Amount</b>	<b>Delivery Date</b>	<b>Release Date</b>
\$5,000,000 (Existing Project Guarantee)	On or before Operative Date	On delivery of the New Project Guarantee and the Heritage Guarantee in accordance with Clause A23.7 [Note: this Existing Project Guarantee has been released]
\$4,200,000 (New Project Guarantee)	On the date referred to in clause A23.7 [Note: the State is holding the New Project Guarantee]	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) have been paid in full by the Developer and the Developer has provided the Retention Guarantee to the State, (if required) in accordance with clause A23.9.
\$800,000 (Heritage Guarantee)	On the date referred to in clause A23.7 [Note: Heritage Victoria is holding the Heritage Guarantee]	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) have been paid in full by the Developer and the Developer has provided the Retention Guarantee to the State, (if required) in accordance with clause A23.9.
\$2,425,000 (Initial Stage 2 Community Houses Payment Guarantee)	On the date the last party executes the Third Deed of Variation [Note: the State is holding the Initial Stage 2 Community Houses Payment Guarantee]	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) have been paid in full by the Developer and the Developer has provided the Retention Guarantee to the State, (if required) in accordance with clause A23.9.
\$1,700,000 (Balance Payment Guarantee)	On the date the last party executes the Fourth Deed of Variation.	On the date that the last of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) have been paid in full by the Developer and the Developer has provided the Retention Guarantee to the State in accordance with clause A23.9.
\$1,000,000	On the date that the last	5 Business Days after the End Date.





(Retention Guarantee)	of the Heritage Building Repayment, the Stage 2 Community Houses Payment and the Liquidated Damages Amount (plus interest on any of those amounts payable in accordance with the Fourth Deed of Variation) have been paid in full by the Developer.	
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## 2.10 Miscellaneous

2.10.1 The following new definitions are inserted into the Principal Agreement:

- (a) **'Fourth Deed of Variation'** means the document titled 'Fourth Deed of Variation' between the State, the Developer and the Guarantor ;
- (b) **'Existing Project Guarantee'** has the meaning in clause A23.10;
- (c) **'New Project Guarantee'** has the meaning in clause A23.10;
- (d) **'Heritage Guarantee'** has the meaning in clause A23.10;
- (e) **'Heritage Permit'** has the meaning in clause A23.10;
- (f) **'Initial Stage 2 Community Houses Payment Guarantee'** means the Project Guarantee for \$2,425,000 in favour of the State provided by the Developer in accordance with clause 2.1(p) of the Third Deed of Variation;
- (g) **'Heritage Building Repayment'** has the meaning in clause B15;
- (h) **'Retention Guarantee'** has the meaning in clause A23.10;
- (i) **'Balance Payment Guarantee'** has the meaning in clause A23.10;
- (j) **'Developer Interest Rate'** means 8 per centum per annum;
- (k) **'Revised Developer Payment Date'** means 30 October, 2015.
- (l) **'Project Office Precinct'** has the meaning in clause C14;
- (m) **'Stage 8'** means Stage 8 on the Development Plan, being the development of the Project Office Precinct;
- (n) **'Planning Approval'** has the meaning in clause C14; and
- (o) **'Additional Sale Lots'** has the meaning in clause C14.

2.10.2 The definition of 'Project Guarantee' is amended as follows:

**'Project Guarantee'** means the Bank Guarantees or performance or other bonds for the amounts specified in Schedule 7 and includes the New Project Guarantee, Heritage Guarantee, Initial Stage 2 Community Houses Payment Guarantee, Balance Payment Guarantee and Retention Guarantee.





## 2.11 Project Term

Clause A5.1 is amended to read as follows:

### 'A5.1 Project Term

- (a) The Project Term commences on the Operative Date and, subject to clause A5.2, expires on the earliest to occur of:
  - (i) the date when all Sale Lots forming part of the Project are the subject of a Dealing and the State has received the Guaranteed Land Payment and Revenue Share Land Payment in respect of all Dealings in accordance with Part D;
  - (ii) an agreement between the parties to end the Project Term; and
  - (iii) the date being 10 years from the Operative Date.
- (b) For avoidance of doubt, 'Sale Lots' include Additional Sale Lots on a Plan of Subdivision of Stage 8 registered prior to the date referred to in clause A5.1(a)(iii).'

## 2.12 Substantial Commencement of a Stage

'Clause D4.3 is amended to read as follows:

- (a) If, at the End Date, the Developer has substantially commenced any Stage, then the Developers' Rights under this Agreement continue to apply to that Stage, with only those changes required to reflect that this Agreement only applies to that Stage, until the earlier to occur of:
  - (i) 24 months after the End Date or such later date as may be agreed by the State; and
  - (ii) the date all Lots forming part of that Stage are the subject of a Dealing and the State has received payment in respect of all Dealings in accordance with Part D.
- (b) For avoidance of doubt, the for the purpose of this clause D4.3 and the definition of 'Substantially Commenced', Stage shall include Stage 8.'

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## 3. General

The parties acknowledge and agree that:

- 3.1 the provisions of the Principal Agreement (as expressly varied by this Deed) continue in full force and effect;
- 3.2 the provisions of the Principal Agreement shall be read and construed so as to give effect to the provisions of this Deed, and in the event of conflict or inconsistency the latter shall prevail; and
- 3.3 except where specified in this Deed, each of the obligations of the State and the Developer are separate and independent and for the avoidance of doubt, the Developer's obligation to pay the Stage 2 Community Houses Payment, the Liquidated Damages Amount and the





Heritage Buildings Repayment are not subject to any pre-conditions unless expressly specified in this Deed.

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**4. Consent and Acknowledgement of Guarantor**

- 4.1 The Guarantor acknowledges and consents to the provisions of this Deed and the variation of the Principal Agreement made by this Deed.
- 4.2 The Guarantor acknowledges that the guarantee in Part E of the Principal Agreement continues in full force and effect following execution of this Deed and extends and applies to the Developer's obligations under this Deed.

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**5. Legal costs**

- 5.1 Except as otherwise expressly provided in this Deed or the Development Agreement, each party shall pay their own legal costs in relation to the preparation, negotiation and execution of this Agreement.
- 5.2 The Developer must pay or reimburse the State 50% of the legal costs incurred by the State in the drafting of this Agreement (**Legal Costs Reimbursement**).
- 5.3 The State will provide the Developer with a tax invoice for the Legal Costs Reimbursement (which will include all information reasonably necessary to verify the total legal costs incurred and the amount of the Legal Costs Reimbursement) (**Tax Invoice**). The Developer must pay the Legal Costs Reimbursement to the State within 10 Business Days following receipt by the Developer of the Tax Invoice.



**Executed by the parties**

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)  
)

*[Handwritten signature]*

3

Signature of Director (or Company Secretary)  
IAN GRIST  
Print full name

Signature of Director (or Company Secretary)  
IAN GRIST  
Print full name



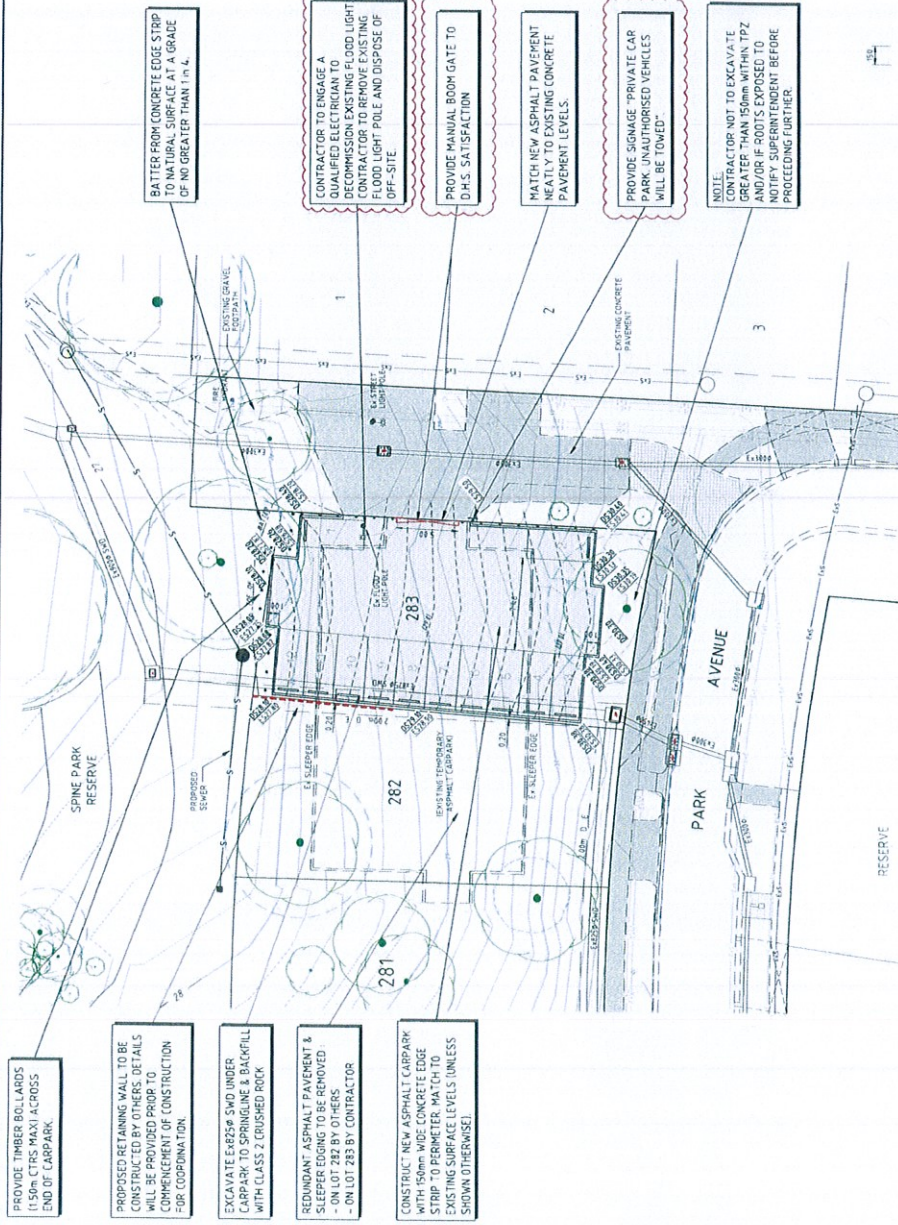


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## ATTACHMENT 1

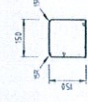
### Car Park Plan





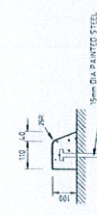
- GENERAL NOTES (Cont.)**
1. ALL WORKS TO BE CARRIED OUT IN ACCORDANCE WITH BORONODARA CITY COUNCIL STANDARD DRAWINGS, SPECIFICATIONS, APPROVED PLANS AND REPRESENTATIVE.
  2. CONSTRUCTION OF NEW ASPHALT PAVEMENT SHALL BE IN ACCORDANCE WITH BORONODARA CITY COUNCIL OR THEIR REPRESENTATIVE.
  3. ANY SPILL MATERIAL TO BE REMOVED MUST BE CERTIFIED BY ENVIRONMENTAL ASSESSMENT SERVICES IN CONJUNCTION WITH NEW DEVELOPMENT COMPLETION.
  4. WHERE WORKS ARE IN THE VICINITY OF EXISTING SERVICES, THESE SERVICES MUST BE PROTECTED AND THE RELEVANT AUTHORITIES NOTIFIED SEVEN (7) DAYS PRIOR TO THE COMMENCEMENT OF THE WORKS.
  5. ALL DIMENSIONS ARE IN METRES UNLESS NOTED OTHERWISE.
  6. ALL LEVELS ARE TO AUSTRALIAN HEIGHT DATUM (AHD).
  7. ALL CO-ORDINATES ARE TO MAP GRID OF AUSTRALIA (MGA).
  8. THE CONTRACTOR MUST ARRANGE THE REQUISITE INSPECTIONS OF THE REPRESENTATIVE AS PER THE HOLD POINTS IN THE BORONODARA CITY COUNCIL SPECIFICATIONS.
  9. ALL AREAS TO BE STORIED TO TOPSOIL, FILLED AND TOPSOIL, REPLACED WITH TOPSOIL TO A MINIMUM OF 150mm. THE TOPSOIL SHALL BE CLEAN, DRY, FREE FROM STONES, AND NOT LESS THAN 150mm OF THE TOPSOIL SHALL BE COVERED BY A 150mm THICK LAYER OF CLEAN CLAY COMPACTED TO A DENSITY NOT LESS THAN 95% OF THE MAKING DRY DENSITY VALUE DETERMINED BY THE STANDING CONSTRUCTION TEST IN ACCORDANCE WITH A.S. 1013.1 (2003).
  10. ALL WORKS TO BE CARRIED OUT IN ACCORDANCE WITH A.S. 1013.1 (2003) SPECIFIED.
  11. THE CONTRACTOR IS RESPONSIBLE FOR ENSURING THAT ALL IMPORTED MATERIALS ARE OF THE QUALITY SPECIFIED IN THE BORONODARA CITY COUNCIL SPECIFICATIONS AND THAT THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE QUALITY OF THE MATERIALS AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE QUALITY OF THE MATERIALS AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE QUALITY OF THE MATERIALS.
  12. WHERE A.S. 1013.1 (2003) SPECIFIED, THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE QUALITY OF THE MATERIALS AND THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE QUALITY OF THE MATERIALS.
  13. THE PRE-CONSTRUCTION MEETING, TYPING OF AREAS CONTAINING NATIVE GRASSES AND SHRUBS IS REQUIRED. A THREE STRAIGHT LINE PLOT AND WHERE NECESSARY SHALL BE CONDUCTED.
  14. ALL CONCRETE SHALL BE 20MPa UNLESS NOTED OTHERWISE.
  15. ALL CONCRETE SHALL BE IN ACCORDANCE WITH A.S. 1013.1 (2003) AND BORONODARA CITY COUNCIL SPECIFICATIONS.
  16. ALL CONCRETE SHALL BE IN ACCORDANCE WITH A.S. 1013.1 (2003) AND BORONODARA CITY COUNCIL SPECIFICATIONS.
  17. ALL CONCRETE SHALL BE IN ACCORDANCE WITH A.S. 1013.1 (2003) AND BORONODARA CITY COUNCIL SPECIFICATIONS.
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  23. ALL CONCRETE SHALL BE IN ACCORDANCE WITH A.S. 1013.1 (2003) AND BORONODARA CITY COUNCIL SPECIFICATIONS.

**PLANNING AND ENVIRONMENT ACT 1987**  
**BORONODARA PLANNING SCHEME**  
**PERMIT**  
**CERTIFICATE No. 2013008930**  
**ENDORSED PLAN**  
Sheet 1 of 1  
Signed *[Signature]*  
MINISTER FOR PLANNING  
Date 23 Dec 2013



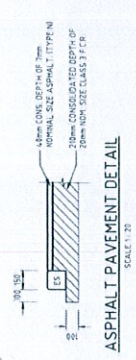
**CONCRETE EDGE STRIP DETAIL**  
SCALE 1:10

NOTE:  
CONCRETE KERN SHALL BE CHARCOAL COLOURED  
15% BLACK (BY WEIGHT)



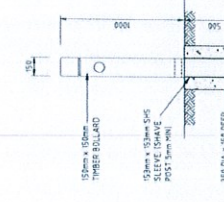
**SPOKED CONCRETE WHEEL STOP DETAIL**  
SCALE 1:10

NOTE:  
1. SUFFICIENT DEPTH OF SOFT GROUND MUST BE EXCAVATED AND REPLACED WITH 150mm OF 100% COMPACTED CLASS 2 SUBGRADE CONSTRUCTION GRADE SPALLS AS PER MODIFIED AASHTO T-99. THE EXCAVATION MUST BE TO THE CLASS 2 SUBGRADE AND TO THE CLASS 2 SUBGRADE CONSTRUCTION GRADE SPALLS AND TO THE CLASS 2 SUBGRADE CONSTRUCTION GRADE SPALLS AND TO THE CLASS 2 SUBGRADE CONSTRUCTION GRADE SPALLS.

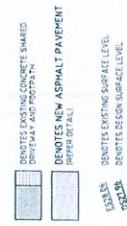


**ASPHALT PAVEMENT DETAIL**  
SCALE 1:20

**BOLLARD DETAIL**  
(REFER BICC 501031)  
SCALE 1:10



- NOTE**
1. TYPICAL PARKING BAY DIMENSIONS ARE STANDARD - 2.50m WIDE x 5.40m DEEP
  2. ALL PARKING BAYS TO HAVE WHEEL STOPS
  3. PROVIDE LINE MARKING FOR ALL PARKING BAYS



**DETAIL PLAN**  
SCALE 1:200



NOTE:  
DIGITAL DATA WILL BE PROVIDED FOR SET-OUT PURPOSES

NOTE:  
DIGITAL DATA WILL BE PROVIDED FOR SET-OUT PURPOSES

CIVIL DRAWING		DEPARTMENT OF HUMAN SERVICES		CIVIL DRAWING	
MAIN DRIVE, KEW		BORONODARA CITY COUNCIL		CIVIL DRAWING	
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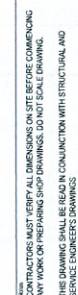


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## ATTACHMENT 2

### Staging Plan





Case #	Age	Description
1	11.57 yr. M.	perforated aortic aneurysm, 277

Year	Quota	Price reduction
1990	100,000	10%
1991	100,000	10%
1992	100,000	10%
1993	100,000	10%
1994	100,000	10%
1995	100,000	10%
1996	100,000	10%
1997	100,000	10%
1998	100,000	10%
1999	100,000	10%
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2027	100,000	10%
2028	100,000	10%
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2031	100,000	10%
2032	100,000	10%
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[illegible]

Walker Corporation Pty Ltd  
12 Pine Court, Kew  
Fax: 03 95938377



**max**  
**architects**  
g/11 31 country rd, south melbourne victoria 3205  
telephone (03) 9251 3400 facsimile (03) 9662 0864  
www.maxarchitects.com.au max@maxarchitects.com.au



**Drawing Title**  
**Masterplan Concept**

**Drawing Number**  
**AR08-0**

**Project Number**  
**11-02**

**Status**  
**PLANNING PERMIT ISSUE**