

SUNSHINE COAST REGIONAL COUNCIL

VILLAGE FAIR INVESTMENTS PTY LTD (ACN 082 538 305)

**INFRASTRUCTURE AGREEMENT IN RESPECT OF BEERWAH SHOPPING
COMPLEX ACCESS, EXTERNAL CONSTRUCTION WORK (PEDESTRIAN
MALL & DRIVEWAY ACCESS) AND MAINTENANCE**

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THIS DOCUMENT is made on the date stated in item 1.

BETWEEN The Council

AND the Applicant

RECITALS

- A** The Applicant is VILLAGE FAIR INVESTMENTS PTY LTD (ACN 082 538 305)
- B** The Applicant lodged the application for Material Change of Use to Establish a Shopping Complex with the Council.
- C** The Council and the Applicant have agreed in respect of Lot 271 SP 126351, Lot 1 RP176802, Lots 1 & 2 RP906174, Lot 5 RP55629, Lot 206 B4412, Lot 1 RP64563 and Lodge Lane road reserve that the Applicant must design, construct, maintain and provide access as outlined in Schedule 1 in return for approval of a Material Change of Use to Establish a Shopping Complex and easement access for right of way across Lot1 RP64563 in favour of Lots 1 & 2 RP906174, Lot 5 RP55629 & Lot 206 B4412.

IT IS AGREED

1 INTERPRETATION

1.1 Name

This document may be referred to in accordance with **Clause 2**.

1.2 Commencement

This document commences on the Commencement Date.

1.3 Interpretation

- (a) In this document, unless a contrary intention appears, reference to:
- (i) a clause is to a clause in this document; and
 - (ii) the singular includes the plural and vice versa; and
 - (iii) any gender includes all other genders; and
 - (iv) a person includes a firm, a corporation, an association and a body, whether incorporated or not and a government or statutory body or authority; and
 - (v) legislation (including subordinate legislation) includes:

- (A) statutory instruments under the legislation; and
- (B) consolidations, amendments, re-enactments or replacements of the legislation; and
- (vi) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes facsimile transmission; and
- (vii) this or any other document includes the document as varied or replaced and is not affected by any change in the identity of the parties; and
- (viii) a day is to a Calendar Day.
- (b) The clause headings appearing in this document are inserted for convenience of reference and do not affect the construction of the document.
- (c) If any words are italicized or otherwise printed differently, this has been done for convenience only and does not affect the construction of this document.
- (d) Whenever more persons than one constitute a party all the covenants, agreements, conditions, restrictions and provisos on the part of that party contained or implied in this document bind those persons jointly and each of them severally.
- (e) This document is in all respects to be interpreted in accordance with the laws of the State of Queensland, and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of that state and any courts which have jurisdiction to hear appeals from them, and waive any right to object to proceedings being brought in those courts.
- (f) Nothing contained in this document affects, prejudices or derogates from the requirements of any statute or from the rights, powers and authorities of the Council under the provision of any statute or under any declared policy of the Council.
- (g) An inclusive definition, or an example or particularization of a provision, does not limit but may extend that definition or provision.
- (h) Where a word or expression is defined, other parts of speech and grammatical forms of that word or expression have a corresponding definition.
- (i) All schedules to this document form part of this document and a reference to an item is a reference to an item in **Schedule 1**.

- (j) Terms used in the Special Conditions which are not otherwise defined in **Clause 1.4** (Definitions) shall have the meanings assigned to them in the Council's Planning Scheme.

1.4 Definitions

In this document:

"**Act**" means the *Integrated Planning Act 1997*.

"**Applicant**" means the person described in and having its address at the place described in Item 4 and includes:

- (a) successors and permitted assigns in the case of a corporation, association or other body whether incorporated or not; and
- (b) executors, administrators and permitted assigns in the case of a natural person.

"**Calendar Day**" means the period from one midnight to the following one.

"**Chief Executive Officer**" means the Chief Executive Officer of the Council and includes the person (if any) for the time being acting as Chief Executive Officer of the Council.

"**Commencement Date**" means the date when this document commences being the date when the last party executes this document

"**Council**" means the Local Government described in Item 3 and its predecessors, successors, transferees and assigns.

"**Development**" has the meaning given in the Act.

"**Development Approval**" means the approval granted to the Applicant under the Act described in Item 6.

"**Force Majeure**" means an event:

- (a) being a decree of the Commonwealth Government or the state Government, an act of God, industrial disturbance, act of public enemy, war, international blockade, public riot, lightning, flood, earthquake, fire, storm or other event whether of a kind herein specified or otherwise; and
- (b) which is not within the control of the party claiming Force Majeure; and
- (c) which could not have been prevented by the exercise by that person of a standard of foresight, care and diligence consistent with that of a prudent and competent person under the circumstances.

"**Local Government**" has the meaning given in the Local Government Act 1993.

"**Local Government Area**" has the meaning given in the Local Government Act 1993.

"**Lot**" has the meaning in the Act.

"**Notice**" means any certificate, demand or notice to be made, given or served by a party under this document.

"**Owner**" of the Subject Site means the person for the time being entitled to receive the rent for the Subject Site or would be entitled to receive the rent for it if it were let to a tenant at a rent.

"**Planning Scheme**" means the planning scheme of the Council.

"**Public Office**" has the meaning given in the *Local government Act 1993*.

"**Purchaser**" means the purchaser of the Subject Site from the Owner.

"**Relevant Period**" has the meaning given in the Act.

"**Request for Extension of Relevant Period**" means the Request for Extension of Relevant Period under the Act described in Item 7.

"**Sell**" includes transfer, dispose of and alienate and "**Sale**" has the corresponding meaning.

"**Special Conditions**" means the conditions specified in Item 8 with which the Applicant must comply.

"**Subject Site**" means the land described in Item 5 and includes:

- (a) any interest or estate in, on, over or under the land; and
- (b) the airspace above the surface of the land and any estate or interest in the land; and
- (c) the subsoil of the land and any estate or interest in the subsoil; and
- (d) any part or parts of the land; and
- (e) any estate or interest created in respect of any of the above matters

"**Use**" has the meaning given in the Act.

1.5 Other Expressions

If a term is not defined in this Infrastructure Agreement it shall unless the context otherwise requires, have the meaning given to it by:

- (a) the Act; or

(b) the Macquarie Dictionary in the absence of a definition in the Act.

2 INFRASTRUCTURE AGREEMENT

2.1 Application of Act

This Infrastructure Agreement is intended to constitute an infrastructure agreement under the Act.

2.2 Document to bind successors in title

The parties warrant that it is the intention of the parties that the obligations of the Applicant under this document will attach to the Subject Site and be binding on the Owner and the Owner's successors in title in accordance with Section 5.2.5 (When infrastructure agreements bind successors in title) of the Act.

3 OBLIGATIONS OF PARTIES

3.1 Warranty of Ownership

The Applicant warrants that it is, at the time of signing this deed, the Owner of the Subject Site

3.2 Compliance of Owner

The Owner and Council shall at its own cost, comply with the Special Conditions and the terms of this Infrastructure Agreement.

3.3 Time for compliance

All payments or contributions or works which the Owner is required to pay or make pursuant to **Clause 3.2** (Compliance of Owner) shall be so paid within the time provided in the Special Conditions.

4 GOODS AND SERVICES TAX

4.1 Interpretation

In this clause:

- (a) expressions which are not defined but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) "GST Law" has the meaning given to that expression in A New Tax System (Goods and Services Tax) Act 1999.
- (c) "GST Amount" means the amount referred to in **clause 4.3** (Payment of GST).

4.2 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Infrastructure Agreement are exclusive of GST.

4.3 Payment of GST

If GST is payable by a supplier on any supply made under this Infrastructure Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply.

4.4 Timing of GST payment

The GST Amount will be paid by the recipient on the same date the consideration for the supply is to be provided under this Infrastructure Agreement.

4.5 Tax invoices

The recipient is not required to pay the GST Amount until the supplier has provided the recipient with a tax invoice in respect of the taxable supply. If the supplier has not provided the recipient with a tax invoice prior to the time that the GST Amount is otherwise payable under this clause, the recipient must pay the GST Amount within five days of the receipt of the tax invoice.

4.6 Adjustment events

If at any time an adjustment event arises in respect of a taxable supply made by a supplier under this Infrastructure Agreement the supplier will provide the recipient with an adjustment note for the adjustment immediately upon becoming aware of the adjustment. Where such an adjustment event arises, a corresponding adjustment will be made to the GST Amount and a payment will be made by the recipient to the supplier or the supplier to the recipient as the case requires.

4.7 Reimbursements

Where a party is required under this Infrastructure Agreement to pay for or reimburse an expense or outgoing of another party, the amount to be paid by the first party is the sum of:

- (a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing that the other party is entitled to; and
- (b) if the payment by the first party is consideration for a taxable supply, an amount equal to the GST payable by the other party in respect of the payment.

4.8 Representatives

In the event that liability for payment of GST in respect of a supply under this Infrastructure Agreement is imposed upon a representative of a supplier, this **Clause 4** (Goods and Services tax) shall nonetheless apply and any amounts to be calculated pursuant to this clause shall be calculated in all respects as if the supplier was liable for the GST imposed on such supply and entitled to input tax credits properly allocated to the making of that supply.

4.9 Pay As You Go ("PAYG")

PAYG installments will be deducted from payments to be made to the Claimant if at the time of payment the Claimant has not provided to the Council a valid Australian Business Number or if the Council otherwise reasonably forms the view that deductions are required to be made under Par 2-5 of the *Taxation Administration Act 1953*.

5 DEFAULT BY OWNER

5.1 Rights of the Council on default

If the Owner fails to duly perform and fulfil its obligations under **Clause 3.2** (compliance of Owner), the Council may recover from the Owner as a liquidated debt the whole amount of the payment or contributions (if any) not paid by the Owner.

5.2 Application of money

The Council may apply any sum recovered or received by it pursuant to **Clause 5.1** (rights of the council on default) as far as the sum may extend to or towards all or any one or more of the following:

- (a) reduction or discharge of the payments or contribution payable by the Owner under this Infrastructure Agreement; and
- (b) reimbursing itself for any damages suffered by it.

6 NOVATION OF DOCUMENT UPON SALE

6.1 Sale of the Subject Site

The Owner shall not sell or transfer the Subject Site prior to the performance and fulfillment of the Special Conditions as contained in this Infrastructure Agreement except subject to the condition that the purchaser (in this clause called "the Purchaser") shall enter into a deed of novation of this Infrastructure Agreement or a replacement Infrastructure Agreement with the Council, whereby the Purchaser becomes contractually bound to the Council to perform and comply with the Special Conditions, or such of them as remain unperformed or unfulfilled by the Owner at the time of such sale.

6.2 Owner to remain liable

In the event that the Owner sells or transfers the Subject Site otherwise than in compliance with **Clause 6.1** the Owner shall perform and fulfill the Special Conditions at such time or times as the Council stipulates, even if the time or times otherwise appointed for such performance and fulfillment have not then arrived.

6.3 Release from Liability

In the event that the Purchaser enters into a deed of novation or such further deed or agreement which contractually obliges the Purchaser to the Council to perform the Covenants, the Owner shall be forever released from the Special Conditions or any further liability pursuant to this Infrastructure Agreement or otherwise arising from its subject matter and the provisions of this clause may be pleaded as a bar to any proceedings brought by the Council.

7 SERVICE

7.1 Service by prepaid post

A Notice is sufficiently made, given or served by a party if left at or forwarded by prepaid post in an envelope addressed to the other party or any of them (where there are more persons than one person comprising the other party) at the address of that party specified in **Schedule 1**.

7.2 Deemed service

A Notice if sent by prepaid post is deemed to have been made, given or served at the time when in the due course of the post it would be delivered at the address to which it is directed whether or not it is actually received.

7.3 Proof of service

In proving service of a Notice made, given or served by the Council it is only necessary for the Council to certify to that effect under the hand of the Chief Executive Officer.

7.4 Form of Notice

- (a) A Notice given by a party must be in writing and signed by the party.
- (b) A Notice given by a party may be signed by an officer of that party or the solicitor for that party.
- (c) A party receiving a Notice is not obliged to enquire as to the authority of the person signing the Notice.

8 MISCELLANEOUS

8.1 Payment of costs

Each party shall pay their own costs, charges and expenses of and incidental to the negotiation, preparation, execution, completion and stamping of this Infrastructure Agreement, all counterparts of it and any other document required under this Infrastructure Agreement.

8.2 Time

Time is, in all cases, of the essence.

8.3 Place for payment of monies

All monies payable to a party under this document are payable free from all deductions at the address of that party specified in **Schedule 1**.

8.4 Waiver

No waiver by the Council of any breach by the Owner of any of the provisions of this Infrastructure Agreement shall be implied against the Council or be otherwise effective unless it is in writing under the hand of the Chief Executive Officer.

8.5 Laches and delay

No laches or delay by the Council at any time or times in enforcing any of its rights, powers and the like under this Infrastructure Agreement prejudice or affect those rights or powers.

8.6 Severance

If any provision of this Infrastructure Agreement cannot be given effect or full force and effect by reason of statutory invalidity that provision shall be served or read down but so as to maintain and uphold so far as possible the remaining provisions of this document.

8.7 Warranty of authority

Any person signing this Infrastructure Agreement:

- (a) as attorney of any party warrants to the other parties that at the date of execution that person has not received any notice or information of the revocation of the power of attorney appointing that persons; and
- (b) as an authorised officer, agent or trustee of any party warrants to the other parties that at the date of execution that person has full authority to execute this document in that capacity.

8.8 Further assurances

Each party agrees at its cost to do everything reasonably necessary to give effect to this document.

8.9 Force Majeure

- (a) If a party is unable by reason of an event of Force Majeure to carry out its obligations under this Infrastructure Agreement, that party must give a Notice to the other party advising of the event of the Force Majeure as soon as it is reasonably practicable after the event of a Force Majeure.
- (b) If a party gives a Notice advising of an event of Force Majeure, that party's obligations will be suspended during the period for which the event of Force Majeure or its effect extends.
- (c) Where the obligations of the Council are dependent upon the occurrence of specified circumstances, then the Council will be relieved of its obligations for so long as there is a change or deviation or non-occurrence of those circumstances arising from a matter beyond the Council's Control.

8.10 Amendment of document

- (a) Despite any provision of this document, the parties may at any time agree to vary the terms of this Infrastructure Agreement
- (b) No modification, variation or amendment of this Infrastructure Agreement is of any force or effect unless:
 - (i) it is in the form of an amendment Infrastructure Agreement and has been signed by the parties;
and
 - (ii) where relevant the amendment Infrastructure Agreement complies with the requirements of the Act.

SCHEDULE 1

Agreement Details

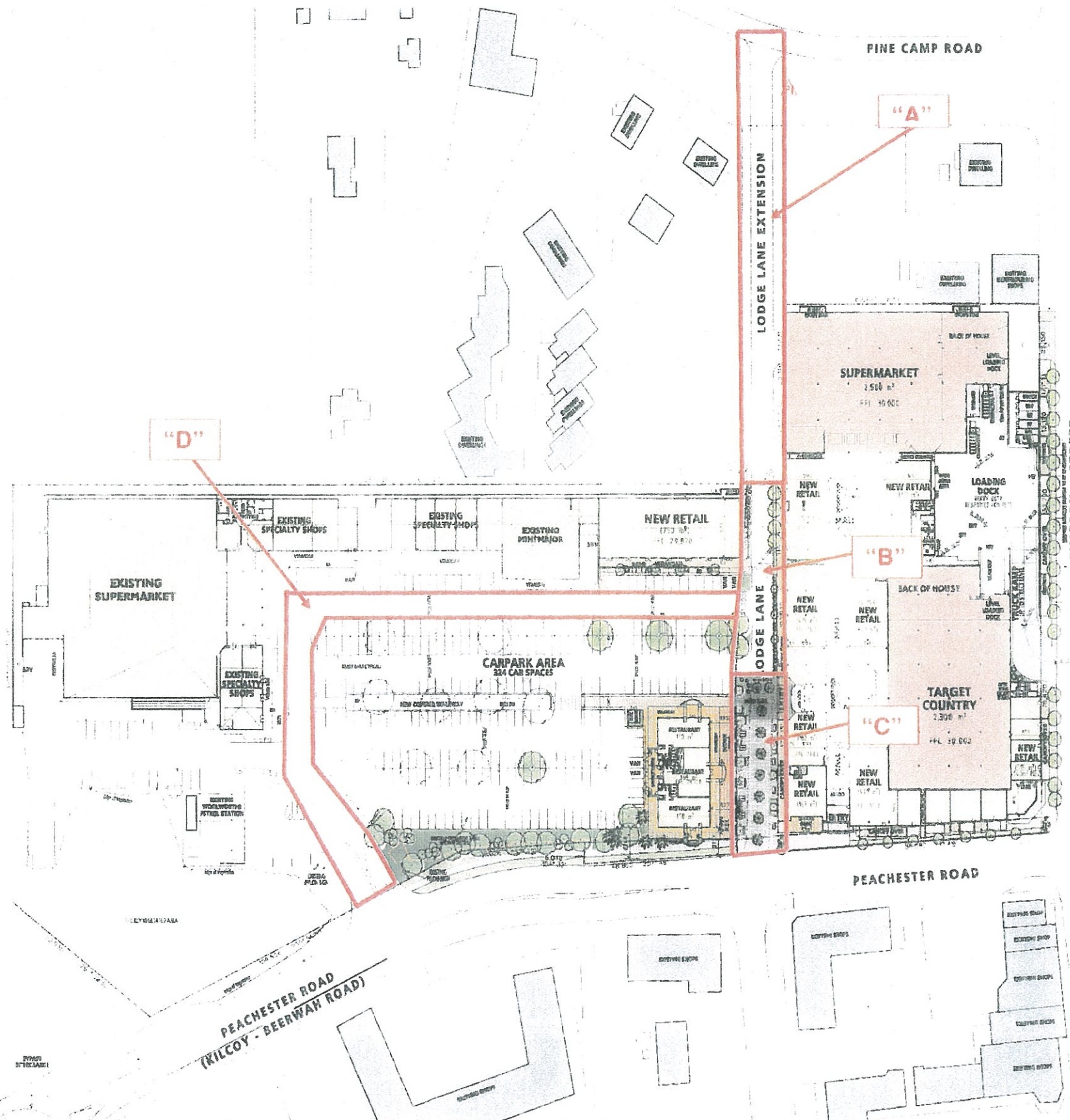
ITEM 1	Date	1 December 2009
ITEM 2	Name of Document	Infrastructure Agreement in respect of construction and maintenance of access road through Lot 1 RP64563 and pedestrian mall zone located in Lodge Lane
ITEM 3	Council Name of Local Government	Sunshine Coast Regional Council
	Address of Public Office	Bury and Curry Streets, Nambour in the State of Queensland Locked Bag 72, Sunshine Coast Mail Centre QLD 4560
ITEM 4	Applicant Name (including ACN if a corporation)	VILLAGE FAIR INVESTMENTS PTY LTD, ACN 082 538 305
	Address (or registered office if a corporation)	c/- Baskin Clarke Level 14, Tower 2 Bondi Junction Plaza 101 Grafton Street BONDI JUNCTION NSW 2022
ITEM 5	Subject Site Description	Lot 271 SP 126351, Lot 1 RP176802, Lots 1 & 2 RP906174, Lot 5 RP55629 & Lot 206 B4412
	County	Canning
	Parish	Bribie
	Area	3.96 ha
	Address	Cor Peachester Road, Simpson Street & Lodge Lane, Beerwah
ITEM 6	Development Approval	Material Change of Use to Establish a Shopping Complex (2008/50-00078)
ITEM 7	Not required	
ITEM 8	Special Conditions	

- 1 Prior to the commencement of the use the Owner shall design and construct a vehicle access driveway within Lot 1 RP64563 to an access street standard in accordance with Queensland Streets for the purposes of providing a vehicular access from Pine Camp Road to Lodge Lane and between adjacent Lot 206 B4412 and Lot 1 RP64563 located generally in accordance with the area described as "A" on the attached Schedule 2.
- 2 Prior to the commencement of the use the Owner shall design and construct a bicycle and pedestrian path extending from Pine Camp Road to Peachester Road, traversing Lot 1 RP64563 and Lodge Lane. The path shall be constructed as a 2.5 metre wide concrete path in accordance with requirements of the Caloundra City Plan Development Design Planning Scheme Policy and IPWEAQ Standard Drawing R-065, located generally in accordance with the areas described as "A, B & C" on the attached Schedule 2.
- 3 Prior to the commencement of the use the Owner shall design and construct the pedestrian mall in Lodge Lane to the standards required by the Planning Scheme Policies and in accordance with approved operational works design drawings, located generally in accordance with the area described as "C" on the attached Schedule 2.
- 4 The Owner shall at all times provide free and available vehicular access through Lot 271 SP 126351 and Lot 1 RP176802 between Peachester Road and Lodge Lane located generally in accordance with the area described as "D" on the attached Schedule 2.
- 5 Prior to commencement of works Council shall execute a legal easement for right of way across Lot 1 RP64563 extending from Lodge Lane to Pine Camp Road in favour of Lots 1 & 2 RP906174, Lot 5 RP55629 & Lot 206 B4412 located generally in accordance with the area described as "A" on the attached Schedule 2.
- 6 The Owner shall maintain all landscape works and driveway access works within Lot 1 RP64563 and Lodge Lane for the duration of this agreement, located generally in accordance with the area described as "A, B & C" on the attached Schedule 2.
- 7 In these Special Conditions:

"Planning Scheme Policies" means the Caloundra City Plan 2004 Planning Scheme Policies including those in respect of Development Design, Landscaping, Parking and Access (or equivalent) applying generally in the Sunshine Coast Regional Council Local Government Area

SCHEDULE 2

Map



GFA	
Existing G.F.A.	1,543 sqm
Proposed G.F.A.	1,154 sqm
Outdoor Dining G.F.A.	413 sqm
TOTAL G.F.A.	3,110 sqm

GLA	
Existing G.L.A.	1,413 sqm
Proposed G.L.A.	1,154 sqm
TOTAL G.L.A.	2,567 sqm

SITE COVER	
Existing Building Area	1,413 sqm
Proposed Building Area	2,567 sqm
Building Area	4,000 sqm
Site Area	10,000 sqm
Site Cover	40.00%

PLOT RATIO	
Total GFA	3,110 sqm
Total Site Area	7,725 sqm
Plot Ratio	0.40

Santel Architects Pty Ltd
 PO Box 650, Beerwah, Queensland 4519
 Email: design@santelarch.com.au
 Website: www.santelarch.com.au
 ABN: 96 204 776 610
 ACN: 111 652 914

RAIA
 Member No. 3536
 The Board of Architects Queensland
 Reg. No. 3875



DEVELOPMENT APPLICATION

Rev. 1: 1:1000
 Date: 10/05/2008
 Project: Proposed Shopping Centre Development
 Client: Village Fair Investments Pty Ltd

Proposed Shopping Centre Development
 Corner Peachester Road & Simpson Street,
 Beerwah, Queensland

Drawing Title
 SITE & LOCALITY PLAN
 (GROUND FLOOR)
 PROPOSED NEW SHOPPING CENTRE

Beerwah Village Shopping Centre
 Scale: 1:500 @ B1
 Drawing No. TP/2A
 Date: May 2008
 Plot No: 06026.0
 Sheet: P1

EXECUTED AS A DEED.

This infrastructure Deed dated this 23rd day of Dec 2009

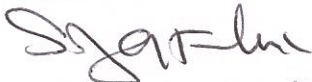
BETWEEN VILLAGE FAIR INVESTMENTS PTY LTD (ACN 082 538 305)
("the Applicant")

AND SUNSHINE COAST REGIONAL COUNCIL a Local Government duly
constituted under the provisions of the "Local Government Act 1993"
("Council")

SIGNED, by (Mayor/authorised
Councillor/delegated officer) for and on behalf
of the Sunshine Coast Regional Council
In the presence of,



Witness

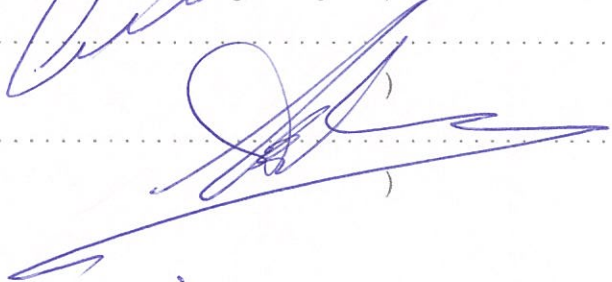

SUSAN FLUX

THE COMMON SEAL of)
VILLAGE FAIR INVESTMENTS PTY LTD)
(ACN 082 538 305) in accordance)
with the Corporations Act 2001 and is signed by:)



.....
Director and)

.....
Director/ Secretary)



In the presence of,

Witness)

