

Form 603
Corporations Act 2001
Section 671B

Notice of initial substantial holder

To: Company Name/Scheme PORT BOUVARD LIMITED
ACN/ARSN ACN 009 134 114

1. Details of substantial holder

Name FKP LIMITED
ACN/ARSN (if applicable) ACN 010 729 950

The holder became a substantial holder on 29/06/2010

2. Details of voting power

The total number of votes attached to all the voting shares in the company or voting interests in the scheme that the substantial holder or an associate (2) had a relevant interest (3) in on the date the substantial holder became a substantial holder are as follows:

Class of securities (4)	Number of securities	Person's votes (5)	Voting power (6)
Ordinary shares	175,000,000	175,000,000	34.4%

3. Details of relevant interests

The nature of the relevant interest the substantial holder or an associate had in the following voting securities on the date the substantial holder became a substantial holder are as follows:

Holder of relevant interest	Nature of relevant interest (7)	Class and number of securities
FKP Limited	Pursuant to section 608 of the Corporations Act – shares acquired under the attached Subscription Agreement dated 20 May 2010 with Port Bouvard Limited, as amended	175,000,000 fully paid ordinary shares

4. Details of present registered

The persons registered as holders of the securities referred to in paragraph 3 above are as follows:

Holders of relevant interest	Registered holder of Securities	Person entitled to be registered as a holder (8)	Class and number of securities
FKP Limited	FKP Limited	FKP Limited	175,000,000 fully paid ordinary shares

5. Consideration

The consideration paid for each relevant interest referred to in paragraph 3 above, and acquired in the four months prior to the day that the substantial holder became a substantial holder is as follows:

Holder of relevant interest	Date of acquisition	Consideration (9)		Class and number of securities
		Cash	Non-cash	
FKP Limited	29/06/2010	\$22,750,000	Not applicable	175,000,000 fully paid ordinary shares

6. Associates

The reasons the person named in paragraph 3 above and associates of the substantial holder are as follows:

Name and ACN/ARSN (if applicable)	Nature of association
Not applicable	Not applicable

7. Addresses

The addresses of persons named in this form are as follows:

Name	Address
FKP Limited	Level 5, 120 Edward Street, Brisbane QLD 4000

Signature

print name Susan Stewart capacity Company Secretary

sign here *S Stewart* date 01/07/2010

DIRECTIONS

- (1) If there are a number of substantial holders with similar or related relevant issues (eg. A corporation and its related corporations, or the manager and trustee of an equity trust), the names could be included in an annexure to the form. If the relevant interests of a group of persons are essentially similar, they may be referred to throughout the form as a specifically named group if the membership of each group, with the names and addresses of members is clearly set out in paragraph 7 of the form.
- (2) See the definition of "associate" in Section 9 of the Corporations Act 2001.
- (3) See the definition of "relevant interest" in sections 608 and 671B(7) of the Corporations Act 2001.
- (4) The voting shares of a company constitute one class unless divided into separate classes.
- (5) The total number of votes attached to all the voting shares in the company or voting interests in the scheme (if any) that the person or an associate has a relevant interest in.
- (6) The person's votes divided by the total votes in the body corporate or scheme multiplied by 100.
- (7) Include details of:
 - (a) any relevant agreement or other circumstances by which the relevant interest was acquired. If subsection 671B(4) applies, a copy of any document setting out the terms of any relevant agreement, and a statement by the person giving full and accurate details of any contract, scheme or arrangement, must accompany this form, together with a written statement certifying this contract, scheme or arrangement; and
 - (b) any qualification of the power of a person to exercise, control the exercise of, the voting powers or disposal of the securities to which the relevant interest relates (indicating clearly the particular securities to which the qualification applies).

See the definition of "relevant agreement" in section 9 of the Corporations Act 2001.
- (8) If the substantial holder is unable to determine the identity of the person (eg. If the relevant interest arises because of an option) write "unknown".
- (9) Details of the consideration must include any and all benefits, money and other, that any person from whom a relevant interest was acquired has, or may, become entitled to receive in relation to that acquisition. Details must be included even if the benefit is conditional on the happening or not of a contingency. Details must be included of any benefit paid on behalf of the substantial holder or its associate in relation to the acquisitions, even if they are not paid directly to the person from whom the relevant interest was acquired.



Dated *20 May* 2010

Subscription Agreement

Parties

Port Bouvard Limited
ACN 009 134 114

FKP Limited
ACN 010 729 950

*This is a true and correct
copy of the Subscription
Agreement dated 20 May 2010*

*M. Ward
Company Secretary
FKP Limited*

Derek La Ferla
Norton Rose Australia
Level 39 BankWest Tower
108 St Georges Terrace
Perth WA 6000
Tel: +61 (0)89426 3285
www.nortonrose.com
Our ref. 2687615

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Agreement dated

20 May

2010

Parties

Port Bouvard Limited ACN 009 134 114
of Level 2, 129 Melville Parade, Como, Western Australia
(Company)

FKP Limited ACN 010 729 950
of Level 5, 120 Edward Street, Brisbane, QLD
(Subscriber)

Introduction

- A. The Company is duly registered under the Corporations Act.
- B. The Subscriber is duly registered under the Corporations Act.
- C. This Agreement sets out the terms and conditions on which the Subscriber agrees to subscribe for the Subscription Shares and the Company agrees to allot and issue the Subscription Shares to the Subscriber.
- D. The Company does not propose to issue the Subscription Shares to the Subscriber for the purpose of the Subscriber selling or transferring the Subscription Shares or granting, issuing or transferring Interests in, or options over, them.

It is agreed

1. Definitions and interpretation

1.1 Definitions

In this Agreement:

- (1) **Accounting Standards** means:
 - (a) accounting standards in force under section 334 of the Corporations Act;
 - (b) interpretations approved by the Australian Accounting Standards Board;
 - (c) requirements of the Corporations Act relating to the preparation and contents of financial reports; and
 - (d) to the extent that any matter is not covered by these accounting standards, interpretations and requirements, means generally accepted accounting principles, policies, practices and procedures applied from time to time in Australia for companies similar to the Company;
- (2) **Agreed Capital Raising** means the equity capital raising of \$60,200,000 comprising the Transaction, the Placement and the Rights Issue;
- (3) **Associate** has the same meaning as in section 12 of the Corporations Act;

- (4) **ASX** means ASX Limited ACN 008 624 691, or the Australian Securities Exchange operated by ASX Limited, as the case requires;
- (5) **ASX 200** means the top 200 stocks listed on the ASX by market-capitalisation weighted and float-adjusted from Standard & Poor's;
- (6) **ASX Listing Rules** means the official listing rules of the ASX as amended from time to time;
- (7) **Authorisation** includes:
- (a) any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with a Government Agency; and
 - (b) in relation to anything that a Government Agency may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action;
- (8) **Balance Date** means 31 December 2009;
- (9) **Banking Facilities** means the bank facilities provided to the Group by St George Bank Ltd by letters of offer dated 21 December 2009 and varied by letters of variation dated 14 May 2010 and signed by members of the Group on 18 May 2010;
- (10) **Board** means the board of directors of the Company from time to time;
- (11) **Break Fee** means the amount of \$2,000,000;
- (12) **Business Day** means a day on which banks are open for business in Perth, Western Australia;
- (13) **Claim** means any Loss, claim, demand, legal proceedings or cause of action including any claim, demand, legal proceedings or cause of action:
- (a) based in contract (including breach of warranty);
 - (b) based in tort (including misrepresentation or negligence);
 - (c) under common law; or
 - (d) under statute (including Part V or VI of the *Trade Practices Act 1974* (Cth) and the Corporations Act), or like provisions in any state or territory legislation,
- in any way relating to this Agreement and includes a claim, demand, legal proceedings or cause of action arising from a breach of a Company Warranty, a breach of this Agreement or under an indemnity in this Agreement;
- (14) **Company Warranties** means the warranties in Schedule 2;
- (15) **Competing Proposal** means any expression of interest, approach or proposal, on the part of any person, to do any of the following, or to enter into any negotiations or discussions with the Company:

- (a) to acquire the whole or a substantial part of the assets, business or property of the Company or its Related Bodies Corporate directly or indirectly by any means, including by acquisition of interests in shares;
 - (b) for an issue of Shares other than the issue of Shares pursuant to the exercise of existing options or the issue of Subscription Shares pursuant to this Agreement;
 - (c) regarding any proposed arrangements which could result in a person having voting power of more than 10% in the Company (other than where that voting power is acquired pursuant to the Placement and with FKP's prior consent acting reasonably), unless that person already has voting power of at least 10% in the Company prior to the date of this Agreement and will not increase their voting power;
 - (d) to acquire control (as determined in accordance with section 50AA of the Corporations Act) of the Company; or
 - (e) which is directly or indirectly conditional on Completion not occurring;
- (16) **Completion** means completion of the issue of the Subscription Shares and payment of the Subscription Amount in accordance with clause 6;
- (17) **Completion Date** means the date that is the later of:
- (a) the date that is 3 Business Days after the last of the conditions in clause 2.1 are satisfied or waived in accordance with clause 2.4; and
 - (b) the date agreed from time to time between the parties for the issue of the Subscription Shares, being as at the date of this Agreement, 28 June 2010;
- (18) **Confidential Information** means all information which:
- (a) is disclosed to a party (the Recipient) or any of its Representatives (whether before or after the date of this Agreement) by or on behalf of the other party (the Discloser), or which is acquired directly or indirectly by the Recipient or any of its Representatives from the Discloser or any of the Discloser's Representatives;
 - (b) relates directly or indirectly to the Transaction including the existence, and terms, of this Agreement, the Discloser or its Related Bodies Corporate, or the past, existing or future business, operations, administration or strategic plans of the Discloser; and
 - (c) is in oral or visual form, or is recorded or stored in a document (whether printed, electronic or otherwise),
- and includes but is not limited to all compilations, analyses, extracts, summaries or other documents prepared by the Recipient or its Representatives which reflect, utilise or relate to any of the information referred to in paragraphs (a) and (b) of this definition;
- (19) **Confidentiality Undertaking** means the undertaking dated 18 March 2010 and executed by the Subscriber;
- (20) **Constitution** means the constitution of the Company as amended or varied from time to time;

- (21) **Corporations Act** means the *Corporations Act 2001* (Cth);
- (22) **Data Room** means the data room established by the Company and made available to the Subscriber and its advisors containing those documents set out in the Data Room Index;
- (23) **Data Room Index** means the index of all documents contained in the Data Room attached to this Agreement as Annexure A;
- (24) **Deal** means:
- (a) to offer to buy or sell;
 - (b) to solicit an offer to buy or sell; or
 - (c) make any invitation or proposal to buy or sell,
- whether directly or indirectly, any right title or interest in any Securities;
- (25) **DEWHA** means the Department of Environment, Water, Heritage and the Arts of Australia;
- (26) **Directors** means the directors of the Company;
- (27) **Disclosure Materials** means:
- (a) all documents and information contained in the Data Room; and
 - (b) all information set out, or fully and fairly referred to, in any document provided by the Company and any of its Representatives to the Subscriber in connection with the negotiations of the Transaction and this Agreement as listed in the Disclosure Materials Index;
- (28) **Disclosure Materials Index** means the index attached to this Agreement as Annexure B;
- (29) **Duplicate Certificate of Title** means the duplicate certificate of title for the Gidgegannup Land held by the Company's bank pursuant to the Banking Facilities and which will be released to the Company upon the payment of \$20,000,000 by the Company to the bank;
- (30) **Duty** means any stamp, transaction or registration duty or similar charge imposed by any Governmental Agency and includes any interest, fine, penalty, charge or other amount imposed in respect of any of them, but excludes any Tax;
- (31) **Encumbrance** means any interest or power:
- (a) reserved in or over any interest in any asset including, but not limited to, any retention of title;
 - (b) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power; or
 - (c) by way of, or having similar commercial effect to, security for payment of a debt, any other monetary obligation or the performance of any other obligation, or any trust or any retention of title and includes, but is not limited to, any agreement to grant or create any of the above;

- (32) **End Date** means the later of:
- (a) 17 August 2010; and
 - (b) another date agreed by the parties in writing;
- (33) **Exclusivity Period** means the period from and including the date of this Agreement until the Completion Date or such other date as agreed in writing between the Subscriber and the Company;
- (34) **Financial Statements** means the reviewed consolidated financial statements of the Company for the half year ended on the Balance Date, as disclosed by the Company to ASX, including the notes to those financial statements;
- (35) **General Meeting** means the meeting of shareholders of the Company convened to approve the Transaction in satisfaction of the condition set out in clause 2.1(2) of this Agreement;
- (36) **Gidgegannup Land** means:
- (a) Lot 154 on Diagram 12447 and being the whole of the land comprised in Certificate of Title Volume 55 Folio 44A;
 - (b) Lot 3 on Diagram 61882 and being the whole of the land comprised in Certificate of Title Volume 1603 Folio 404;
 - (c) Lot 2 on Diagram 61882 and being the whole of the land comprised in Certificate of Title Volume 1603 Folio 403;
 - (d) Lot 298 on Deposited Plan 27983 and being the whole of the land comprised in Certificate of Title Volume 1360 Folio 792;
 - (e) Lot 11 on Plan 16700 and being the whole of the land comprised in Certificate of Title Volume 1832 Folio 437;
 - (f) Lot 14 on Diagram 90210 and being the whole of the land comprised in Certificate of Title Volume 2064 Folio 931; and
 - (g) Lot 13 on Diagram 90210 and being the whole of the land comprised in Certificate of Title Volume 2064 Folio 930;
- (37) **Gidgegannup Option Agreements** means Put and Call Option No 2 and Put and Call Option No 3;
- (38) **Government Agency** means any government or any governmental, semi-governmental, administrative, fiscal or judicial body, department, commission, authority, tribunal, agency or entity in any part of the world and for the avoidance of doubt includes ASX;
- (39) **Group** means the Company and each Related Body Corporate of the Company;
- (40) **GST** means goods and services tax or similar value added tax levied or imposed in Australia under the GST Law or otherwise on a supply;
- (41) **GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (42) **GST Law** has the same meaning as in the GST Act;

- (43) **Immediately Available Funds** means payment by bank cheque or electronic funds transfer into an account nominated by the Company;
- (44) **Independent Expert's Report** means an independent expert's report in respect of the issue of the Subscription Shares to Subscriber in accordance with ASIC Regulatory Guide 111 "Content of Experts Reports" and Regulatory Guide 112 "Independence of Experts Reports", which includes an opinion from the expert as to whether or not the issue of the Subscription Shares to Subscriber is fair and reasonable to the Shareholders not associated with Subscriber and also includes any update to the independent expert's report requested by the Company (including in circumstances of a Competing Proposal);
- (45) **Initial Cancellation Fee** means the sum of \$2,000,000;
- (46) **Insolvency Event** means in relation to, any member of the Group, it is:
- (a) or states that it is, insolvent under administration or insolvent (each as defined in the Corporations Act);
 - (b) in liquidation, under administration or wound up or proposing to go into liquidation or to pass a winding-up resolution or to commence steps for winding-up or dissolution;
 - (c) taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
 - (d) in receipt of a deregistration notice under section 601AB of the Corporations Act or any communication from ASIC that might lead to such a notice or applying for deregistration under section 601AA of the Corporations Act;
 - (e) presented or threatened with a petition or other process for winding-up or dissolution in circumstances justifying a petition or other process;
 - (f) in receivership or had a receiver, receiver and manager, judicial manager, liquidator, administrator, official manager appointed, or such a person is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of that Group member, in circumstances justifying such an appointment; or
 - (g) enters into, or takes steps or proposes to enter into, any arrangement, compromise or composition with or assignment for the benefit of its creditors or class of them;
- (47) **Institutional Rights Issue** means that proportion of the Rights Issue which is offered to institutional and sophisticated investors (who satisfy section 708(8) or section 708(11) of the Corporations Act) and accelerated such that the book build for any rights not taken up, and therefore their settlement, occurs simultaneously with the Placement and expected to raise approximately \$8,500,000;
- (48) **Letter of Intent** means the letter of intent executed by representatives of the Subscriber and the Company on 4 May 2010;
- (49) **Loss** means losses, liabilities, damages, costs, charges and expenses and includes Taxes and Duties;
- (50) **Material Adverse Change** means, in relation to the Company, or any member of the Group, any event, change, condition, matter or thing that will have a Material Adverse Effect on the Group's business, assets, liabilities, financial position and

performance, material contracts (taken as a whole), cash flow, profitability or prospects other than a change resulting directly or indirectly from the actions of the Subscriber or the Agreed Capital Raising and includes:

- (i) any material variation or termination of the Banking Facilities with St George Bank Limited (other than in accordance with amendments to those facilities advised to the Subscriber in writing prior to the date of this Agreement); and
 - (ii) any material litigation is initiated or threatened in writing against any member of the Group (except as disclosed in the Disclosure Materials);
- (51) **Major Property Group** means any entity included in the ASX 200 whose assets predominantly consist directly or indirectly of real property;
- (52) **Material Adverse Effect** means any state of facts, which, individually or in the aggregate, is or would reasonably be expected to be, material and adverse to the Group's business, assets, liabilities, financial position and performance, material contracts (taken as a whole), cash flow, profitability or prospects, provided that a Material Adverse Effect shall not include any change, event, occurrence or effect relating to or resulting from:
- (a) any matter or thing that is outside the control of the Company (for clarity, any change, event, occurrence or effect relating to or resulting from:
 - (i) economic, financial, currency exchange, securities or markets and prices in general; or
 - (ii) conditions affecting the property industry in general, including changes in law,will, for the purposes of this definition, be deemed to be within the control of the Company);
 - (b) any matter which has been announced to ASX by the Company, is disclosed in the Disclosure Materials, or otherwise known to the Subscriber as at the date of this Agreement; and
 - (c) the announcement of the execution of this Agreement and the Agreed Capital Raising, or any matters specifically permitted or contemplated by this Agreement;
- (53) **Official List** means the official list of the ASX as defined in the ASX Listing Rules as amended from time to time;
- (54) **Options Release** means the deed of cancellation, settlement and release dated 20 May 2010 between Riseley Investments, Michael Robert Coleman, the Company, PBD1 and PBD2 in relation to the termination of Put and Call Option No 2 and Put and Call Option No 3;
- (55) **PBD1** means PBD Estate No.1 Pty Ltd ACN 125 885 181;
- (56) **PBD2** means PBD Estate No.2 Pty Ltd ACN 125 989 808;
- (57) **Placement** means the placement (either fully underwritten or settled) of up to 157,285,553 Shares to institutional and sophisticated investor clients of Macquarie Capital Advisers Limited and Euroz Securities Limited to raise up to \$20,447,122;

- (58) **Put and Call Option No 2** means the put and call option deed entered into between Riseley Investments and PBD2 on 28 June 2007;
- (59) **Put and Call Option No 3** means the put and call option deed entered into between Riseley Investments and PBD2 on 28 June 2007;
- (60) **Related Body Corporate** has the same meaning as in section 50 of the Corporations Act;
- (61) **Related Party** has the meaning given to it in section 228 of the Corporations Act;
- (62) **Representative** means in relation to a party:
- (a) each of the party's Related Bodies Corporate; and
 - (b) each of the directors, officers, employees and advisers of the party or of any of its Related Bodies Corporate;
- (63) **Retail Rights Issue** means that proportion of the Rights Issue which is not the Institutional Rights Issue, is to be underwritten by way of the Underwriting Agreement, and which is expected to raise approximately \$8,500,000;
- (64) **Riseley Investments** means Riseley Investments Pty Ltd ACN 097 992 302;
- (65) **Rights Issue** means the fully underwritten pro rata non-renounceable rights issue offering Shareholders 1 new ordinary share in the issued capital of the Company for every Share held to raise approximately \$17,002,878;
- (66) **Securitles** has the meaning given in clause 4.5(1)(a) of this Agreement;
- (67) **Share** means a fully paid ordinary share in the capital of the Company;
- (68) **Shareholder** means the holder of a Share;
- (69) **Specified Executives** means John Wroth (CEO), Stephen Court (Director), Ross Neumann and Peter Coppini (Company Secretary and Chief Financial Officer);
- (70) **Subscriber Warranties** means the warranties in Schedule 3;
- (71) **Subscription Amount** means \$22,750,000, being the Subscription Price multiplied by the number of Subscription Shares;
- (72) **Subscription Price** means \$0.13 per Subscription Share;
- (73) **Subscription Shares** means 175,000,000 Shares to be issued at Completion;
- (74) **Subsidiary** has the meaning given by section 9 of the Corporations Act;
- (75) **Superior Proposal** means a Competing Proposal that the Board considers (acting in good faith and in order to satisfy its fiduciary or statutory duties after taking written advice from its financial and legal advisers) is or could reasonably be considered to be materially more favourable to the Shareholders than the Transaction whether or not publicly announced, having regard to all aspects of the Competing Proposal and the Transaction, including:
- (a) the value of the consideration and other benefits offered under the Competing Proposal and the Transaction;

- (b) the likelihood of the conditions of the Competing Proposal being satisfied and completion occurring within a reasonable period of time and relative to the expected date for Completion disregarding delays brought about by the existence of the Competing Proposal; and
 - (c) a qualitative assessment of the identity, reputation and financial standing of the party making the Competing Proposal;
- (76) **Tax** means any tax, levy, charge, impost, duty, fee, deduction, compulsory loan or withholding, that is assessed, levied, imposed or collected by any Government Agency and includes, but is not limited to any interest, fine, penalty, charge, fee or any other amount imposed on, or in respect of any of the above;
- (77) **Tax Law** means a Law with respect to or imposing any Tax;
- (78) **Transaction** means the transaction contemplated by this Agreement, including the subscription for, and the subsequent issue of, the Subscription Shares;
- (79) **Transaction Documentation** means:
- (a) the Shareholders notice convening the General Meeting (including all explanatory materials to that notice); and
 - (b) the prospectus required for the purposes of the Rights Issue;
- (80) **Underwriters** means, following the execution of the Underwriting Agreement, Macquarie Capital Advisers Limited and Euroz Securities Limited;
- (81) **Underwriting Agreement** means the underwriting agreement to be entered into by the Company and the Underwriters with respect to the Placement and the Rights Issue, the terms of which will be subject to review and approval by the Subscriber, acting reasonably; and
- (82) **Warranties** means the Company Warranties and Subscriber Warranties.

1.2 Interpretation

In this Agreement:

- (1) headings and bold type are for convenience only and do not affect the interpretation of this Agreement;
- (2) the singular includes the plural and the plural includes the singular;
- (3) words of any gender include all genders;
- (4) other parts of speech and grammatical forms of a word or phrase defined in this Agreement have a corresponding meaning;
- (5) an expression importing a person includes any company, partnership, joint venture, association, corporation or other body corporate and any Government Agency as well as an individual;
- (6) a reference to a clause, party, schedule, attachment or exhibit is a reference to a clause of, and a party, schedule, attachment or exhibit to, this Agreement and a reference to this Agreement includes any schedule, attachment and exhibit;

- (7) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (8) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (9) a reference to a party to a document includes that party's successors and permitted assignees;
- (10) a reference to liquidation or insolvency includes appointment of an administrator, compromise, arrangement, merger, amalgamation, reconstruction, winding-up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or any similar procedure or, where applicable, changes in the constitution of any partnership or person, or death;
- (11) no provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of this Agreement or that provision;
- (12) a reference to money is to Australian dollars, unless otherwise stated;
- (13) a reference to a body, other than a party to this Agreement (including an institute, association or authority), whether statutory or not:
 - (a) that ceases to exist; or
 - (b) whose powers or functions are transferred to another body,
 is a reference to the body that replaces it or that substantially succeeds to its powers or functions; and
- (14) a reference to time is a reference to Perth, Western Australia time.

1.3 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next Business Day.

1.4 Inclusive expressions

Specifying anything in this Agreement after the words 'including', 'includes' or 'for example' or similar expressions does not limit what else is included.

1.5 Awareness

Where a Warranty is given to the best of the Company's 'knowledge', or so far as the Company is 'aware' or with a similar qualification as to the Company's awareness or knowledge, the Company will be deemed to know or be aware of a particular fact, matter or circumstance if as at the date of this Agreement any of the Specified Executives is actually aware of that fact, matter or circumstance or would have been aware if they had made all due and proper enquiries.

2. Conditions precedent to Completion

2.1 Conditions precedent

The obligations of the parties under clauses 3 and 6 are conditional on, and do not become binding unless and until:

(1) FIRB approval

The Treasurer of the Commonwealth of Australia or his delegate has:

- (a) provided written notice that there is no objection under the Foreign Acquisitions and Takeovers Act (1975) (Cth) to the proposed subscription by the Subscriber for the Subscription Shares;
- (b) become precluded from exercising any power to make an order under the Foreign Acquisitions and Takeovers Act in relation to the proposed subscription by the Subscriber for the Subscription Shares; or
- (c) if an interim order is made by the Treasurer under the Foreign Acquisitions and Takeovers Act in respect of the proposed subscription for the Subscription Shares by the Subscriber, the subsequent period for making a final order prohibiting the subscription elapses without a final order being made.

(2) Company member approval

The members of the Company in general meeting have approved by the requisite majority:

- (a) the issue of the Subscription Shares to the Subscriber for all purposes including the acquisition by the Subscriber of relevant interests in the Subscription Shares for the purposes of item 7 of section 611 of the Corporations Act and the issue of the Subscription Shares in compliance with ASX Listing Rules; and
- (b) the Placement for the purposes of ASX Listing Rule 7.1,

and ASX has granted the Company the following waivers to the extent necessary for the purposes of the Agreed Capital Raising:

- (a) ASX Listing Rule 3.20;
- (b) ASX Listing Rule 7.40;
- (c) ASX Listing Rule 7.1;
- (d) ASX Listing Rule 7.15; and
- (e) ASX Listing Rule 10.11.

(3) Gidgegannup settlement

The Company:

- (a) providing a certificate to the Subscriber (in a form satisfactory to the Subscriber, acting reasonably) that it holds all documents (other than the documents to be supplied by the Company's bank, including but not limited

to the Duplicate Certificate of Title and any release of any Encumbrance held by the bank over the Gidgegannup Land) required to effect completion under the Options Release, and can, subject to the payment of the Initial Cancellation Fee, effect completion under the Options Release including, without limitation:

- (i) deliver all documents required for the conveyance of the Gidgegannup Land free from Encumbrance; and
- (ii) pay the Initial Cancellation Fee pursuant to the terms of the Options Release;

on the basis that the documents are to be held, as from delivery of the certificate, in escrow by the lawyers for the relevant parties and not released until completion is effected in accordance with the terms of the Options Release; and

- (b) an undertaking from Norton Rose addressed to the Subscriber to, as from the time of receipt of the Initial Cancellation Fee until the date of completion of the Options Release, hold the Initial Cancellation Fee in its trust account and not release the Initial Cancellation Fee except as required to effect completion of the Options Release.

(4) Successful capital raising

On or before 9.00am on the Completion Date, the Company has:

- (a) received valid and binding applications under the bookbuild of the Placement and Institutional Rights Issue such that the Placement and Institutional Rights Issue bookbuild are successful;
- (b) delivered a certificate to the Subscriber from the Company confirming that:
 - (i) the Underwriting Agreement has been entered into;
 - (ii) the conditions precedent to the settlement of the Placement and Institutional Rights Issue as set out in the Underwriting Agreement that are capable of being satisfied at that time have either been satisfied or waived;
 - (iii) the Company is not aware of any circumstances that would indicate that settlement of the Placement and Institutional Rights Issue is not going to occur; and
 - (iv) the Underwriting Agreement has not been terminated and the Company will not terminate the Underwriting Agreement in so far as it relates to the Placement or the Institutional Rights Issue;
- (c) delivered a certificate to the Subscriber from the Underwriters that:
 - (i) the Underwriting Agreement has not been terminated in so far as it relates to the Placement or the Institutional Rights Issue;
 - (ii) they have an unconditional obligation to the Company to pay to the Company in Immediately Available Funds on the Completion Date any funds that are not received by 1pm EST on the Completion Date from the settlement of the Placement and the Institutional Rights Issue; and

- (iii) the Retail Rights Issue is underwritten (subject to normal market termination events) on terms satisfactory to the Subscriber (acting reasonably) as evidenced by the Underwriting Agreement, which has not been terminated.

(5) Directors' voting intentions

Within five Business Days of the date of this Agreement, each Director, unless restricted from doing so by law, publicly announce that they intend to vote the Shares they own or control in favour of the Transaction in the absence of a Superior Proposal.

(6) Re Quotation

The current suspension of the Shares from trading on the ASX is lifted and the Shares are reinstated to quotation on the Official List no later than the Business Day immediately prior to the Completion Date.

(7) Transaction Documentation

The Subscriber (acting reasonably and in timely fashion) providing its approval to those parts of the Transaction Documentation where a reference to the Subscriber, the Agreed Capital Raising or the Options Release is made.

2.2 Reasonable endeavours

- (1) Each party must co-operate with the other and do all things reasonably necessary to ensure that:
 - (a) each of the conditions precedent in clause 2.1 is satisfied as soon as practicable after the date of this Agreement but in any event before the End Date; and
 - (b) there is no occurrence within the control of that party, their Related Bodies Corporate or Associates that would prevent the conditions precedent in clause 2.1 being satisfied (as the context requires),

provided that nothing in this clause 2.2(1) requires that the Subscriber agree to any conditions which may be sought to be imposed in connection with seeking the satisfaction of clause 2.1 and it may agree or not agree to any such conditions in its absolute discretion.

- (2) Each party must:
 - (a) supply to the other party copies of all applications made and all information supplied for the purpose of enabling a condition in clause 2.1 to be satisfied; and
 - (b) keep the other party informed in a timely manner of the status of any discussions or negotiations with relevant third parties regarding the conditions in clause 2.1.

2.3 Notice

Each party must promptly notify the others in writing if it becomes aware that any condition in clause 2.1 has been satisfied or has become incapable of being satisfied.

2.4 Waiver

- (1) The conditions in clauses 2.1(3), 2.1(4), 2.1(5), 2.1(6) and 2.1(7) are for the benefit of the Subscriber, and may only be waived by the Subscriber giving notice in writing to the Company.
- (2) The conditions in clauses 2.1(1) and 2.1(2) are for the benefit of the Company and the Subscriber and may only be waived by the Company and the Subscriber each giving notice in writing to the other.

2.5 Company Member Approval

Without limiting clause 2.1, the Board must:

- (1) obtain and provide an Independent Expert's Report to the Shareholders for the purposes of procuring the satisfaction of the condition set out in clause 2.1(2);
- (2) unanimously recommend the Transaction to the Shareholders and must not withdraw that unanimous recommendation prior to Completion, except to the extent that:

a Competing Proposal has been received by the Company and in the opinion of the Directors reasonably formed in good faith, either:

- (a) after receiving specific written financial and legal advice:
 - (i) that the Competing Proposal is a Superior Proposal; and
 - (ii) that to recommend or continue to recommend the Transaction would constitute a breach of a fiduciary or statutory duties of the Directors; or
- (b) on the basis of the Independent Expert's Report (updated to take into account the Competing Proposal), that the Competing Proposal is a Superior Proposal.

2.6 Termination

- (1) A party may, by giving notice to the other party, terminate this Agreement at any time before Completion if:
 - (a) any of the conditions in clause 2.1 are not satisfied or waived in accordance with clause 2.4, by the End Date; or
 - (b) a condition in clause 2.1 becomes incapable of satisfaction or the parties agree that any of the conditions in clause 2.1 cannot be satisfied, if those conditions are not waived in accordance with clause 2.4.

3. Subscription and issue of Subscription Shares

3.1 Subscription Shares

On the Completion Date, the Subscriber must subscribe for, and the Company must issue, the Subscription Shares for the Subscription Amount, at a price per Subscription Share equal to the Subscription Price.

3.2 Rights and ranking of Subscription Shares

- (1) All Subscription Shares issued to the Subscriber will:
 - (a) be issued as fully paid;
 - (b) be free of Encumbrances; and
 - (c) rank equally in all respects with the other Shares on issue at Completion.
- (2) On issue of the Subscription Shares, the Subscriber agrees to be bound by the Constitution.

4. Period before Completion

4.1 Restrictions on the Company

Prior to Completion, the Company must, unless the Subscriber otherwise consents in writing (such consent not to be unreasonably withheld or delayed) take all reasonable steps to preserve the business, operations, assets and goodwill of the Company and must not:

- (1) issue or allot any share capital or options or other securities convertible into shares capital;
- (2) buy back or redeem any Shares or otherwise reduce its share capital;
- (3) other than the execution of the Options Release, settle any current or pending litigation or make any payments in lieu of such settlement;
- (4) grant any special voting or other rights that attach to Shares;
- (5) resolve to be wound up;
- (6) other than the execution and completion of the Options Release, dispose or agree to dispose of the whole or a substantial part of its business or property;
- (7) declare or pay any dividend, or make any other distribution of its assets, capital or profits to holders of Shares; or
- (8) agree to directly or indirectly acquire any real property or commence any new stages of its existing developments,

other than the issue of Subscription Shares pursuant to this Agreement and doing all things necessary to complete the Agreed Capital Raising.

4.2 Placement restrictions on the Company

The Company must not, and must procure that its advisers do not, without the Subscriber's prior written consent, allow any Major Property Group to participate in the Placement or to underwrite or sub-underwrite the Placement or Rights Issue.

4.3 Notification

If, on or before Completion, the Company becomes aware of any matter which may result in a breach or potential breach of clause 4.1 or clause 4.2, it must:

- (1) notify the Subscriber of the breach or the potential breach and provide the other party with reasonable details of the alleged breach or potential breach; and
- (2) consult with the Subscriber as to the effect of the alleged breach or potential breach.

4.4 Provision of correspondence

The Company must promptly:

- (1) supply to the Subscriber any material correspondence between any member of the Group and their financiers, the Australian Securities and Investments Commission or the ASX; and
- (2) advise the Subscriber of the occurrence of any review event or event of default or any similar event under the Banking Facilities or any material change in the prospects for the successful completion of the contracts for the sale of the Oceanique apartments.

4.5 Restrictions on dealings

- (1) Subject to clause 4.5(2), the Subscriber will not, and will ensure that its Related Bodies Corporate do not, other than as set out in this Agreement or with the prior written consent of the Company, for a period of 6 months after the date of this Agreement:
 - (a) Deal, or induce or attempt to induce or cause or procure another person to Deal, in any Division 3 financial products (as that term is defined in section 1042A of the Corporations Act) of the Company or any of its Related Bodies Corporate (Securities) whether or not such Securities are listed on ASX or any other recognised stock exchanges;
 - (b) create or agree or offer to create, any security interest in the Securities; or
 - (c) do, or omit to do, any act if the act or omission would have the effect of transferring effective ownership or control of the Securities.
- (2) The parties may agree to a date earlier than the date being 6 months after the date of this Agreement, from which the restrictions contained in clause 4.5(1) will terminate and the parties will not be required to comply with clause 4.5(1).

5. Exclusivity

5.1 No shop and no talk arrangements

During the Exclusivity Period the Company will not, and will ensure that its employees, officers, agents and advisers do not, except with the prior written consent of the Subscriber:

- (1) continue any discussions or negotiations which may have been taking place with any other party for the issue or sale of Shares or any financial involvement in the whole or part of the capital of the Company or the Group or otherwise regarding the subject matter of this Agreement, other than with respect to the Placement or the Rights Issue;
- (2) directly or indirectly solicit, invite, facilitate, encourage or initiate any enquiries, negotiations or proposals other than in the ordinary course of business or in respect of the Agreed Capital Raising;
- (3) directly or indirectly respond to any enquiries other than enquiries received in the ordinary course of business or in respect of the Agreed Capital Raising;
- (4) permit any other party to access the Data Room or the Disclosure Materials or undertake due diligence investigations;
- (5) directly or indirectly participate in any discussions or negotiations, provide any information or take any other action to induce or facilitate any third party making or pursuing a proposal other than in the ordinary course of business or in respect of the Agreed Capital Raising; or
- (6) communicate to any person other than the Subscriber an intention to do any of the things referred to in clauses 5.1(1) to 5.1(5) above.

5.2 Response to unsolicited approach

Nothing in clause 5.1(2) to (5) prevents the Company responding to approaches made to it in circumstances where clause 5 has otherwise been complied with if compliance with the relevant provision of that clause in connection with that response would, in the opinion of the Directors reasonably formed in good faith and, after receiving specific written legal advice from an Australian law firm, constitute a breach of the fiduciary or statutory duties of the Directors.

5.3 Notification to Subscriber

The Company must promptly notify the Subscriber in writing:

- (1) of any approach or attempt to initiate, resume or continue discussions or negotiations of the kind referred to in clause 5.1;
- (2) of any request for information relating to it or any of its Subsidiaries or any of its businesses or operations or any request for access to the books or records of it or any of its Subsidiaries in connection with discussions of the kind referred to in clause 5.1; and
- (3) of the general nature of the approach, attempt to initiate, resume or continue discussions or negotiations or request for information.

5.4 Legal advice

The Company acknowledges that it has received legal advice on this Agreement and the operation of this clause 5 to the effect that it may validly enter into such arrangements.

6. Completion

6.1 Time and place for Completion

Completion of the issue of the Subscription Shares under this Agreement must take place:

- (1) at 10.00 am on the Completion Date (or such other time as the parties agree); and
- (2) at the offices of the Company's solicitors or at any other place the parties agree.

6.2 Obligations of the Company

On or before Completion, the Company must procure that a meeting of Directors is convened and approves, subject to Completion, the issue of the Subscription Shares to the Subscriber.

6.3 Subscription at Completion

At Completion, the Subscriber must:

(1) **subscription**

subscribe for and accept the issue of, the Subscription Shares, by providing to the Company a completed and executed application substantially in the form set out in Schedule 1; and

(2) **subscription price**

pay to the Company the Subscription Amount in Immediately Available Funds by paying:

- (a) the Initial Cancellation Fee into the Norton Rose trust account;
- (b) the sum of \$20,000,000 to St George Bank in satisfaction of the terms of the Banking Facilities; and
- (c) the sum of \$750,000 as directed by the Company.

6.4 Issue at Completion

At Completion, the Company must:

(1) **Share issue**

allot and issue or procure the issue of the Subscription Shares to the Subscriber free from any Encumbrance or other third party rights and recorded as fully paid; and

(2) **Documentation**

give to the Subscriber at the Subscriber's election, a CHES holding statement or issuer-sponsored holding statement in respect of the Subscription Shares.

6.5 Interdependency

The requirements of clauses 6.3 and 6.4 are interdependent and are to be carried out contemporaneously and, as nearly as may be possible, simultaneously. No delivery, payment or other event referred to in clauses 6.3 and 6.4 will be regarded as having been

made or occurred until all such deliveries and payments have been made and all other such events have occurred.

6.6 Registration of Subscription Shares

As soon as practicable after Completion but in any event not later than 2 Business Days after Completion, the Company must register the Subscriber in the member's register of the Company as the holder of the Subscription Shares.

6.7 Quotation on ASX

The Company will apply to ASX for official quotation of the Subscription Shares as soon as practicable, and in any event within 2 Business Days after Completion.

6.8 Use of proceeds

The Company will ensure that the moneys referred to in clause 6.3(2)(b) are used to reduce the Company's existing debt pursuant to its Banking Facilities by \$20,000,000, with the remaining amount (post transaction fees) to be available for general working capital purposes.

6.9 Institutional investors

The Company will procure that the holders of no less than 50% of the Shares which are eligible to participate in the Rights Issue be given the opportunity to participate in the Institutional Rights Issue, subject to those holders satisfying the requirements of sections 708(8) or 708(11) of the Corporations Act.

7. Subscriber acknowledgements

The Subscriber acknowledges that:

- (1) the Company is making a private placement of the Subscription Shares;
- (2) the Company is not making any recommendation in relation to the Subscription Shares;
- (3) the acquisition of the Subscription Shares involves a degree of risk;
- (4) the issue of the Subscription Shares does not require disclosure to the Subscriber under Part 6D.2 of the Corporations Act and the Company will not be preparing or lodging a disclosure document with the Australian Securities and Investments Commission in connection with the issue of the Subscription Shares; and
- (5) the Company is entering into this Agreement in reliance on the Subscriber's Warranties.

8. Strategic relationship of parties

8.1 Board nominees

Subject to clauses 8.2, 8.3 and 8.4, the Constitution, applicable laws, regulations and ASX Listing Rules, the Board will promptly following a written request from the Subscriber (which cannot be given prior to Completion) convene a Board meeting to approve the appointment to the Board of:

- (1) two people; or
- (2) that number of people representing no less than 1/3 of the directors of the Company at the time of nomination,

nominated by the Subscriber.

8.2 Suitability of nominees

Each person nominated by the Subscriber pursuant to this clause 8 to be a director must have, in the opinion of the Company's directors acting reasonably, the requisite skill, knowledge and experience to properly perform his or her duties as a director of the Company provided that any member of the Subscriber's board will be taken to have such skill, knowledge and experience and the Subscriber may nominate a replacement for any person whose nomination is rejected under this clause.

8.3 Consents to act

No resolution will be put to shareholders of the Company to approve the appointment of a person nominated by the Subscriber to the Board unless the Company receives a satisfactory consent to act as a director from that nominee provided that a consent in any such form as has previously been accepted by the Board will be taken to be in a satisfactory form.

8.4 Removal of appointees

- (1) Other than with the prior written consent of the Company, the Subscriber will procure the resignation of one board nominee appointed in accordance with this clause 8 from the Board if the Subscriber and its Related Bodies Corporate cease to hold at least 15% of the issued share capital of the Company (calculated on a fully diluted basis).
- (2) In addition to the requirements of clause 8.4 above, other than with the prior written consent of the Company, the Subscriber will also procure the resignation of one board nominee appointed in accordance with this clause 8 from the Board if the Subscriber and its Related Bodies Corporate cease to hold at least 5% of the issued share capital of the Company (calculated on a fully diluted basis).

8.5 Replacement of appointees

Subject to compliance with clauses 8.2, 8.3 and 8.4, the Constitution, applicable laws, regulations and ASX Listing Rules, the Subscriber will be entitled to replace any of its appointees to the Board by notice to the Company given at any time. The Company will promptly following receipt of the Subscriber's notice convene a Board meeting to approve the appointment to the Board of the Subscriber's appointees.

9. Reimbursement of costs

9.1 Background

- (1) The Company acknowledges that, if the Subscriber enters into this Agreement and the Transaction is subsequently not implemented, the Subscriber will incur significant costs.
- (2) The Subscriber has requested that provision be made for the payments outlined in clause 9.2, without which the Subscriber would not have entered into this Agreement.

- (3) The Company considers that this clause is fair and reasonable and that it is appropriate to agree to the payments referred to in this clause 9 in order to secure the significant benefits to it (and its shareholders) resulting from the Transaction.

9.2 Reimbursement to Subscriber

- (1) If this Agreement is terminated or the Transaction is not completed as a result of:
- (a) a Competing Proposal being received by the Board to which clause 2.5(2)(a) or (b) applies such that the Directors recommend the Competing Proposal as a Superior Proposal to Shareholders;
 - (b) despite the Board continuing to recommend the Transaction, the Shareholders approving a Superior Proposal and as a result, fail to approve the Transaction by the requisite majority; or
 - (c) the Transaction not being put to the Shareholders by the Company for approval in general meeting by the End Date, except where the reason for the Transaction not being put to the Shareholders is caused by the Subscriber or as a result of matters outside the control of the Company. For the avoidance of doubt and for the purposes of this paragraph (c), the receipt by the Company, or announcement by another person, of a Competing Proposal (whether or not solicited by the Company) is not a matter outside the control of the Company,

the Company must pay to the Subscriber the Break Fee to compensate the Subscriber for the costs and disbursements incurred by the Subscriber, the loss of, or delay in pursuing, other corporate opportunities and the time invested by the management and board of the Subscriber.

- (2) Since the losses which would actually be incurred by the Subscriber of the kinds referred to in clause 9.2(1) are of such nature that they cannot accurately be ascertained in advance, the Break Fee has been agreed as a genuine and reasonable pre-estimate of the loss which may be suffered by the Subscriber.
- (3) The Company must pay the Subscriber the Break Fee claimed under clause 9.2(1) within 5 Business Days of receipt by the Company of a demand for payment of the Break Fee from the Subscriber that has been issued in accordance with this clause.

9.3 Compliance with law

This clause 9 imposes obligations on the Company only to the extent that the performance of those obligations as to payment of any part of the Break Fee would not breach an order of the Takeovers Panel or a court of competent jurisdiction and all rights of review or appeal in respect of the order have been exhausted.

9.4 Exclusive remedy

Notwithstanding any other provision of this Agreement, where a Break Fee becomes payable (or would be payable if a demand was made by the Subscriber), the Subscriber cannot make any claim against the Company in relation to an event referred to in clause 9.2(1)(a), 9.2(1)(b) or 9.2(1)(c) other than for the Break Fee provided that nothing in clause 9 operates to limit the rights of the Subscriber in respect of Claims it may have in respect of other breaches of this Agreement or otherwise in connection with the Transaction except that the amount of any such Claims will be reduced or extinguished (as applicable) by the amount of the Break Fee paid to and retained by the Subscriber.

10. Warranties

10.1 Warranties

- (1) The Company gives the Company Warranties to and for the benefit of the Subscriber.
- (2) The Subscriber gives the Subscriber Warranties to and for the benefit of the Company.

10.2 Repetition of warranties

The Warranties are given:

- (1) in respect of each Warranty which is expressed to be given on a particular date, on that date; and
- (2) in respect of each other Warranty, on the date of this Agreement and immediately before Completion.

10.3 Indemnity

Subject to the terms of this clause 10, the Company indemnifies the Subscriber against Loss arising from or connected with a breach of any Company Warranty.

10.4 Reliance

- (1) The Company acknowledges that the Subscriber enters into this Agreement in reliance on each Company Warranty.
- (2) The Subscriber acknowledges that the Company enters into this Agreement in reliance on each Subscriber Warranty.

10.5 Independent Warranties

Each Warranty is separate and independent and not limited by reference to any other Warranty or any notice or waiver given by any party in connection with anything in this Agreement.

10.6 Representations of the Subscriber

The Subscriber represents and warrants to the Company that the Subscriber:

- (1) **No disclosure document required**

Is a person to whom an offer and issue of Subscription Shares can be made without disclosure by reason of the offer of Subscription Shares being received outside of Australia or as a result of sub-sections 708(8), 708(10) or 708(11) of the Corporations Act.

- (2) **Own enquiries**

Other than as expressly warranted in this Agreement in the Company Warranties, relies on its own assessment of the Company and its prospects and has conducted its own investigations with respect to the Subscription Shares and the Company, including the particular tax consequences of acquiring, owning or disposing of the Subscription Shares in light of the Subscriber's particular situation as well as any consequences arising under the laws (including taxation laws) of any jurisdiction.

10.7 Disclosure

- (1) The Subscriber acknowledges and agrees that the Company has disclosed or is deemed to have disclosed against the Company Warranties, and that the Subscriber is aware of, and will be treated as having actual knowledge of, all facts, matters and circumstances which prior to the date of this Agreement:
 - (a) are fully and fairly disclosed in writing by the Company or any Representative of the Company to the Subscriber or its Representatives;
 - (b) were contained in the Disclosure Materials; or
 - (c) are within the actual knowledge of the Subscriber or any of its Representatives;
- (2) The Company Warranties are given subject to the disclosures or deemed disclosures described in clause 10.7(1). The Company will have no liability under the Company Warranties to the extent that disclosure is made or is deemed to have been made against the Company Warranties under this clause 10.7.

10.8 No reliance

The Subscriber acknowledges, represents and warrants to the Company and each of its Related Bodies Corporate that:

- (1) at no time has:
 - (a) the Company, any person on its behalf, made or given; or
 - (b) the Subscriber relied on (in connection with the matters the subject of this Agreement),

any representation, warranty, promise or undertaking except the Company Warranties and those set out in this Agreement;
- (2) no representations, warranties, promises, undertakings, statements or conduct:
 - (a) have induced or influenced the Subscriber to enter into, or agree to any terms or conditions of, this Agreement;
 - (b) have been relied on in any way as being accurate by the Subscriber;
 - (c) have been warranted to the Subscriber as being true; or
 - (d) have been taken into account by the Subscriber as being important to its decision to enter into, or agree to any or all of the terms of, this Agreement,

except the Company Warranties and those set out in this Agreement; and
- (3) The Subscriber has made, and relies upon, its own searches, investigations, enquiries and evaluations in respect of the Company and its affairs, except to the extent set out in the Company Warranties.

10.9 Opinions, estimates and forecasts

- (1) Without limiting clause 10.9(2), the Company makes no warranty relating to documents number 16 in the Data Room Index and documents number 1, 27, 48, 49, 55, 66, 67, 68 and 72 in the Disclosure Materials Index.

- (2) The Subscriber acknowledges that no member of the Company is under any obligation to provide the Subscriber with any information on the future financial performance or prospects of the Company. If the Subscriber has received opinions, estimates, projections, business plans, budget information or other forecasts in respect of the Company, the Subscriber acknowledges and agrees that:
 - (a) there are uncertainties inherent in attempting to make these estimates, projections, business plans, budgets and forecasts and the Subscriber is familiar with these uncertainties;
 - (b) the Subscriber is taking full responsibility for making their own evaluation of the adequacy and accuracy of all estimates, projections, business plans, budgets and forecasts furnished to it; and
 - (c) other than in respect of any fraud, the Company is not liable under any Claim arising out of or relating to any opinions, estimates, projections, business plans, budgets or forecasts.

10.10 Exclusions from liability

The Company will not be liable for any Claim in respect of:

- (1) any Loss (including any indirect, consequential or economic loss or loss of profits, however arising) which does not flow directly, naturally or in the usual course of things from a breach of a Company Warranty or a breach of this Agreement, whether or not that Loss was in the reasonable contemplation of the parties when this Agreement was entered into; and
- (2) to the extent that the Subscriber or any Related Body Corporate of the Subscriber is entitled to claim an indemnity against or otherwise recover from (or has claimed an indemnity against or otherwise recovered from) a person other than the Company in respect of any Loss flowing from the breach or by reason of any fact, matter or circumstance giving rise to the breach, whether by way of contract, indemnity or otherwise.

10.11 Minimum amount of Claims

The Company will not be liable for any Claim:

- (1) unless the amount finally adjudicated against or agreed by the Company in respect of the Claim exceeds \$100,000; and
- (2) until the total of all amounts finally adjudicated against or agreed by the Company in respect of Claims that would, but for this clause 10.11(2), be payable under clause 10.11(1), exceeds \$250,000.

10.12 Maximum liability

- (1) The maximum aggregate amount which the Company is required to pay in respect of all Claims whenever made is limited to an amount equal to 100% of the Subscription Amount.
- (2) The Company will not be liable for any Claim unless the Subscriber notifies the Company of the Claim (in writing and in reasonable detail) within 12 months after Completion.

11. Termination

11.1 Termination by the Subscriber with notice

The Subscriber may terminate this Agreement at any time before Completion by notice in writing to the Company if:

- (1) the Company materially breaches this Agreement or does not fulfil a material obligation under this Agreement, and that material breach is incapable of remedy or, if capable of remedy, is not remedied within 7 days of the Company receiving written notice from the Subscriber requiring rectification of the breach; or
- (2) the Company is removed from the Official List;
- (3) the Company is unable to satisfy clause 6.9;
- (4) any of the Banking Facilities are terminated;
- (5) either:
 - (a) a breach of a Company Warranty occurs; or
 - (b) any other event occurs or circumstance arises in respect of any member of the Group, including but not limited to the commencement of, or threatened commencement of, material litigation against a Group member or in respect of the Banking Facilities, any amendment of a facility or the occurrence of a review event or event of default or any similar event under a facility; or
 - (c) an Insolvency Event occurs,

before Completion that in the reasonable opinion of the Subscriber constitutes a Material Adverse Change, and the Material Adverse Change is incapable of remedy or, if capable of remedy, is not remedied to the satisfaction of the Subscriber within 7 days of the Company receiving written notice from the Subscriber requiring rectification of the breach.

For the purpose of enabling this clause to operate as intended, where Completion would otherwise be due to occur prior to expiry of any period allowed for remedy, the date for Completion will be extended until the second Business Day after expiry of that remedy period.

11.2 Termination by the Company

The Company may terminate this Agreement at any time before Completion by notice in writing to the Subscriber if:

- (1) the Subscriber materially breaches this Agreement or does not fulfil a material obligation under this Agreement, and that material breach is incapable of remedy or, if capable of remedy, is not remedied to the satisfaction of the Company within 7 days of the Subscriber receiving written notice from the Company requiring rectification of the breach;
- (2) the Break Fee is paid by the Company in accordance with clause 9.2; or
- (3) a breach of a Subscriber Warranty occurring before Completion that in the reasonable opinion of the Company materially and adversely affects the Transaction or Subscriber's ability to Complete, and the relevant matter is

incapable of remedy or, if capable of remedy, is not remedied to the satisfaction of the Company within 7 days of the Subscriber receiving written notice from the Company requiring rectification of the breach.

For the purpose of enabling this clause to operate as intended, where Completion would otherwise be due to occur prior to expiry of any period allowed for remedy, the date for Completion will be extended until the second Business Day after expiry of that remedy period.

11.3 Effect of Termination

If this Agreement is terminated under clause 2.6 or this clause 11:

- (1) each party retains the rights it has against the other in respect of any breach of this Agreement occurring before termination;
- (2) each party is released from its obligations to further perform its obligations under this Agreement, except those expressed to survive termination;
- (3) the Subscriber must return to the Company or destroy all documents and other materials obtained from or on behalf of the Company in connection with the Transaction provided that the Subscriber will be entitled to retain one copy of documents or materials obtained from the Company or its Representatives for legal, regulatory or compliance purposes; and
- (4) the rights and obligations of each party under each of the following clauses and schedules will continue independently from the other obligations of the parties and survive termination of this Agreement:
 - (a) clause 1 (Definitions and Interpretation);
 - (b) clause 9 (Reimbursement of Costs);
 - (c) clause 12 (Confidentiality);
 - (d) clause 13 (Costs and expenses);
 - (e) clause 14 (GST); and
 - (f) clauses 15 and 17 (Nominee and General).

11.4 No other right to terminate or rescind

No party may terminate or rescind this Agreement (including on the grounds of any breach of Warranty or misrepresentation that occurs or becomes apparent before Completion) except as permitted under clause 2.6 or this clause 11.

12. Confidentiality

12.1 Confidentiality obligations

Subject to clause 12.2, each party:

- (1) acknowledges that the Confidential Information is secret, confidential and valuable to the other party;

- (2) must not, without the other party's prior written consent, directly or indirectly, disclose or publish the Confidential Information otherwise than in accordance with the terms of this Agreement;
- (3) must not at any time use the Confidential Information other than for the purposes of this Agreement, and must not permit, assist or allow a third party to use the Confidential Information;
- (4) must do all things reasonably necessary to safeguard the confidentiality of the Confidential Information from unauthorised use, access or copying;
- (5) may only disclose the Confidential Information to its Representatives who:
 - (a) have a specific need to have access to the Confidential Information for the purpose of enabling the party to perform its obligations under this Agreement; and
 - (b) are made aware of the confidential nature of the Confidential Information and the existence and terms of this clause; and
- (6) must, on request of the other party, return any Confidential Information provided by that party except for any Confidential Information forming part of the minutes or board records of the party receiving the Confidential Information and any Confidential Information that is required to be retained for legal, regulatory or compliance purposes.

12.2 Disclosure required by law

- (1) A party is not liable for breaching its confidentiality obligations in this Agreement if:
 - (a) it complies with a court order, other legal or Government Agency requirement or the requirements of the ASX Listing Rules to disclose any of the Confidential Information;
 - (b) the Confidential Information is in the public domain other than as a result of a breach of this Agreement by the party;
 - (c) the Confidential Information is rightfully known to or in the possession or control of a party and not subject to an obligation of confidentiality on that party; or
 - (d) the Confidential Information is independently and lawfully obtained or developed by a party.
- (2) Where disclosure is required by court order or other legal or Government Agency requirement, the disclosing party must:
 - (a) disclose only the minimum Confidential Information required to comply with that requirement; and
 - (b) give the other party prompt written notice of that disclosure requirement to enable the other party to take appropriate steps to safeguard its interests.

12.3 Acknowledgement of effect of ASX Listing Rules

- (1) The Subscriber and the Company each acknowledge that the other is listed on ASX and is subject to the ASX Listing Rules and, in particular, Listing Rule 3.1 which requires that the relevant party notify the market and ASX of any information

that a reasonable person would expect to have a material effect on the price or value of the party's securities.

- (2) Where a party believes (acting reasonably) it is required to make a market announcement, to satisfy the requirements of the ASX Listing Rules, to the extent practicable and allowed by law, that party must provide a draft of the relevant document to the other party at least 24 hours prior to making that announcement.
- (3) Except where clauses 12.3(1) or 12.3(2) apply, each Party agrees not to make a media release or public statement about the Transaction except with the prior written consent of the other Party.

12.4 Survival of obligations

The rights and obligations of the parties under this clause 12 survive termination of this Agreement.

13. Costs and expenses

13.1 Duties

The Subscriber must pay all Duty in respect of the execution, delivery and performance of this Agreement and the Transaction. For the avoidance of doubt, this obligation does not extend to any Duty payable in connection with the Placement, the Rights Issue or the termination or settlement of the Gidgegannup Option Agreements or transactions contemplated by or entered into in connection with any of them.

13.2 Costs and expenses

- (1) Subject to clause 13.2(3), in reimbursement of a portion of the costs and expenses in respect of this Transaction the Company will pay the Subscriber the sum of \$250,000 (Subscriber's Costs).
- (2) The Subscriber's Costs will be paid by the Company to the Subscriber within 5 Business Days of receipt of a notice requesting such payment in accordance with this clause, which cannot be sent to the Company prior to 30 June 2010 if the Subscription Amount has not been paid.
- (3) The Subscriber's Costs will not be payable by the Company where:
 - (a) the Company terminates this Agreement as a result of a breach of the terms of this Agreement by the Subscriber; or
 - (b) the condition in clause 2.1(1) of this Agreement is not satisfied by the End Date.
- (4) Unless otherwise provided for in this Agreement, each party must pay its own costs and expenses in respect of the negotiation, preparation, execution, delivery and registration of this Agreement and any other agreement or document entered into or signed under this Agreement.
- (5) Any action to be taken by any party in performing its obligations under this Agreement must be taken at its own cost and expense unless otherwise provided in this Agreement.

14. GST

14.1 Definitions

Words used in this clause 14 that have a defined meaning in the GST Law, have the same meaning as in the GST Law unless the context indicates otherwise.

14.2 GST

- (1) Unless expressly included, the consideration for any supply under or in connection with this Agreement does not include GST.
- (2) To the extent that any supply made under or in connection with this Agreement is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the recipient must pay, in addition to the consideration provided under this Agreement for that supply (unless it expressly includes GST) an amount (additional amount) equal to the amount of that consideration (or its GST exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply. The recipient must pay the additional amount at the same time as the consideration to which it is referable.
- (3) Whenever an adjustment event occurs in relation to any taxable supply to which clauses 14.2(1) and 14.2(2) applies:
 - (a) the supplier must determine the amount of the GST component of the consideration payable; and
 - (b) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

14.3 Tax invoices

If the supplier is registered for GST, the supplier must issue a Tax Invoice to the recipient of a supply to which clause 14.2 applies no later than 7 days following payment of the GST inclusive consideration for that supply under that clause.

14.4 Reimbursements

If either party is entitled under this Agreement to be reimbursed or indemnified by the other party for a cost or expense incurred in connection with this Agreement, the reimbursement or indemnity payment must not include any GST component of the cost or expense to the extent that the cost or expense is the consideration for a creditable acquisition made by the party being reimbursed or indemnified, or by its representative member.

15. Nominee

The Subscriber may nominate one or more of its wholly owned Subsidiaries to be the registered holder of the Subscription Shares by requesting the issue and allotment of the Subscription Shares to that entity or those entities in the application in Schedule 1.

16. Notices

16.1 How and where Notices may be sent

Each communication (including each notice, consent, approval, request and demand) under or in connection with this Agreement:

- (1) must be in writing; and
- (2) must be addressed as follows (or as otherwise notified by that party to the other party from time to time):

To the Company: Port Bouvard Limited
Level 1, 129 Melville Parade
Como WA 6152

Fax No: (08) 6436 2223
Attention: Peter Coppini

To the Subscriber: FKP Limited
Level 5 120 Edward Street
Brisbane QLD 4000

Fax No: (07) 3319 3695
Attention: The Company Secretary

- (3) must be signed by the party making it or (on that party's behalf) by the solicitor for or any attorney, director, secretary or authorised agent of that party;
- (4) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, or the addressee in accordance with clause 16.1(2); and
- (5) is taken to be received by the addressee:
 - (a) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (b) (in the case of prepaid post sent to an address in another country) on the seventh day after the date of posting;
 - (c) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (d) (in the case of delivery by hand) on delivery;

but if the communication is taken to be received on a day that is not a Business Day or after 5.00pm AWST, it is taken to be received at 9.00am on the next Business Day.

17. General

17.1 Governing law and jurisdiction

- (1) This Agreement is governed by the law in force in Western Australia.

- (2) Each party irrevocably submits to the non-exclusive jurisdiction of courts exercising jurisdiction in Western Australia and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement. Each party irrevocably waives any objection to the venue of any legal process in these courts on the basis that the process has been brought in an inconvenient forum.

17.2 Invalidity and enforceability

- (1) If any provision of this Agreement is invalid under the law of any jurisdiction the provision is enforceable in that jurisdiction to the extent that it is not invalid, whether it is in severable terms or not.
- (2) Clause 17.2(1) does not apply where enforcement of the provision of this Agreement in accordance with clause 17.2(1) would materially affect the nature or effect of the parties' obligations under this Agreement.

17.3 Waiver

- (1) No party to this Agreement may rely on the words or conduct of any other party as a waiver of any right unless the waiver is in writing and signed by the party granting the waiver.
- (2) The meanings of the terms used in this clause 17.3 are set out below.
 - (a) **conduct** includes delay in the exercise of a right.
 - (b) **right** any right arising under or in connection with this Agreement and includes the right to rely on this clause.
 - (c) **waiver** includes an election between rights and remedies, and conduct that might otherwise give rise to an estoppel.

17.4 Variation

A variation of any term of this Agreement must be in writing and signed by the parties.

17.5 Assignment of rights

Rights arising out of or under this Agreement are not assignable by a party without the prior written consent of the other parties.

17.6 Further action to be taken at each party's own expense

Each party must, at its own expense, do all things and execute all documents necessary to give full effect to this Agreement and the Transaction.

17.7 Entire agreement

This Agreement embodies the entire agreement between the parties and supersedes all prior discussions, negotiations, understandings, arrangements and agreements, express or implied, in respect of the subject matter of those agreements (including, without limitation, the Letter of Intent and the Confidentiality Undertaking).

17.8 Counterparts

This Agreement may be executed in any number of counterparts.

17.9 Exercise of discretions

- (1) Unless expressly required by the terms of this Agreement, a party is not required to act reasonably in giving or withholding any consent or approval or exercising any other right, power, authority, discretion or remedy, under or in connection with this Agreement.
- (2) A party may (without any requirement to act reasonably) impose conditions on the grant by it of any consent or approval, or any waiver of any right, power, authority, discretion or remedy, under or in connection with this Agreement. Any conditions must be complied with by the party relying on the consent, approval or waiver.

Schedule 1 Application for Subscription Shares

To: The Directors
Port Bouvard Limited (Company)
Level 2, 129 Melville Parade
Como WA 6152
Australia

Application for Subscription Shares

[insert full name of Subscriber party], in accordance with the terms of the Subscription Agreement dated **[insert date]** and made between the Company and **[insert full name of Subscriber party]** (Subscriber)(Agreement):

1. applies to have issued to it or its nominee fully paid ordinary shares in the capital of the Company at a price per share of A\$0.13;
2. pays the sum of A\$22,750,000 representing the subscription money payable in respect of the shares, in accordance with the terms of clause 6.3 (2) of the Agreement; and
3. agrees that all shares issued to it or its nominee will be held on and subject to the provisions of the constitution of the Company from time to time and it or its nominee will be bound by and observe such provisions.

[For the purposes of clause 15 of the Agreement the Subscriber nominates [] (ACN/ABN [] to be issued the shares.)

.....
Executed by FKP Limited ACN 010 729

950 by :

.....
and

.....
as attorneys under Power of Attorney
registered number 712482867 dated 28
May 2009

.....
Attorney

.....
Attorney

.....
Name of Attorney
(BLOCK LETTERS)

.....
Name of Attorney
(BLOCK LETTERS)

Schedule 2 Company Warranties

1. The Company

- 1.1 The Company is a corporation registered and validly existing under the Corporations Act.
- 1.2 The Company has full power and capacity to enter into and perform its obligations under this Agreement.
- 1.3 All necessary Authorisations for the execution, delivery and performance by the Company of this Agreement in accordance with its terms have been obtained or will be obtained prior to Completion.
- 1.4 The execution, delivery and performance of this Agreement:
 - (1) complies with the Constitution; and
 - (2) does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or Encumbrance, by which the Company is bound and that would prevent it from entering into and performing its obligations under this Agreement.
- 1.5 The Company has been admitted to and is listed on the Official List.
- 1.6 The Company has not been removed from the Official List.

2. Solvency

- 2.1 The Company:
 - (1) has not gone, or proposed to go, into liquidation;
 - (2) has not passed a winding-up resolution or commenced steps for winding-up or dissolution;
 - (3) has not received a deregistration notice under section 601AB of the Corporations Act or any communication from ASIC that might lead to such a notice or applied for deregistration under section 601AA of the Corporations Act; and
 - (4) has not been presented or threatened with a petition or other process for winding-up or dissolution.
- 2.2 No receiver, receiver and manager, judicial manager, liquidator, administrator or official manager has been appointed, or is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of the Company, and, to the best of the Company's knowledge, information and belief, there are no circumstances justifying such an appointment.

3. Information

- 3.1 Acknowledging the effect of clause 1.5 and 10.7, to the best of the Company's knowledge, information and belief, all information disclosed by the Company and its authorised officers, employees and advisers to the Subscriber and its authorised officers, employees or advisers in the course of the negotiations leading to the finalisation of this Agreement regarding the Group and its business being the information contained in the Disclosure Materials as at the date of this Agreement is true, accurate and complete and not

misleading or deceptive and all the information about the Group which the Company knows and which is material to a purchaser for value of the Subscription Shares and includes all material agreements entered into by a member of the Group or by which they are bound, all material litigation and all banking facilities and security documentation between any Group member and their financiers.

- 3.2 To the best of the Company's knowledge, information and belief, the Company has not withheld from the Subscriber any information or document which, for the purposes of ASX Listing Rule 3.1, a reasonable person would expect to have a material effect on the price or value of Shares or which would be material to a purchaser for value of the Subscription Shares.
- 3.3 The Transaction will not breach any change of control or acquisition of control provision in any agreement by which any Group member is bound or give rise to any termination right in a third party or pre-emptive or similar right in favour of a third party under any such agreement.
- 3.4 No material Claims are threatened or pending against any member of the Group and there is no fact, matter or circumstance likely to give rise to any Claim against any member of the Group.

3.5 No member of the Group is currently involved in any material legal proceeding.

3.6 There are no unsatisfied or outstanding judgements, orders or writs affecting any member of the Group.

4. Financial

4.1 As far as the Company is aware, the Financial Statements have been prepared:

- (1) in accordance with the Accounting Standards;
- (2) in accordance with the requirements of the Corporations Act; and
- (3) in the manner described in the notes to the Financial Statements.

4.2 As far as the Company is aware, the Financial Statements give a true and fair view of:

- (1) the financial position of the Company as at the Balance Date; and
- (2) the financial performance of the Company for the financial period ended on the Balance Date.

4.3 Subject to the information contained in the Disclosure Materials, there are no agreements or arrangements entered into pertaining to the financing of the Company or any Related Body Corporate of the Company.

4.4 Since the Balance Date, there have been no matters that have or are likely to have a Material Adverse Effect.

4.5 No Insolvency Event has occurred in respect of any Group member.

5. Specific

5.1 Other than the Gidgegannup Option Agreements and the put and call option agreement between Riseley Investments and PBD1, there are no other material agreements or arrangements entered into by any Group member.

- (1) pertaining to the land held by the Group at Gidgegannup or the land the subject of the Gidgegannup Option Agreements; or
 - (2) with either Riseley Investments, a Related Body Corporate of Riseley Investments or Mr Coleman which bind the Company or any Related Body Corporate of the Company;
- 5.2 To the best of the Company's knowledge, information and belief, PBD2 is entitled to receive a stamp duty refund in the sum of \$3,065,400, being the stamp duty paid on the Gidgegannup Option Agreements.
- 5.3 As at the date of this Agreement, it has not received any response, whether written or otherwise from DEWHA in relation to either the Company's letter to DEWHA dated 12 March 2010 or the Company's property development at Point Grey.

Schedule 3 – Subscriber Warranties

The Subscriber warrants that:

1. Power and capacity

It has full power and capacity to enter into and perform its obligations under this Agreement.

2. Corporate authorisations

All necessary Authorisations for the execution, delivery and performance by It of this Agreement in accordance with its terms have been obtained or will be obtained prior to Completion.

3. No legal impediment

The execution, delivery and performance of this Agreement:

- (1) complies with its constitution or other constituent documents (as applicable); and
- (2) does not constitute a breach of any law or obligation, or cause or result in a default under any agreement, or Encumbrance, by which it is bound and which would prevent it from entering into and performing its obligations under this Agreement.

4. Information

- (1) It has made and relied upon its own assessment of the Company and has conducted its own investigation with respect to the Subscription Shares and the Company including, without limitation, the particular legal and tax consequences of purchasing, owning or disposing of the Subscription Shares in light of its particular situation.
- (2) It is aware that publicly available information about the Company can be obtained from the Australian Securities and Investments Commission and ASX (including its web site <http://www.asx.com.au>).
- (3) In deciding to enter into this Agreement and subscribe for the Subscription Shares it has formed its own investment decision.

5. Solvency

- (1) It has not gone, or proposed to go, into liquidation.
- (2) It has not passed a winding-up resolution or commenced steps for winding-up or dissolution.
- (3) It has not received a deregistration notice under section 601AB of the Corporations Act or any communication from ASIC that might lead to such a notice or applied for deregistration under section 601AA of the Corporations Act.
- (4) It has not been presented or threatened with a petition or other process for winding-up or dissolution and, so far as it is aware, there are no circumstances justifying a petition or other process.

- (5) No receiver, receiver and manager, judicial manager, liquidator, administrator, official manager has been appointed, or is threatened or expected to be appointed, over the whole or a substantial part of the undertaking or property of Subscriber, and, so far as it is aware, there are no circumstances justifying such an appointment.
- (6) It has not entered into, or taken steps or proposed to enter into, any arrangement, compromise or composition with or assignment of the benefit of its creditors or class of them.

6. Subscriber's interest in the Company

As at the date of this Agreement and at all times until Completion:

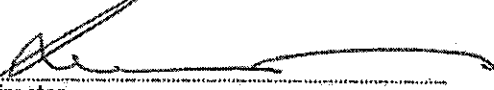
- (1) the Subscriber does not, and will not, have any legal or beneficial ownership of any the Company Shares; and
- (2) without limiting clause 6(1) of this Schedule 3, the Subscriber's 'voting power' (as defined in section 9 of the Corporations Act) is, and will be, nil.

Executed as an agreement.

Executed by Port Bouvard Limited ACN
009 134 114 in accordance with
section 127 of the *Corporations Act 2001*:



Director/company secretary



Director

Executed by FKP Limited ACN 010 729
950 by :
and
as attorneys under Power of Attorney
registered number 742482867 dated 28
May 2009



Attorney
Peter Ross Brown

Director

Name of Attorney
(BLOCK LETTERS)



Attorney
Susan Elizabeth Stewart

Name of Attorney
(BLOCK LETTERS)



25 June 2010

Susan Stewart
Company Secretary
FKP Limited
Level 5, 120 Edward Street
Brisbane QLD 4000

*This is a true and correct copy
of the variation letter
Agreement dated 25 June 2010*

*Atterwait
Company Secretary
FKP Limited*

Dear Susan

RE: Subscription agreement – variation letter agreement

We refer to the subscription agreement between Port Bouvard Limited ACN 009 134 114 (the **Company**) and FKP Limited ACN 010 729 950 (**Subscriber**) dated 20 May 2010 (**Subscription Agreement**).

Unless otherwise defined in this letter agreement, capitalised terms used in this letter agreement have the same meaning as given to those terms in the Subscription Agreement. Where stated, clause references in this letter agreement are references to clauses in the Subscription Agreement.

Pursuant to clause 17.4 an amendment or variation to the Subscription Agreement is not effective unless it is in writing and signed by the Company and the Subscriber.

In accordance with clause 17.4 the Company and the Subscriber agree that with effect from the date of this letter agreement the Subscription Agreement is varied as follows:

1. by deleting clause 1.1(16) and replacing it with:

"Completion means completion of the issue of the Subscription Shares and payment of the Subscription Amount in accordance with clause 6 and the terms of the Escrow Deed;"

2. by inserting the following as a new clause 1.1(33):

"Escrow Deed means the escrow agent deed dated 25 June 2010 between the Company, the Subscriber and Norton Rose Australia;"

3. by inserting the following as a new clause 1.1(60):

"Reinstatement means the current suspension of the Shares from trading on the ASX being lifted and the Shares being reinstated to quotation on the Official List;"

-
4. by deleting clause 2.1(6);
 5. by inserting new clause 2.6 (2):

"The Subscriber may, by giving notice to the Company, terminate this Agreement at any time before Completion if Reinstatement has not occurred by noon on 29 June 2010";
 6. by inserting the following as a new clause 4.6:

"4.6 Escrow arrangements

 - (1) *On 25 June 2010, the Subscriber must pay to Norton Rose Australia the Subscription Amount in Immediately Available Funds to be held by Norton Rose Australia strictly in accordance with the terms of the Escrow Deed.*
 - (2) *The Subscriber acknowledges that, upon payment of the Subscription Amount to Norton Rose Australia, it has irrevocably instructed and authorised Norton Rose Australia to make payment of the Subscription Amount in accordance with the terms of the Escrow Deed.*;
 7. by deleting "10.00am" from clause 6.1(1) and replacing it with "within 2 hours following Reinstatement occurring,";
 8. by deleting the word "At" from clause 6.3 and inserting the words "Subject to Reinstatement occurring, at" before the words "Completion" in that clause;
 9. by deleting clause 6.3(2) and replacing it with:

"(2) subscription price

"pay the Subscription Amount to Norton Rose in accordance with the terms of the Escrow Deed.";
 10. by deleting the word "At" from clause 6.4 and inserting the words "Subject to Reinstatement occurring, at" before the word "Completion" in that clause; and
 11. by deleting paragraph 2 of Schedule 1 and replacing it with:

has paid the sum of \$22,750,000 representing the subscription money payable in respect of the shares to Norton Rose Australia with an irrevocable authority for Norton Rose Australia to pay that amount in accordance with the terms of the Escrow Deed; and"

The Company and the Subscriber confirm that:

- a) the variations to the Subscription Agreement set out in this letter agreement do not affect the alidity or enforceability of the Subscription Agreement, as varied by this letter agreement; and
- b) each party to the Subscription Agreement is bound by the Subscription Agreement, as varied by this letter agreement.

This letter agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same agreement.

The letter agreement is binding on the exchange of counterparts. A copy of a counterpart sent by facsimile machine:

- a) must be treated as an original counterpart;
- b) is sufficient evidence of the execution of the original; and
- c) may be produced in evidence for all purposes in place of the original.

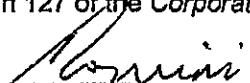
Please execute this letter agreement to confirm your agreement to the provisions set out in it.

Yours sincerely

Peter Coppini
Company Secretary
Port Bouvard Limited

Executed as an agreement on June 2010


Executed by Port Bouvard Limited ACN 009 134 114 in accordance with section 127 of the Corporations Act 2001:



Director/company secretary

PETER COPPINI

Name of director/company secretary
(BLOCK LETTERS)



Director

STEPHEN JOHN COURT

Name of director
(BLOCK LETTERS)


Executed by FKP Limited ACN 010 729 950 by: MICHAEL SHANNON and SUSAN STEWART as attorneys under Power of Attorney registered number 712482867 dated 28 May 2009



Attorney

Michael Shannon

Name of Attorney
(BLOCK LETTERS)
Michael Shannon
Legal Counsel
under Power of Attorney
712482867



Attorney

SUSAN STEWART

Name of Attorney
(BLOCK LETTERS)