

201186

THIS LAND MANAGEMENT AGREEMENT is made on the day of 2004

BETWEEN:

SAMUEL PROPERTY GROUP PTY LTD and A. D'ANDREA & ASSOCIATES PTY LTD
both of S4, 76 Osmond Tce Norwood SA
(Collectively called "the Owners")

AND

CITY OF UNLEY
of 181 Unley Road Unley SA 5061
("the Council")

AND

ENGELS HARDWARE PTY LTD
of 1460 Main North Road SALISBURY NORTH SA 5106 **AND**
VALERIE ANN ENGEL
of 5 Fergusson Court WYNN VALE SA 5172
(Collectively called "Engel")

RECITALS

- A. 1. Samuel Property Group Pty Ltd ("SPG") and A. D'Andrea and Associates Pty Ltd ("ADA") are the joint owners of the land in Certificate of Title Volume 5087 Folio 21 and known as 92 King William Road, Goodwood ("92 KWR").
2. Samuel Property Group Pty Ltd (SPG) is also the owner of the land in Certificate of Title Volume 5200 Folio 495 and known as 94 King William Road Goodwood ("94 KWR").
3. Engels Hardware Pty Ltd and Valerie Ann Engel (Engel) are the joint owners of the land in Certificate of Title Volume 5108 Folio 563 and known as 96-98 King William Road Goodwood ("96-98 KWR").
- B. All of the land described as 92 KWR, 94 KWR and 96-98 KWR is within the area of the City of Unley and is hereunder collectively referred to as "the subject land".
- C. SPG and ADA lodged a Development Application with the Council to establish on 92 KWR and 94 KWR a combined retail/commercial/residential development ("the development") The said application was given development application number DA090/0005/03.
- D. The Council is the planning authority pursuant to the Development Act (the Act) in respect of the application.
- E. As part of the application the SPG, ADA and Engel indicated that they were prepared to enter into a Land Management Agreement with the Council regarding certain matters and features of the development including in particular the taking of access from Bloomsbury St, Goodwood over the

land known as 96-98 KWR.

- F. The development involves 47 car parks at both ground level and in an undercroft format on the land situated at 92 KWR and 94 KWR. Access to the car-parking area is proposed to be taken from the land known as 96-98 KWR, which land has a frontage to Bloomsbury Ave.
- G. Engel has subject to the terms and conditions hereinafter appearing agreed to allow access to be taken over the land situated at 96-98 KWR so as to enable the development to proceed as no vehicular access is proposed to be taken from King William Rd to the land situated at either 92 KWR or 94 KWR.
- H. On 10 November 2003 the Council granted Provisional Development Plan Consent to the development subject to a number of conditions including that a Land Management Agreement be registered over the land known as 92 KWR, 94 KWR, 96 KWR and 98 KWR.
- I. Pursuant to the provisions of Section 57(2) of the Act the parties have agreed to enter into this Agreement to deal with certain matters relating to the future management and development of the land

OPERATIVE PART

The Council, the Owner and Engel agree as follows:

1. INTERPRETATION

1.1. Definitions

In this document unless the context otherwise requires:

"the Owner" means, as the case permits or requires, the person(s) and/or company(ies) from time to time being registered or entitled to be registered as the proprietor(s) of an estate in fee simple in the land identified in Certificates of Title Volume 5087 Folio 21, Volume 5200 Folio 495 and Volume 5108 Folio 563 collectively known as 92 – 98 King William Road Goodwood or any one or more of them.

"the Council" means the of the City of Unley and its successors.

"consent" shall include any development approval that may issue in relation to DA 090/005/03.

1.2.

- (a) words importing the singular include the plural and vice versa;
- (b) an obligation of two or more parties shall bind them jointly and severally;
- (c) if a word or phrase is defined cognate words and phrases have corresponding definitions; and
- (d) a reference to:
 - (i) a person includes a corporation and a body politic;
 - (ii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or

- replacements of any of them made by any legislative authority;
- (iii) any thing (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them; and
 - (iv) a right includes a remedy, authority or power.
- (e) any reference to a numbered allotment/lot is a reference to that allotment/lot on the attached plan which numbers may not represent the correct allotment/lot number assigned to those allotments in the Lands Title Office.

1.3 The parties further agree that the terms and conditions that follow are in addition to any conditions that may be imposed by the Council in respect of the development.

1.4. Headings

Headings shall be ignored in construing this document.

2. Access to 92 – 94 King William Road

Subject to the terms hereinafter appearing, Engel agrees to provide unrestricted access over its land at 96-98 KWR to the owners, users and visitors to 92 KWR and 94 KWR on the following terms and conditions:-

- 2.1 The owners of 92 KWR and 94 KWR agree to pay to Engel a licence fee in the amount of \$10,000 per annum (plus GST) which sum is to be increased annually by the Consumer Price Index – all indices for the City of Adelaide. The licence fee shall be payable in equal monthly instalments with payment in advance and payable on the first day of each month.
- 2.2 SPG and ADA will perform at their cost (and at no cost to Engel) all of the works over the land at 96 – 98 KWR as detailed in the plans approved by the Council including establishment of the carpark together with garden beds, fencing on the western boundary, watering system, landscaping and lighting. All such work shall be done consistent with and to the same standard as the work on 92 & 94 KWR.
- 2.3 SPG and /ADA agree to maintain all of the works that they establish on 96-98 KWR at no cost to Engel. Such costs are to also include any (on-going) electricity charges and water charges associated with any works performed on the land at 96-98 KWR. Engel agrees to allow SPG and ADA access to the land at 96-98 KWR at all reasonable times for the purposes of performing and maintaining the said works.
- 2.4 SPG and ADA shall establish a waste bin area on the land at 92-94 KWR which waste bin area can be accessed and used by those persons using or making use of 96-98 KWR.
- 2.5 Any works performed on the Engel Land shall not result in the reduction of any car parking spaces on that land.

3. PARKING AVAILABILITY and SHARED PARKING

- 3.1 The parties agree that all visitors to the subject land shall have a free and unrestricted right to park their vehicle in any one of the designated car parking spaces on the subject land, however, each party hereby undertakes to encourage and request such visitors to, wherever

possible, park in areas of the subject land which are directly connected to that part of the subject land associated with the visitors purpose of visit.

- 3.2 The Owners hereby agree that any staff of any business occupying any of the subject land, shall be directed by the relevant owner to park on that portion of the subject land to which the respective owner's business relates.

4. COMMENCEMENT OF AGREEMENT

The parties agree that the payment of the licence will commence from 1 August 2004.

5. INSURANCE

- 5.1 The owners of the land at 92 KWR and 94 KWR agree to at all times hold appropriate insurance to indemnify and keep indemnified Engel in relation to any claim that may be made in relation to or during the construction works associated with the development in circumstances where the claim arises from or involves the use of the land 96 KWR -98 KWR.

- 5.2 The Owner of the land at 92 KWR and 94 KWR will hold the relevant indemnity insurance to indemnify them and Engel in relation to any claim that may be made by persons using or intending to use the land at 92 KWR and 94 KWR arising as a result of the use of the car park and/or access area on or over the land at 96-98 KWR.

6. ADDITIONAL REQUIREMENTS

The requirements of this Agreement are at all times to be construed as additional to the requirements of the Act and any other legislation affecting development of the land.

7. OPERATION OF THIS DEED

The parties expressly agree and declare that the provisions of this Deed will not be binding or impose any obligation upon them unless or until the date the Registrar-General notes this agreement as a memorial over the relevant titles in respect of all of the land save for the obligation to pay the licence fee in accordance with clause 4.

8. RESCISSION

In the event that any development authorisation obtained for the development lapses or expires by virtue of the provisions of the Act without being implemented by SPG and SPG/ADA all of the parties agree to rescind this Deed at the request of the SPG and SPG/ADA and the reasonable costs of and incidental to the preparation, stamping and registration of the Deed of Rescission shall be borne by the SPG and SPG/ADA.

9. RIGHT OF INSPECTION

The Council and any employee or agent of the Council authorised by the Council may for the purposes of this Agreement at any reasonable time enter into and upon the land for the purpose of:-

- 9.1. inspecting the land and any building on the land
9.2. exercising any other powers of the Council under this Agreement.

10. NOTICE TO REMEDY

If any Owner is in breach of this Agreement the Council must by notice in writing served on the relevant owner and in all cases on SPG and SPG/ADA request SPG and SPG/ADA to remedy the breach (including the reinstatement of the land) within such reasonable time nominated by the Council in the notice (being not less than 10 business days of the date of the service of the notice) and if the SPG and SPG/ADA fails to remedy the breach, the Council or its servants or agents may carry out the requirements of the notice and in so doing perform any necessary works upon the land and recover any costs thereby incurred from SPG and SPG/ADA as a debt due and owing to the Council. If any notice requires Engel to carry out any work SPG/ADA agree to indemnify Engel in relation to the cost of any such work and at its option perform that work.

11. RIGHT TO REMOVE

If in a notice referred to in the preceding paragraph the Council requires removal of anything from the land which may include but shall not be limited to a building or material of any kind the Council and its servants or agents are hereby authorised and empowered by SPG and SPG/ADA to remove the said thing or things from the land (provided that the said thing or things have not previously been approved by the Council) and dispose of it or them in any manner determined by the Council PROVIDED THAT if the said thing or things shall have any monetary value then the Council shall use its best endeavours to realise that monetary value and shall after the disposal account to the relevant Owner and pay to it the realised value less all expenses reasonably incurred by the Council in such removal and disposal.

12. DELEGATION

The Council may delegate any of the Council's powers under this Agreement to any person.

13. GIVING OF NOTICE

A notice shall for the purpose of this Agreement be properly served on the relevant Owner if it is:-

- 13.1 posted to the Owner's last address known to the Council in which event it will be deemed to have been received on the day after posting,
 - 13.2 affixed to a prominent position on the land
- and in all circumstances the notice is to be served on SPG/ADA.

14. REGISTRATION AND COSTS

- 14.1 Each of the parties hereto agree to execute all documents necessary to give effect to this agreement and for the notation/registration of this agreement over the relevant Certificates of Title and will also arrange for anyone having a legal or equitable interest in the land to grant their consent to the registration of this agreement over the title to the land(s).
- 14.2 SPG and SPG/ADA agree to meet all the Registration and Stamp Duty costs associated with the registration of this Agreement over all of the land and will pay the total of \$440 inclusive of GST in respect with any legal costs that Engel incurs in seeking advice in relation to this agreement but otherwise the parties will bear their own costs of this agreement.
- 14.3 The Council requests that this Agreement be registered on the land comprised in the Certificates of Title Volume 5087 Folio 21, Volume 5200 Folio 495 and Volume 5108 Folio 563 collectively known as the subject land.

15. ENTIRE AGREEMENT VARIATION and WAIVER

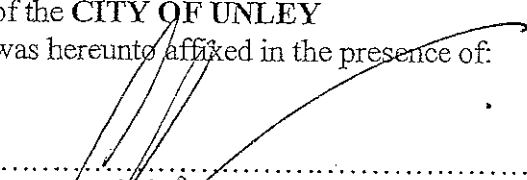
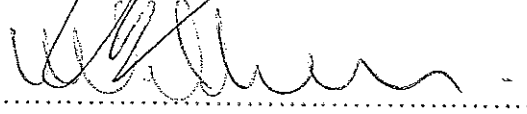
- 15.1 This Agreement contains the Agreement between the Owners and the Council. Any variation to the Agreement shall be in writing and attested to by the parties in writing.
- 15.2 The Council and the Owners acknowledge that the Recitals are true and accurate and agree that they form part of this Agreement.
- 15.3 This Deed may not be varied except by a supplementary Deed signed by the Council and the Owner(s) as the case may be.
- 15.4 The Council may waive compliance by the Owner(s) with the whole or any part of the obligations of the Owner herein contained provided that no such waiver shall be effective unless expressed in writing and signed by the Council.

16. SEVERANCE

- 16.1 If a provision of this Agreement is void or voidable or unenforceable but would not be void or voidable or unenforceable if it were read down and is capable of being read down it shall be read down accordingly.
 - 16.2 If not withstanding sub-clause 1 hereof, a provision of this Agreement is still void or voidable or unenforceable:-
 - (i) if the provision would not be void or voidable or unenforceable as aforesaid if a word or words were omitted therefrom, that word or those words (as the case may be) are hereby severed;
 - (ii) if necessary, the whole provision is hereby severed; and
- the remainder of this Agreement has full force and effect.

EXECUTED unconditionally by the parties as an Agreement pursuant to the provisions of Section 57 of the Development Act 1993.

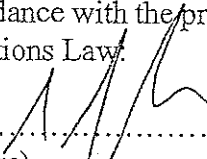
THE COMMON SEAL
of the **CITY OF UNLEY**
was hereunto affixed in the presence of:)
)
)

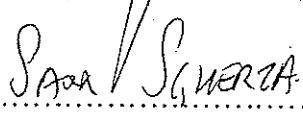
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.....

.....

Mayor

Chief Executive Officer

Executed by the)
SAMUEL PROPERTY GROUP PTY LTD)
in accordance with the provisions of the)
Corporations Law.)

.....

(Signature)


.....(Name)

.....
(Signature)

.....(Name)

FORM B1
Attach to inside
left hand corner

To be completed by lodging party ANNEXURE to _____ dated _____ over Certificate of Title Volume: _____ Folio: _____	NUMBER _____ Office use only
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Executed by _____)
A. D'ANDREA & ASSOCIATES PTY LTD)
 in accordance with the provisions of the)
 Corporations Law:)

[Handwritten Signature]
 (Signature)

ALBERTO D'ANDREA
 (Name)

[Handwritten Signature]
 (Signature)

FLORA D'ANDREA
 (Name)

Executed by _____)
ENGELS HARWARE PTY LTD)
 in accordance with the provisions of the)
 Corporations Law:)

[Handwritten Signature]
 (Signature)

PETER CARL ENGEL
 (Name)



 (Signature)

 (Name)

SIGNED by VALERIE ANN ENGELS *V.A.E.*)
 in the presence of:)

[Handwritten Signature]
 (Signature)

Rhonda van Meek 82582166
 (Name and Day Phone Number)

[Handwritten Signature]
 (Signature)

VALERIE ANN ENGEL
 (Name)

[Handwritten Signature]

Executed by
A. D'ANDREA & ASSOCIATES PTY LTD
in accordance with the provisions of the
Corporations Law:

[Handwritten Signature]
.....
(Signature)

ALBERTO D'ANDREA
.....
(Name)

[Handwritten Signature]
.....
(Signature)

FLORA D'ANDREA
.....
(Name)

Executed by
ENGELS HARWARE PTY LTD
in accordance with the provisions of the
Corporations Law:

[Handwritten Signature]
.....
(Signature)

PETER CARL ENGEL
.....
(Name)



.....
(Signature)

.....
(Name)

^{v. E.}
SIGNED by VALERIE ANN ENGELS
in the presence of:

[Handwritten Signature]
.....
(Signature)

Rhonda van Mook 82582166
.....
(Name and Day Phone Number)

[Handwritten Signature]

The St George Bank Ltd having an interest in the Land in Certificate Title 5087 Folio 21 pursuant to the Mortgage 9282461 hereby consents to the registration of this agreement over that land

.....
(Name and Signature) St George Bank Ltd

The St George Bank Ltd having an interest in the Land in Certificate Title 5200 Folio 496 pursuant to the Mortgage 9282345 hereby consents to the registration of this agreement over that land

.....
(Name and Signature) St George Bank Ltd

Insert type of document

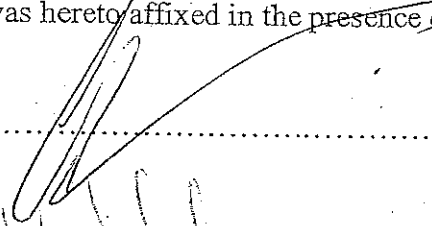
here.....

TO: THE REGISTRAR GENERAL

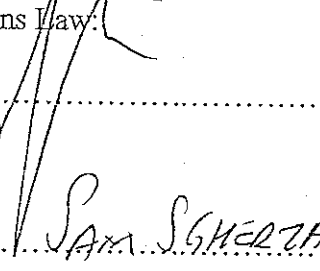
CITY OF UNLEY of 181 Unley Road, Unley SA 5061 does pursuant to the provisions of Section 57(8) of the Development Act 1993 HEREBY APPLY FOR THE REGISTRATION of the attached Land Management Agreement pursuant to the provisions of Section 57 of the said Act which Land Management Agreement is dated the day of 2004 and made between CITY OF UNLEY of the first part and SAMUEL PROPERTY GROUP PTY LTD and A. D'ANDREA & ASSOCIATES PTY LTD both of S4, 76 Osmond Tce Norwood SA 5067 and ENGELS HARWARE PTY LTD of 1460 Main North Road Salisbury North SA 5106 and VALERIE ANN ENGELS of 5 Fergusson Court Wynn Vale SA 5172 all collectively of the second part and which Agreement binds the land comprised in Certificates of Title Volume 5087 Folio 21 Volume 5200 Folio 495 and Volume 5108 Folio 563 (collectively the land).

The Agreement relates to the management and development of the land for the purposes of Section 57 of the said Act.

The Common Seal of **CITY OF UNLEY**)
was hereto affixed in the presence of :)

..... Mayor

..... City Manager

Executed by the)
SAMUEL PROPERTY GROUP PTY LTD)
in accordance with the provisions of the)
Corporations Law.)

..... (Signature) (Signature)

..... (Name) (Name)

See Annexure