



Maddocks

Lawyers
Collins Square, Tower Two
Level 25, 727 Collins Street
Melbourne VIC 3008
Australia

Telephone 61 3 9258 3555
Facsimile 61 3 9258 3666

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

DX 259 Melbourne

Date 21/5/21

Heads of Agreement

Sale and redevelopment of 2-12 Wilkinson Street, Brunswick

Moreland City Council
ABN 46 202 010 737
and

Moreland Affordable Housing Ltd
ACN 630 001 446

Contents

1.	Definitions	3
2.	Appointment of Moreland Affordable Housing Ltd.....	4
2.1	Appointment.....	4
2.2	Acceptance of Appointment.....	4
3.	Purpose of Agreement.....	4
4.	Acknowledgement.....	4
5.	Process.....	5
5.1	Drafting & Negotiation of Contract Documentation	5
5.2	Conduct of Negotiations	5
5.3	Form of Contract Documentation.....	5
5.4	Execution of Contract Documentation.....	5
5.5	Termination if Contract Documentation cannot be agreed.....	5
6.	Conditions precedent to execution of the Contract Documentation by Council	5
7.	Communication	6
8.	No Fettering of Council's Powers.....	6
9.	Conflicts of Interest.....	6
9.1	Declaring Potential Conflicts of Interest.....	6
9.2	Council's Right to Terminate.....	7
10.	Probity	7
10.1	Probity.....	7
10.2	Canvassing	7
11.	Confidentiality	7
12.	Breach	8
13.	Binding Agreement	8
14.	Dispute Resolution.....	8
14.1	Reasonable Endeavours	8
14.2	Notice.....	8
14.3	Dispute Notice.....	8
14.4	Instructions to Dispute Expert.....	8
14.5	Determination binding.....	9
14.6	Costs of Dispute Expert.....	9
14.7	Obligations to continue	9
15.	GST	9
15.1	Definitions	9
15.2	GST Exclusive.....	9
15.3	Increase in Consideration	9
15.4	Payment of GST.....	10
15.5	Tax Invoice.....	10
15.6	Reimbursements	10
15.7	Adjustment events.....	10
16.	General	10

16.1	Amendment.....	10
16.2	Entire Understanding.....	10
16.3	Further Assurance.....	10
16.4	Legal Costs and Expenses.....	10
16.5	Waiver and Exercise of Rights.....	11
17.	Notices.....	11
17.1	Service of Notice	11
17.2	Particulars for Service	11
17.3	Time of Service	11
18.	Interpretation.....	11
18.1	Governing Law and Jurisdiction.....	11
18.2	Persons.....	12
18.3	Joint and Several.....	12
18.4	Legislation.....	12
18.5	This Document, Clauses and Headings	12
18.6	Severance.....	12
18.7	Counterparts	13
18.8	Currency	13
18.9	Business Day.....	13
18.10	Number and Gender.....	13
Schedule 1.....		15
Schedule 2.....		19
Schedule 3	Property Plan.....	21

Heads of Agreement

Date / /

Parties

Name	Moreland City Council (ABN 46 202 010 737)
Address	90 Bell Street, Coburg, Victoria
Contact	Kirsten Coster
Email	kcoster@moreland.vic.gov.au
Short name	Council

Name	Moreland Affordable Housing Ltd (ACN 630 001 446)
Address	90 Bell Street, Coburg, Victoria
Contact	Chairperson
Email	chair@mah.org.au
Short name	MAH

Background

- A. In February 2020, Council entered a Memorandum of Understanding to engage with MAH either directly or through partnership with other organisations.
- B. The agreement supports the express intentions of MAH outlined in its constitution to achieve through accepting by way of transfer, lease or other mechanisms, land from Council for development for the purpose of increasing the range of affordable housing in the City of Moreland.
- C. Council is the owner in fee simple of the Council Land.
- D. On 9 September 2020 Council considered a report on the planned actions by MAH and Council towards its first affordable housing developments which was unanimously resolved that Council (amongst other things):
 - D.1 Notes that MAH will lodge a planning application for the Council Land, designed to meet the requirements of the Moreland Design Excellence Scorecard and subject to MAH agreeing to enter into a binding agreement with Council to develop the Council Land for affordable housing in perpetuity, as required by Council.
 - D.2 Receives the project feasibility report by February 2021 including the comprehensive assessment of development options provided by Moreland Affordable Housing Ltd on five feasibility sites, including the Council Land.

- D.3 Endorses a change in scope of the feasibility to be undertaken by MAH such that the Council Land site only considers a land transfer option (subject to the inclusion of a 173 Agreement on the land that, amongst other matters, requires its use for affordable housing in perpetuity) and does not include a lease option.
 - D.4 Council further resolved to write to Minister for Housing encouraging direct State Government support.
- E. Council and MAH have agreed on the Key Terms and have agreed to enter into this Agreement to establish the process for concluding the Contract Documentation, comprising:
 - E.1 the Contract of Sale; and
 - E.2 Section 173 Agreement (subject to the inclusion of a Section 173 Agreement on the land that, amongst other matters, requires its use for affordable housing in perpetuity),subject to Council complying with its statutory obligations in respect of the proposed sale of the Council Land.
- F. These Heads of Agreement establish a procedure for negotiation and execution of, but do not commit either Council or MAH to enter into, the Contract Documentation.

The Parties Agree

1. Definitions

1.1 In this document unless expressed or implied to the contrary:

Affordable Housing has the meaning in the *Planning and Environment Act 1987* (Vic) (and includes Social Housing).

Agreement means this heads of agreement.

Business Day means Monday to Friday excluding public holidays in Victoria.

Consultant means any person or corporate body directly or indirectly engaged by MAH.

Contract Documentation means either the:

- (a) Contract of Sale; and
- (b) Section 173 Agreement; and

and any other supporting documentation reasonably required by Council in a form agreed by the parties to document the commitment to the delivery of the Development by MAH.

Contract of Sale means the contract of sale for the Council Land on the terms set out in the Contract of Sale Terms Sheet.

Contract of Sale Terms Sheet means the terms sheet attached as Schedule 1 of this Agreement.

Council Land means the land contained in certificates of title:

- (a) volume 3169 folio 608;
- (b) volume 4180 folio 907;
- (c) volume 5537 folio 271; and
- (d) volume 8061 folio 911, and

known as 2-12 Wilkinson Street, Brunswick and shown on the plan contained in Schedule 3.

Council's Representative means Kirsten Coster, Director City Futures.

Development means the development of the Council Land as Affordable Housing in accordance with the Contract of Sale and the Section 173 Agreement.

Key Terms means the terms set out in the Contract of Sale Terms Sheet and the Section 173 Agreement Terms Sheet.

MAH's Representative means the Chairperson of MAH.

Negotiation Period means the period of two months commencing on the date of this Agreement or as otherwise agreed in writing between the parties.

Section 173 Agreement means the agreement in respect of the Council Land on the terms set out in the Section 173 Agreement Terms Sheet.

Section 173 Agreement Terms Sheet means the terms sheet attached as Schedule 2 of this Agreement.

Social Housing has the meaning as in section 4(1) of the *Housing Act 1983* (Vic).

2. Appointment of Moreland Affordable Housing Ltd

2.1 Appointment

Subject to MAH observing and performing all of its obligations under this Agreement and entering into the Contract Documentation, Council appoints MAH as its preferred purchaser to undertake the Development.

2.2 Acceptance of Appointment

MAH accepts the appointment referred to in clause 2.1.

3. Purpose of Agreement

The parties acknowledge and agree that the purpose of this Agreement is to:

- 3.1 identify the conditions precedent to the parties entering into the Contract Documentation;
- 3.2 identify the Key Terms;
- 3.3 establish a procedure for negotiation and execution of the Contract Documentation; and
- 3.4 otherwise govern the relationship between the parties during, and specify any other matters relevant to, the period between the appointment of MAH as the preferred purchaser by Council and execution of the Contract Documentation.

4. Acknowledgement

The parties acknowledge that:

- 4.1 if the Contract Documentation is agreed by the parties, submission of signed Contract Documentation constitutes an irrevocable offer by MAH to enter into the Contract Documentation; and
- 4.2 neither Council nor MAH is bound to enter into the Contract Documentation and either party may terminate this Agreement by notice in writing at any time, in which event neither party is entitled to claim any costs, losses, expenses or damages against the other for the termination of this Agreement.

5. Process

5.1 Drafting & Negotiation of Contract Documentation

MAH and Council agree to progress the drafting and negotiation of the Contract Documentation in good faith with the intention of ensuring the finalisation of the Contract Documentation within the Negotiation Period, subject to clauses 5.5 and 6.

5.2 Conduct of Negotiations

- 5.2.1 Council's Representative may convene negotiation meetings with MAH to progress the negotiation and drafting of the Contract Documentation.
- 5.2.2 Each party agrees to promptly respond to all reasonable requests of the other party for meetings and submission of documentation with the intention of finalising the Contract Documentation as quickly as possible.

5.3 Form of Contract Documentation

- 5.3.1 The terms of the Contract Documentation will reflect the Key Terms (as varied by agreement between the parties).
- 5.3.2 Council and MAH acknowledge and agree that the Key Terms are not exhaustive and are to be used as the basis for negotiation of the Contract Documentation.
- 5.3.3 The parties acknowledge that Council will be responsible for preparing the Contract Documentation.

5.4 Execution of Contract Documentation

If the Contract Documentation is agreed by the parties, MAH must execute the Contract Documentation and provide Council with a duly executed copy of the agreed Contract Documentation on or before the date that is 14 days after receipt from Council of execution copies of the Contract Documentation. MAH acknowledges that submission of the signed Contract Documentation to Council will constitute an offer by MAH to enter into the Contract Documentation.

5.5 Termination if Contract Documentation cannot be agreed

If the Contract Documentation is not agreed by the parties within the Negotiation Period, then either party may terminate this Agreement by notice in writing at any time after the end of the Negotiation Period and prior to the parties reaching agreement on the Contract Documentation, in which event neither party is entitled to claim any costs, losses, expenses or damages against the other for the termination of this Agreement.

6. Conditions precedent to execution of the Contract Documentation by Council

- 6.1 This Agreement is subject to and conditional upon Council complying with its statutory obligations pursuant to the *Local Government Act 1989 (Act)* in respect of the proposed sale of the Council Land, including to:

- 6.1.1 obtain a valuation of the Council Land which is made not more than 6 months prior to the sale, in accordance with section 189 of the Act;

- 6.1.2 give public notice of its intention to sell the Council Land at least 4 weeks prior to selling the subject land and invite submissions from the public in respect of the proposed sale in accordance with section 189 of the Act; and
 - 6.1.3 consider any submissions received in respect of the proposed sale in accordance with section 223 of the Act.
- 6.2 If, after having complied with sections 189 and 223 of the Act, Council decides (in its absolute discretion) not to proceed with the sale of the Council Land, Council shall have the right to terminate this Agreement by giving notice in writing to that effect to MAH.
- 6.3 Upon termination of this Agreement pursuant to clause 6.2, MAH acknowledges that it shall have no action, right, claim or demand against Council under this Agreement or arising from or out of the termination by Council pursuant to this clause 6.

7. Communication

- 7.1 All enquiries by MAH in respect of any aspect of the sale or development of the Council Land must be directed to Council's Representative.
- 7.2 MAH is prohibited from directly contacting any councillor, member of Council's staff or consultant of Council to discuss any aspect of the sale or development of the Council Land without the prior approval of Council's Representative. A breach of this requirement will be sufficient cause for MAH to be disqualified from further involvement in the sale and development of the Council Land.
- 7.3 Where MAH considers it necessary or desirable to meet with councillors, or members of Council's staff or consultant of Council for any reason, such a request must be facilitated through Council's Representative in order to ensure that all probity requirements are met.

8. No Fettering of Council's Powers

This Agreement does not fetter or restrict the power or discretion of Council to make any decision including requirements or conditions in connection with any use or development of the Council Land or the granting of any planning approval, the approval or certification of any plans of subdivision or consolidation applicable to the Council Land, or the issue of a statement of compliance in connection with any such plans, or any other power or discretion of Council under any law or Act (including the *Local Government Act 1989*, *Local Government Act 2020*, *Planning and Environment Act 1987* or *Subdivision Act 1988*).

9. Conflicts of Interest

9.1 Declaring Potential Conflicts of Interest

MAH must declare any actual or potential conflicts of interest that may arise in respect of the Development in relation to:

- 9.1.1 MAH and Council; and/or
- 9.1.2 Council and any consultant or subcontractor that MAH proposes to engage for the Development.

9.2 Council's Right to Terminate

- 9.2.1 If Council considers that MAH may or will have a conflict of interest in relation to the Development or Council, then Council may in its sole discretion terminate this Agreement.
- 9.2.2 If Council exercises its right under clause 9.2.1 to terminate this Agreement, MAH acknowledges that Council has complete discretion to do so and that MAH is not entitled to claim any costs, losses, expenses or damages against Council for the termination of this Agreement.

10. Probity

10.1 Probity

MAH agrees to comply with any probity requirements of Council or any probity advisor appointed by Council during the process covered by this Agreement.

10.2 Canvassing

- 10.2.1 MAH, its employees or Consultants must not approach, or request any councillor, member of Council's staff or consultant engaged by Council:
- (a) to solicit support for its proposal; or
 - (b) otherwise seek to influence the outcome of the negotiation between the parties.
- 10.2.2 MAH will, to the extent practicable and reasonable, avoid socialising with any councillor, member of Council's staff or consultant engaged by Council and, where such socialising occurs, refrain from discussing its proposal or the Development.

11. Confidentiality

The parties acknowledge and agree that:

- 11.1 the terms and existence of this Agreement are confidential and must not be disclosed to any third party without the prior written consent of the other party (which must not be unreasonably withheld or delayed), except:
- 11.1.1 to consultants engaged by either party in connection with the proposed sale and development of the Council Land; and
 - 11.1.2 in respect of Council, to the extent that it is required to disclose information regarding the Agreement under the *Local Government Act 1989* (Vic) or *Local Government Act 2020* (Vic) or any other law;
- 11.2 no press release or public statement about the terms of this Agreement or the Contract Documentation will be made by either party without the prior written consent of the other party which must not be unreasonably withheld or delayed; and
- 11.3 they will work together to develop mutually satisfactory press releases or public statements.

12. Breach

- 12.1 If either party breaches this Agreement and remains in breach after 14 days of having received a written request from the other party to rectify the breach, the party not in breach may terminate this Agreement by providing 7 days written notice to the party in breach.
- 12.2 If either party exercises its right under clause 12.1 to terminate this Agreement or this Agreement terminates pursuant to clause 5.5, the other party is not entitled to claim any costs, losses, expenses or damages against the terminating party for the termination of this Agreement.

13. Binding Agreement

- 13.1 MAH and Council agree that this Agreement is intended to be a legally binding agreement enforceable by the parties.
- 13.2 MAH represents and warrants to Council that it has full legal capacity and power to enter into, exercise its rights and perform its obligations under, this Agreement.
- 13.3 Council represents and warrants to MAH that it has full legal capacity and power to enter into, exercise its rights and perform its obligations under, this Agreement.

14. Dispute Resolution

14.1 Reasonable Endeavours

Each of the parties must use its reasonable endeavours to co-operatively resolve a dispute or difference arising under or in connection with this Agreement or the form of the Contract Documentation (**dispute**).

14.2 Notice

If a dispute arises, notice in writing must be given by the party claiming dispute and the dispute must be referred to MAH's Representative and Council's Representative for resolution.

14.3 Dispute Notice

If the dispute is not resolved within 5 Business Days after being referred to the representatives of each party under clause 14.2, either party may refer the dispute to an independent expert agreed by the parties (or failing agreement within 5 Business Days, an independent expert nominated by the Law Institute of Victoria (or equivalent professional body) (**Dispute Expert**).

14.4 Instructions to Dispute Expert

The parties must instruct the Dispute Expert to:

- 14.4.1 call for any information or make any investigation that the Dispute Expert considers appropriate;
- 14.4.2 place relative weightings on the information or findings of the investigation that the Dispute Expert sees fit;

- 14.4.3 act as an expert and not as an arbitrator;
- 14.4.4 determine the dispute in any manner which the Dispute Expert considers appropriate;
- 14.4.5 consider matters of occupational and public health and safety and transport policy as paramount;
- 14.4.6 make a determination as soon as possible; and
- 14.4.7 inform the parties to the dispute in writing of the determination.

14.5 Determination binding

Any determination of the Dispute Expert is binding on all parties in the absence of fraud or a manifest error.

14.6 Costs of Dispute Expert

The parties must pay the costs and the expenses of the Dispute Expert equally unless otherwise determined by the Dispute Expert. The parties may be legally represented during this process.

14.7 Obligations to continue

Both parties must continue to comply with their obligations pursuant to the terms of this Agreement during the currency of the dispute resolution procedure pursuant to this clause.

15. GST

15.1 Definitions

In this clause 15:

- 15.1.1 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 15.1.2 **GST** means GST within the meaning of the GST Law and includes penalties and interest. If under or in relation to the *National Taxation Reform (Consequential Provisions) Act 2000* (Vic) or a direction given under section 6 of that Act, the supplier makes voluntary or notional payments, the definition of GST includes those voluntary or notional payments and expressions containing the term 'GST' have a corresponding expanded meaning; and
- 15.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999*.

15.2 GST Exclusive

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

15.3 Increase in Consideration

If GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient will pay to the supplier an amount equal to the GST payable on the supply.

15.4 Payment of GST

Subject to clause 15.5 the recipient will pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

15.5 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 15.4.

15.6 Reimbursements

If this Agreement requires a party to reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:

15.6.1 the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and

15.6.2 if the payment or reimbursement is subject to GST, an amount equal to that GST.

15.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Agreement:

15.7.1 the supplier must provide an adjustment note to the recipient within 7 days of becoming aware of the adjustment; and

15.7.2 any payment necessary to give effect to the adjustment must be made within 7 days after the date of receipt of the adjustment note.

16. General

16.1 Amendment

This Agreement may only be varied or replaced by a document duly executed by the parties.

16.2 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

16.3 Further Assurance

Each party must promptly execute and deliver all documents and take all other reasonable action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

16.4 Legal Costs and Expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

16.5 Waiver and Exercise of Rights

- 16.5.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 16.5.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

17. Notices

17.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

- 17.1.1 personally on the person;
- 17.1.2 by leaving it at the person's current address for service;
- 17.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or
- 17.1.4 by email to the person's nominated email address for service.

17.2 Particulars for Service

- 17.2.1 The particulars for service of each party are set out on page one of this Agreement under the heading Parties.
- 17.2.2 Any party may change the address, facsimile or email number for service by giving notice to the other parties.
- 17.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

17.3 Time of Service

A notice or other communication is deemed served:

- 17.3.1 if served personally or left at the person's address, upon service;
- 17.3.2 if posted within Australia to an Australian address, two Business Days after posting and in any other case, seven Business Days after posting; or
- 17.3.3 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

18. Interpretation

18.1 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction

of the courts of Victoria and waives any right to object to proceedings being brought in those courts.

18.2 Persons

In this Agreement, a reference to:

18.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

18.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and

18.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

18.3 Joint and Several

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

18.4 Legislation

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

18.5 This Document, Clauses and Headings

In this Agreement:

18.5.1 a reference to this Agreement or other document includes the Agreement or other document as varied or replaced regardless of any change in the identity of the parties;

18.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;

18.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;

18.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;

18.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and

18.5.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

18.6 Severance

18.6.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

18.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

18.7 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

18.8 Currency

In this Agreement, a reference to '\$' or 'dollars' is a reference to Australian dollars.

18.9 Business Day

If a payment or other act is required by this document to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

18.10 Number and Gender

In this Agreement, a reference to:

18.10.1 the singular includes the plural and vice versa; and

18.10.2 a gender includes the other genders.

Signing Page

Executed as a deed:

Signed by **Kirsten Coster** the delegate for and on behalf of **Moreland City Council** in the presence of:

) 

)
) Kirsten Coster

24/06/2021



.....
Witness (signature)

Mike Collins

.....
Witness (print name)

Executed as a deed by **Moreland Affordable Housing Limited ACN 630 001 446** in accordance with s 127(1) and s 127(3) of the *Corporations Act 2001*:

)
)
)
)



Signature of Director



/Company Secretary

Anthony (Tony) Nippard
Print full name

Melanie Sherrin
Print full name

Schedule 1

Contract of Sale Terms Sheet

1. Vendor	Moreland City Council of 90 Bell Street, Victoria (Council)
2. Purchaser	Moreland Affordable Housing Ltd ACN 630 001 446 of 90 Bell Street Coburg, Victoria 3058 (MAH)
3. Property	The land being approximately 1093 square metres comprising the land contained in certificates of title volume 3139 folio 608, volume 4180 folio 907, volume 5537 folio 271 and volume 8061 folio 911 and generally known as Wilkinson Car Park, 2-12 Wilkinson Street, Brunswick (Council Land)
4. Price	The consideration is the Purchaser entering into the Contract of Sale and the section 173 agreement referred to in clause 12
5. Deposit	Nil
6. GST Liability	MAH is responsible for the payment of any GST payable on the sale of the Property.
7. Day of Sale	The date on which the Contract of Sale is signed by both parties.
8. Vacant Possession	Council will provide vacant possession of the Council Land at settlement.
9. Settlement Date	Is due on the date which is 60 days after the later of the dates on which: (a) MAH procures the grant of the Planning Permit referred to in clause 11.1; and (b) MAH procures the Construction Funding referred to in clause 11.2.
10. Form of Contract	<p>The contract shall be in the form formerly prescribed by the <i>Estate Agents (Contracts) Regulations 2008</i> with special conditions incorporating the terms of sale, including the conditions precedent set out in clause 11 below (Contract of Sale).</p> <p>The Contract of Sale will otherwise contain such other special conditions for a contract of sale appropriate for the sale of the Council Land or which are reasonably required by Council.</p>

<p>11. Conditions Precedent – MAH</p>	<p>11.1 Planning Permit</p> <ul style="list-style-type: none"> (a) The Contract of Sale will be subject to and conditional on MAH obtaining at its own cost a planning permit on conditions reasonably satisfactory to MAH to enable the Council Land to be developed and used for affordable housing (including social housing) of such size, features and quality as agreed between MAH and Council in accordance with clause 11.1(b) (Planning Permit), within 18 months after the Day of Sale (Planning Permit Date). (b) The parties agree that the affordable housing (including social housing) at the Council Land must meet the Moreland Design Excellence Scorecard. (c) If at the Planning Permit Date, MAH has at all times acted in good faith and done everything reasonably necessary to obtain the Planning Permit but, for reasons beyond its control, has been unable to do so, Council agrees to extend the Planning Permit Date by a period of six (6) months, provided that the Planning Permit Date cannot be extended beyond a period that is 24 months after the day of sale. (d) MAH must at its own cost do all things necessary to obtain the Planning Permit as soon as practicable after the day of sale. (e) MAH must keep Council informed on a regular basis as to its progress in obtaining the Planning Permit and give Council written notice that the Planning Permit has been granted. (f) MAH is responsible for all costs and expenses associated with the Planning Permit and Council shall not be obliged to make any payments on behalf of MAH in relation to either the request for the Planning Permit or complying with any conditions of the Planning Permit. (g) Provided that MAH's application for the Planning Permit (Application) complies with clause 11.1(b) in Council's reasonable opinion, Council agrees in its capacity as the owner of the Council Land to promptly sign the Application if requested to do so by MAH. Council otherwise reserves the right to determine the Application subject to the proper exercise of its statutory functions, duties and powers as the responsible authority under the Moreland Planning Scheme and pursuant to the <i>Planning and Environment Act 1987</i>. (h) Subject to clause 11.1(c), if MAH has not obtained the Planning Permit by the Planning Permit Date, either party may rescind the Contract of Sale (provided that such party is not otherwise in breach of its obligations under the
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	<p>Contract of Sale) by giving written notice to that effect to the other party, whereupon neither party will have any action, right or claim against the other party arising from the rescission of the Contract of Sale or MAH's failure to obtain the Planning Permit.</p> <p>11.2 Construction funding</p> <p>(a) The Contract of Sale is conditional on MAH giving:</p> <p>(i) notice to Council that it has procured construction funding sufficient for the undertaking of the Development on terms acceptable to MAH acting reasonably (Construction Funding); and</p> <p>(ii) evidence to Council substantiating the Construction Funding,</p> <p>promptly after MAH has procured Construction Funding and within 18 months after the Day of Sale or such later dates as Council and MAH may agree (Construction Funding Approval Date).</p> <p>(b) If MAH has not given notice and evidence to Council that it has procured Construction Funding by the Construction Funding Approval Date, either party may terminate the Contract of Sale by giving notice in writing to that effect to either party at any time after the Construction Funding Approval Date but before the Purchaser procures the Construction Funding.</p> <p>(c) If the Contract of Sale is rescinded under clause 11.2(b), unless otherwise provided for in the Contract of Sale, neither party will have any claim against the other under the Contract of Sale or arising from or out of the rescission of the Contract of Sale including the failure of MAH to achieve substantial commencement of the development of the Council Land.</p>
12. Section 173 Agreement	By no later than 10 business days prior to settlement, MAH will deliver to Council a signed agreement pursuant to section 173 of the <i>Planning and Environment Act 1987</i> (Section 173 Agreement) in the form described in the attached Section 173 Agreement Term Sheet, a copy of which will be annexed to the Contract of Sale.
13. No nomination	MAH will have no right to nominate an additional or substitute purchaser under the Contract of Sale.
14. Costs	The parties shall each bear their own costs with respect to the preparation, negotiation and execution of the Contract of Sale and the Section 173 Agreement.
15. Environmental	MAH acknowledges that it is aware of the environmental condition of the Property and acquires the Property "as is". MAH will not make any claim whatsoever against Council or refuse to settle the Contract of Sale due to the presence of,

	or in relation to, any contamination affecting the Property. MAH agrees to release Council from all and any claims by MAH in respect of contamination that MAH may have at the Day of Sale or at any time in the future and to indemnify Council from claims made by any other party in respect of the environmental condition of the Property on and from the Day of Sale.
16. Risk	Risk in the Council Land will pass to MAH at settlement of the Contract of Sale.
17. Non fettering	Nothing in the terms of the Contract of Sale shall fetter or restrict the power or discretion of Council to make or impose requirements or conditions in connection with any use or development of the Property or the granting of any planning approval, the approval or certification of any plans of subdivision or consolidation applicable to the Property or the issue of a statement of compliance in connection with such plans, or any other power or discretion of Council under any Act or at law.

Schedule 2

Section 173 Agreement Terms Sheet

1. Construction of development

(a) The owner covenants to:

- (i) develop the land generally in accordance with the planning permit obtained by the purchaser under the contract of sale for the land (**Development**);
- (ii) substantially commence the Development within 2 years after settlement of the contract of sale for the land (**Contract of Sale**); and
- (iii) practically complete the Development within 4 years after settlement of the Contract of Sale.

(b) If the owner has not:

- (i) substantially commenced the Development by the date which is 2 years after settlement of the Contract of Sale; or
- (ii) practically completed that the Development by the date which is 4 years after settlement of the Contract of Sale,

then the owner must at Council's election, transfer the land to Council for the Specified Consideration.

(c) In this clause 1:

- (i) **practically completed** or **practical completion** means the following:
 - (A) the issue of an occupancy permit or a certificate of final inspection pursuant to the *Building Act 1993* (Vic) in respect of the Development; and
 - (B) completion of all of the works for the Development;
- (ii) **Specified Consideration** means:
 - (A) if the owner breaches clause 1(a)(ii), nil consideration; and
 - (B) if the owner breaches clause 1(a)(iii), the value of the improvements on the land at the time of the breach calculated by reference to the market value of the land and any improvements thereon less the market value of the land only (without any improvements); and
- (iii) **substantially commence** or **substantial commencement** means the completion of construction of not less than 20% of the budgeted works.

2. Social Housing and Affordable Housing

Following practical completion of the Development, at least 85% of the dwellings constructed on the land must be used as affordable housing or social housing at all times (**Affordable Housing Dwellings**), of which at least 50% must be used as social housing.

3. Perpetuity

Following practical completion of the Development:

- 3.1 the section 173 agreement will remain registered on all titles issued for the Affordable Housing Dwellings in perpetuity; and
- 3.2 the section 173 agreement will be removed from the title(s) to any part of the land that is not an Affordable Housing Dwelling.

4. Transfer to a registered agency

4.1 Subject to clause 4.2, the owner must not transfer any of the Affordable Housing Dwellings to a third party other than:

- (a) to a registered agency (as defined in the *Housing Act 1983*); and
- (b) where all affordable housing dwellings are to be transferred in a single transfer to the same third party.

4.2 The parties agree that subject to clause 4.1:

- (a) Moreland Affordable Housing Limited (**MAH**) must not transfer any Affordable Housing Dwellings to any third party until after the Development has been practically completed; and
- (b) provided that the Development has been practically completed, MAH may transfer up to 90% of the Affordable Housing Dwellings to a registered agency.

5. Local Benefit

When selecting residents for the Affordable Housing Dwellings, the owner must give preference to persons who can provide evidence satisfactory to the owner to show that, for at least two years prior to the date of selection of residents, the person has been (in order of preference):

- 5.1 ordinarily resident in the City of Moreland; or
- 5.2 employed or educated within the City of Moreland.

6. Restriction on use as security

The owner must not use the land as security for any loan unless:

- 6.1 the loan is to fund affordable housing projects within the City of Moreland; and
- 6.2 the owner obtains Council's prior written consent, which may be granted or withheld at Council's absolute discretion.

7. Other terms

The section 173 agreement will otherwise be drafted on terms which are reasonably required by Council.

Schedule 3 Property Plan

2-12 Wilkinson Street, Brunswick

