

ITEM 9.2.6
APPENDIX A

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| SHIRE OF YORK | |
| LE. AVI. 60050 | |
| OFFICER | INITIALS |
| RAY | |
| 9 SEP 2011 | |
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| REFERRED TO COUNCIL | |
| DATE | INITIALS |
| 19/9/11 | |

SHIRE OF YORK

-AND-

AVON COMMUNITY DEVELOPMENT FOUNDATION (INC)

CONTRACT OF SALE
LOTS 2, 3, 4, 5, 6 AND 13 REDMILE ROAD, YORK

MAYBERRY HAMMOND & CO
SOLICITORS
85 FITZGERALD STREET
NORTHAM WA 6401

TELEPHONE: (08) 9622 5755
(MBH:HC:35074)

THIS AGREEMENT is made the _____ day of _____ 2011

BETWEEN:

SHIRE OF YORK of PO Box 22, York in the State of Western Australia, (herein called "the Seller") of the one part; and

AVON COMMUNITY DEVELOPMENT FOUNDATION (INC) of PO Box 272, Northam in the said State, (herein called "the Buyer") of the other part.

WHEREBY it is mutually agreed as follows :-

1. **Purchase Price:**

The Seller will sell and the Buyer will purchase all the estate and interest in fee simple in possession of the Seller free from encumbrances in the land (and all erections and improvements thereon) described in the Schedule hereto (the Land) for the purchase price of **FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00) plus GST**.

2. **Manner of Payment:**

The Buyer will pay to the Seller at its address herein or as otherwise directed in writing from time to time by the Seller the said Purchase Price as follows :-

- (a) Deposit sum of **FIVE THOUSAND DOLLARS (\$5,000.00)** to be paid to the Seller's Agent as set out herein within **SEVEN (7)** days of all conditions for this Contract for Sale as set out in the Schedule hereto clause 19 hereto **being completed.**
- (b) The **balance** of the Purchase Price plus GST plus the adjustment of any outgoings and amounts payable by the Seller.

3. **Possession and Settlement Date:**

The Buyer shall be entitled to vacant possession of the Land within ninety (90) days from the completion of all of the special Conditions as set out in the Schedule hereto or such earlier date as may be agreed by the parties hereto (the Settlement Date).

On the Settlement Date the Buyer shall pay to the Seller the balance of the Purchase Price plus GST plus the adjustment of outgoings and amounts then due and payable by the Seller.

4. **Rates and Taxes:**

All Rates and Taxes and other outgoings in respect of the said land shall be paid by the Seller up to the Settlement Date shown in Clause 3 hereof and thereafter by the Buyer and if necessary an apportionment shall be made.

5. **Seller Representations:**

The Buyer admits that neither the Seller nor its agent or agents have made any representations concerning the Land and that the Buyer has satisfied itself by personal inspection as to the condition of the Land and any improvements thereon.

6. **Rights and Easements:**

The Land is sold subject to all rights and easements (if any) affecting the same.

7. **Transfer of Title:**

On payment of the balance of the said Purchase Price and all interest thereon due and payable at that time and subject to all the terms covenants and conditions herein having been fully complied with on the part of the Buyer the Buyer is entitled to receive from the Seller a proper registerable Transfer of the land in favour of the Buyer together with the duplicate Certificates of Title relating to such Transfer to be prepared stamped and registered at the expense of the Buyer.

8. **Seller's Warranties:**

The Seller represents that at the date of this Contract:

- (a) There are not within the knowledge of the Seller:
- (i) Any outstanding or impending demands orders or requisitions of any competent authority relating to the land;
 - (ii) Any proposals for the re-alignment widening or alteration of the level of any road adjoining the land by any competent authority;
 - (iii) Any pipes cables or other installations of any competent authority passing through the land.
- (b) There are no amounts owing to any competent Authority in respect of works performed or to be performed or any expenses incurred or to be incurred by such Authority in respect of the land and no such amounts will be owing at settlement.
- (c) The Seller has not received notice of any resumption or intended resumption of the land or any part thereof by any competent authority.

- (d) All buildings and improvements are on or within the boundaries of the land.
- (e) The present use stipulated in this Contract or (where no use is stipulated) the use to which the land is put at the date of this Contract is lawful.

9. **Payment of Costs:**

The Buyer agrees to pay the costs of and incidental to the instructions for and the preparation engrossing execution and stamping of this Agreement and its counterparts and shall bear and pay all duty assessed thereon.

10. **Encumbrances:**

Except as shown in the Schedule hereof the Seller covenants there are no mortgages liens charges writs warrants or encumbrances registered against or over the said land. In case of a mortgage it shall be sufficiently discharged to enable a Transfer to be registered to the Buyer free of encumbrances on payment of all monies owing hereunder. The Buyer accepts this as "Notice in Writing" for the purposes of Section 7 of The *Sale of Land Act 1970*.

11. **Chattels:**

The chattels referred to in the schedule are sold as inspected and the Seller represents that it is the owner thereof and that they are free from any lien, charge, encumbrance or other interest of any third party.

12. **Special Conditions:**

NOTWITHSTANDING anything herein contained to the contrary this sale is subject to the special terms and covenants and conditions contained in the Schedule hereof.

13. **2009 Joint Form General Conditions for the Sale of Land:**

The Law Society of Western Australia (Inc) and the Real Estate Institute of Western Australia (Inc) JOINT FORM of GENERAL CONDITIONS FOR THE SALE OF LAND (2009) REVISION) shall be incorporated herein and apply to this Contract so far as they are not varied or inconsistent with the express terms hereof.

14. **Interpretation and Definitions:**

In this agreement unless the context otherwise requires:-

(a) The expression:-

- (i) "The Seller" shall mean and include the Seller and each person who is a Seller and his and their and each of their personal representatives and transferees jointly and severally and in the case where the Seller is

a corporation or corporations shall mean and include the Seller and each corporation which is a Seller and its and their and each of their successors and Transferees jointly and severally;

(ii) "The Buyer" shall mean and include the Buyer and each person who is a Buyer and his and their and each of their personal representatives and transferees jointly and severally and in the case where the Buyer is a corporation or corporations shall mean and include the Buyer and each corporation which is a Buyer and its and their and each of their successors and transferees jointly and severally.

- (a) The singular number includes the plural number and the masculine gender includes the feminine and neuter genders and vice versa.
- (b) An undertaking by more than one person shall be deemed to be made by those persons jointly and each of them severally.
- (c) The captions, headings, section numbers and clause numbers appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of the sections or clauses of this Agreement nor in any way affect this agreement.

15. **Notices:**

- (a) Any notice or demand required to be served given or made hereunder by any of the parties may be given by that party or his Solicitor.
- (b) In addition to the methods of service provided for in Section 135 of the *Property Law Act 1974* any notice or demand required to be served given or made hereunder shall be sufficiently served if left on the premises of the party to be served or sent by prepaid Registered Post addressed to that party at his address appearing herein.
- (c) Any notice sent by Registered Post shall be deemed to have been received within forty eight (48) hours after the same shall have been posted notwithstanding actual non receipt and in proving service it shall be sufficient proof that the envelope containing the notice was properly addressed stamped and posted by Registered Post.

16. **Seller's Agent:**

17. Buyer's Agent:

Mayberry Hammond & Co
85 Fitzgerald Street
NORTHAM WA 6401

Telephone: 9622 5755
Facsimile: 9622 5633

IN WITNESS whereof the parties have hereunto set their seals the day and year first hereinbefore written.

THE SCHEDULE

The Land:

Lots 2, 3, 4 5 and 6 on Diagram 2623 and being the whole of the land contained in Certificate of Title Volume 484 Folio 137; and

Lot 13 on Plan 29848 and being the whole of the land contained in Certificate of Title Volume 1103 Folio 377.

Additional Property (Chattels):

Nil

Encumbrances:

Nil

Special Terms:

This Contract for Sale is subject to and conditional upon the following:-

- (a) The Buyer obtaining from the Department of Environment and Conservation a statement which confirms that the Land is not a site which is classified under the *Contaminated Sites Act 2003* within 28 days of the date of this Contract of Sale.
- (b) The Buyer obtaining a grant of three million seven hundred and thirty three thousand dollars (\$3,733,000.00) dollars plus GST from the Department of Housing and Works through Royalties for Regions funding for the completion of 18 residential dwellings on the Land by 31 December 2011;

- (c) The Department of Housing and Works and the Department of Regional Development and Lands executing a Funding Agreement for the allocation of funds in clause (b) above by 29 February 2012;
- (d) The Buyer completing a tender process and allocation of the tender for the construction of eighteen (18) residential dwellings on the Land by 30 April 2012 and which tender is conditional upon clauses (e) and (f) below;
- (e) The Buyer obtaining from the Shire of York Planning Consent for the development of the Land for the construction of eighteen (18) residential dwellings as submitted for approval by the Buyer in accordance with the Shire of York Town Planning Scheme No. 2 and subject to the acceptance by the Buyer of any conditions imposed by the Shire of York by 30 June 2012 for such development and Planning Consent approval;
- (f) The Buyer making an Application to the Shire of York for the approval of a Building Licence for the construction of eighteen (18) residential dwellings on the Land as submitted by the Buyer and subject to the acceptance by the Buyer of any conditions imposed by the Shire of York by 30 June 2012. The parties hereto agree that such Building Licence shall be conditional upon the Building Licence issuing when the Land is transferred into the name of the Buyer.

The Common Seal of **AVON COMMUNITY DEVELOPMENT FOUNDATION INC** was hereunto affixed by authority of a resolution of the Board of Management and in the presence of:



[Handwritten signature]

Full Name: *Barbara Ann Dunsen*

[Handwritten signature]

Full Name: *SIMON TODD HARTLEY*

The Common Seal of the **SHIRE OF YORK** was)
hereunto affixed by authority of a resolution of)
the Council and in the presence of:)

SHIRE PRESIDENT
John Patrick Hooper

CHIEF EXECUTIVE OFFICER
Raymond Patrick Hooper

