

Planning Agreement - 187 Thomas Street, Haymarket

The Council of the City of Sydney

and

Greaton Thomas Pty Ltd
as trustee for the Greaton Thomas Unit Trust
ACN 623 405 621

The Council of the City of Sydney
Town Hall House
456 Kent Street
SYDNEY NSW 2000

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THIS PLANNING AGREEMENT is made on

2021

BETWEEN:

- (1) **The Council of the City of Sydney ABN 22 636 550 790**
of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **City**); and
- (2) **Greaton Thomas Pty Ltd ACN 623 405 621**
as trustee for the Greaton Thomas Unit Trust ABN 32 243 425 645
of Level 20, 20 Bond Street, SYDNEY NSW 2000 (the **Developer**)

BACKGROUND

- (A) The Developer is the owner of the Land and intends to undertake the Development on the Land.
- (B) The Developer has offered to enter into this document with the City to provide the Public Benefits on the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

Act means the *Environmental Planning and Assessment Act 1979 (NSW)*.

Affordable Housing Monetary Contribution means that part of the Monetary Contribution described as "Affordable Housing Monetary Contribution" in clause 1 of Schedule 3 to be paid by the Developer to the City in accordance with this document.

Attributed Value means the value the City and the Developer agree is to be attributed to each element of the Public Benefits as at the date of this document, as set out in clause 1 of Schedule 3 of this document.

Authorisation means:

- (a) an approval, authorisation, consent, declaration, exemption, permit, licence, notarisation or waiver, however it is described, and including any condition attached to it; and
- (b) in relation to anything that could be prohibited or restricted by law if a Government Agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney, Australia.

City's Representative means the person named in Item 3 of Schedule 1 or his/her delegate.

Community Infrastructure Monetary Contribution means that part of the Monetary Contribution described as "Community Infrastructure Monetary Contribution" in clause 1 of Schedule 3 to be paid by the Developer to the City in accordance with this document.

Confidential Information means:

- (a) information of a party (**disclosing party**) that is:
 - (i) made available by or on behalf of the disclosing party to the other party (**receiving party**), or is otherwise obtained by or on behalf of the receiving party; and
 - (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential.

Confidential Information may be made available or obtained directly or indirectly, and before, on or after the date of this document.

Confidential Information does not include information that:

- (a) is in or enters the public domain through no fault of the receiving party or any of its officers, employees or agents;
- (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under an obligation of confidence to the disclosing party in relation to that information; or
- (c) is or was developed by the receiving party independently of the disclosing party and any of its officers, employees or agents.

Construction Certificate has the same meaning as in the Act.

Covenant means a binding agreement in a form and on terms capable of being registered by the Registrar-General in the relevant folio of the Register and may include a public positive covenant, a provision in a strata management statement or other form of registrable document.

Dealing means selling, transferring, assigning, novating, mortgaging, charging, or encumbering and, where appearing, **Deal** has the same meaning.

Deed of Novation means the deed substantially in accordance with the format set out in **Annexure C**.

Developer's Representative means the person named in Item 4 of Schedule 1 or his/her delegate.

Development means the development of the Land by the Developer described at Item 2 of Schedule 1.

Development Application means the development application identified in Item 5 of Schedule 1 and includes all plans, reports models, photomontages, material boards (as amended supplemented) submitted to the consent authority before the determination of that Development Application.

Development Consent means the consent granted to the Development Application for the Development and includes all modifications made under section 4.55 of the Act.

Dispute means any dispute or difference between the parties arising out of, relating to or in connection with this document, including any dispute or difference as to the formation, validity, existence or termination of this document.

Environmental Laws means all laws and legislation relating to environmental protection, building, planning, health, safety or work health and safety matters and includes the following:

- (a) the *Work Health and Safety Act 2011 (NSW)*;
- (b) the *Protection of the Environment Operations Act 1997 (NSW)*; and
- (c) the *Contaminated Land Management Act 1997 (NSW)*.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

Gross Floor Area has the meaning given to that term in the *Sydney Local Environment Plan* in effect at the date of this document.

GST means the same as in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

Index Number means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

Land means the land described in Item 1 of Schedule 1 of this document.

Laws means all applicable laws, regulations, industry codes and standards, including all Environmental Laws.

Monetary Contribution means that part of the Public Benefits to be paid by the Developer to the City as the Community Infrastructure Monetary Contribution and the Affordable Housing Monetary Contribution in accordance with this document.

Personnel means the Developer's officers, employees, agents, contractors or subcontractors.

Planning Proposal means the planning proposal lodged by or on behalf of the Developer on or about 14 April 2020 with the City.

Public Benefits means the provision of benefits to the community by the Developer in the form and at the times specified in Schedule 3.

Regulation means the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

Sydney LEP means *Sydney Local Environmental Plan 2012*.

Tax means a tax, levy, duty, rate, charge, deduction or withholding, however it is described, that is imposed by law or by a Government Agency, together with any related interest, penalty, fine or other charge.

1.2 **Rules for interpreting this document**

Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this document, except where the context makes it clear that a rule is not intended to apply.

- (a) A reference to:
 - (i) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
 - (ii) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
 - (iii) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
 - (iv) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
 - (v) anything (including a right, obligation or concept) includes each part of it.
- (b) A singular word includes the plural, and vice versa.
- (c) A word which suggests one gender includes the other genders.
- (d) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (e) If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.
- (f) A reference to **including** means "including, without limitation".
- (g) A reference to **dollars** or **\$** is to an amount in Australian currency.
- (h) A reference to **this document** includes the agreement recorded by this document, including all schedules and annexures.
- (i) Words defined in the GST Act have the same meaning in clauses about GST.

- (j) This document is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.

2. **APPLICATION OF THE ACT AND THE REGULATION**

2.1 **Application of this document**

This document is a planning agreement within the meaning of section 7.4 of the Act and applies to:

- (a) the Land; and
- (b) the Development.

2.2 **Public Benefits to be made by Developer**

Clause 5 and Schedule 3 set out the details of the:

- (a) Public Benefits to be delivered by the Developer;
- (b) time or times by which the Developer must deliver the Public Benefits; and
- (c) manner in which the Developer must deliver the Public Benefits.

2.3 **Application of sections 7.11, 7.12 and 7.24 of the Act**

- (a) The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent set out in Items 5 and 6 of Schedule 2 to this document.
- (b) For the avoidance of doubt, if the City imposes a condition of consent on a Development Consent for the Development under section 7.11 of the Act requiring payment of a contribution authorised by a contributions plan approved under section 61 of the *City of Sydney Act 1988 (NSW)*, no further contributions pursuant to section 7.11 or section 7.12 of the Act are payable in relation to the Development other than in accordance with clauses 2.3(c) and 2.3(d).
- (c) Where a Development Consent requires the payment of a Monetary Contribution in accordance with:
 - (i) section 61 of the *City of Sydney Act 1988 (NSW)* (**City of Sydney Act**), then the Monetary Contribution must be paid in accordance with the City of Sydney Act; or
 - (ii) section 7.12 of the Act, then the amount to be paid will be the amount payable in accordance with section 61 of the City of Sydney Act as it applied at the date of this document.
- (d) For the avoidance of doubt, the value of the Monetary Contribution is the same under either option in clause 2.3(c). The Developer will only be required to make payment to the City under either clause 2.3(c)(c)(i) or clause 2.3(c)(c)(ii), but not both.

2.4 **City rights**

This document does not impose an obligation on the City to:

- (a) grant Development Consent for the Development; or
- (b) exercise any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

2.5 **Explanatory note**

The explanatory note prepared in accordance with clause 25E of the Regulation must not be used to assist in construing this document.

3. **OPERATION OF THIS PLANNING AGREEMENT**

3.1 **Commencement**

This document will commence on the date of execution of this document by all parties to this document.

4. **WARRANTIES**

4.1 **Mutual warranties**

Each party represents and warrants that:

- (a) **(power)** it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
- (b) **(corporate authority)** it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
- (c) **(Authorisations)** it holds each Authorisation that is necessary or desirable to:
 - (i) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (ii) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (iii) enable it to properly carry on its business as it is now being conducted, and it is complying with any conditions to which any of these Authorisations is subject;
- (d) **(documents effective)** this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and Laws affecting creditors' rights generally), subject to any necessary stamping or registration;

- (e) **(solvency)** there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
- (f) **(no controller)** no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 **Developer warranties**

- (a) The Developer warrants to the City that, at the date of this document:
 - (i) it is the registered proprietor of the Land;
 - (ii) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document;
 - (iii) all work performed by the Developer and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Developer's size and experience; and
 - (iv) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.
- (b) The Developer warrants to the City that, prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

5. **PUBLIC BENEFITS**

5.1 **Developer to provide Public Benefits**

The Developer must, at its cost and risk, provide the Public Benefits to the City in accordance with this document.

6. **INDEMNITY**

The Developer indemnifies the City against all damage, expense, loss or liability of any nature suffered or incurred by the City arising from any act or omission by the Developer (or any Personnel) in connection with the performance of the Developer's obligations under this document, except where the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City (or any person engaged by the City).

7. **REGISTRATION AND CAVEAT**

7.1 **Registration of this document**

- (a) The Developer:
 - (i) consents to the registration of this document at NSW Land Registry Services on the certificate of title to the Land;

- (ii) warrants that it has obtained all consents to the registration of this document on the certificate of title to the Land; and
- (iii) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register this document on the certificate of title to the Land, including but not limited to:
 - (A) producing any documents or letters of consent required by the Registrar-General;
 - (B) providing the production slip number when the Developer produces the certificate of title to the Land at NSW Land Registry Services; and
 - (C) providing the City with a cheque for registration fees payable in relation to registration of this document at NSW Land Registry Services.
- (iv) The Developer must act promptly in complying with and assisting to respond to any requisitions raised by NSW Land Registry Services that relate to registration of this document.

7.2 **Caveat**

- (a) Where the Developer has not complied with clause 7.1(a)(iii) within the stated timeframe, the City may, at any time register a caveat over the Land preventing any Dealing with the Land that is inconsistent with this document. Provided that the City complies with this clause 7.2, the Developer must not object to the registration of this caveat and may not attempt to have the caveat removed from the certificate of title to the Land.
- (b) In exercising its rights under this clause 7.2 the City must do all things reasonably required to:
 - (i) remove the caveat from the Land once this document has been registered on the certificate of title to the Land; and
 - (ii) consent to the registration of:
 - (A) this document; and
 - (B) any plan of consolidation, plan of subdivision or other Dealing required by this document or the Development Consent.

7.3 **Release of this document**

If the City is satisfied that the Developer has provided all Public Benefits and otherwise complied with this document then the City must promptly do all things reasonably required to remove this document from the certificate of title to the Land.

8. **ENFORCEMENT – GUARANTEE**

Not used.

9. **DISPUTE RESOLUTION**

9.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 9.

9.2 **Negotiation**

(a) If any Dispute arises, a party to the Dispute (**Referring Party**) may by giving notice to the other party or parties to the Dispute (**Dispute Notice**) refer the Dispute to the Developer's Representative and the City's Representative for resolution. The Dispute Notice must:

- (i) be in writing;
- (ii) state that it is given pursuant to this clause 9; and
- (iii) include or be accompanied by reasonable particulars of the Dispute including:
 - (A) a brief description of the circumstances in which the Dispute arose;
 - (B) references to any:
 - (aa) provisions of this document; and
 - (bb) acts or omissions of any person, relevant to the Dispute; and
 - (C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.

(b) Within 10 Business Days of the Referring Party issuing the Dispute Notice (**Resolution Period**), the Developer's Representative and the City's Representative must meet at least once to attempt to resolve the Dispute.

(c) The Developer's Representative and the City's Representative may meet more than once to resolve a Dispute. The Developer's Representative and the City's Representative may meet in person, via telephone, videoconference, internet-based instant messaging or any other agreed means of instantaneous communication to effect the meeting.

9.3 **Not use information**

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 9 is to attempt to settle the Dispute. Neither party may use any information or documents obtained through any dispute resolution process undertaken under this clause 9 for any purpose other than in an attempt to settle the Dispute.

9.4 **Condition precedent to litigation**

Subject to clause 9.5, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) the Resolution Period has expired.

9.5 **Summary or urgent relief**

Nothing in this clause 9 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

10. **TAXES AND GST**

10.1 **Responsibility for Taxes**

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits.
- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 10.1(a).

10.2 **GST free supply**

To the extent that Divisions 81 and 82 of the GST Law apply to a supply made under this document:

- (a) no additional amount will be payable by a party on account of GST; and
- (b) no tax invoices will be exchanged between the parties.

10.3 **Supply subject to GST**

To the extent that clause 10.2 does not apply to a supply made under this document, this clause 10.3 will apply.

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be

increased under clause 10.3(a) if the payment is consideration for a taxable supply.

- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 10.3(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 10.3.
- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

11. **DEALINGS**

11.1 **Dealing by the City**

- (a) The City may Deal with its interest in this document without the consent of the Developer if the Dealing is with a Government Agency. The City must give the Developer notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The City may not otherwise Deal with its interest in this document without the consent of the Developer, such consent not to be unreasonably withheld or delayed.

11.2 **Dealing by the Developer**

- (a) Prior to registration of this document in accordance with clause 7, the Developer must not Deal with this document or the Land without:
 - (i) the prior written consent of the City; and
 - (ii) the Developer and the third party the subject of the Dealing entering into the Deed of Novation (or other document agreed by the City in relation to a Dealing that is a mortgage, charge or encumbrance) by delivering to the City prior to completing that Dealing the Deed of Novation (executed in triplicate or counterparts or as agreed) properly executed by those parties.
- (b) On and from registration of this document in accordance with clause 7:
 - (i) the Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land, provided the parties the subject of the Dealing enter into the Deed of Novation by delivering

to the City prior to completing that Dealing the Deed of Novation (executed in triplicate or counterparts or as agreed) properly executed by those parties;

- (ii) the Developer may register a plan of strata subdivision, and the City consents to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of the strata plan; and
- (iii) the Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:
 - (A) the prior written consent of the City; and
 - (B) the City, the Developer and the third party the subject of the Dealing entering into the Deed of Novation (or other document agreed by the City in relation to a Dealing that is a mortgage, charge or encumbrance) by delivering to the City prior to completing that Dealing the Deed of Novation (or other agreed document) (executed in triplicate or counterparts or as agreed) properly executed by those parties.
- (c) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 11.2.
- (d) For a Deed of Novation to the City under clause 11.2(a) or clause 11.2(b) the City will:
 - (i) provide the Developer with a letter of consent by the City as caveator to the registration of the transfer Dealing transferring title to the Land to the purchaser named as the incoming party under the Deed of Novation; and
 - (ii) provide the Developer and the third party the subject of the Dealing with counterparts of the Deed of Novation properly executed by the City.

12. **TERMINATION**

- (a) The City may terminate this document by notice in writing if the amendment to the Sydney LEP contemplated by the Planning Proposal is:
 - (i) subsequently amended by an environmental planning instrument made after the Planning Proposal in a way that prevents the Development from proceeding; or
 - (ii) declared to be invalid by a Court of competent jurisdiction.
- (b) If the City terminates this document then:
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;

- (ii) the Developer must take all steps reasonably necessary to minimise any loss that each party may suffer as a result of the termination of this document;
- (iii) not used; and
- (iv) the City will, at the Developer's cost, do all things reasonably required to remove this document from the certificate of title to the Land.

13. **CONFIDENTIALITY AND DISCLOSURES**

13.1 **Use and disclosure of Confidential Information**

A party (**receiving party**) which acquires Confidential Information of another party (**disclosing party**) must not:

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or
- (b) disclose any of the Confidential Information except in accordance with clauses 13.2 or 13.3.

13.2 **Disclosures to personnel and advisers**

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party:
 - (i) must ensure that any person to whom Confidential Information is disclosed under clause 13.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 13.2(a); and
 - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 13.2(b)(i).

13.3 **Disclosures required by law**

- (a) Subject to clause 13.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or

- (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under clause 13.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

13.4 **Receiving party's return or destruction of documents**

On termination of this document the receiving party must immediately:

- (a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and
- (b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

which are in the possession, power or control of the receiving party or of any person to whom the receiving party has given access.

13.5 **Security and control**

The receiving party must:

- (a) keep effective control of the Confidential Information; and
- (b) ensure that the Confidential Information is kept secure from theft, loss, damage or unauthorised access or alteration.

13.6 **Media releases**

The Developer must not issue any information, publication, document or article for publication in any media concerning this document or the Public Benefits without the City's prior written consent.

14. **NOTICES**

- (a) A notice, consent or other communication under this document is only effective if it is in writing, signed and either left at the addressee's address or sent to the addressee by mail or email. If it is sent by mail, it is taken to have been received 5 Business Days after it is posted. If it is sent by email, it is taken to have been received the same day the email was sent, provided

that the sender has not received a delivery failure notice (or similar), unless the time of receipt is after 5:00pm in which case it is taken to be received on the next Business Day.

- (b) A person's address and email address are those set out in Schedule 1 for the City's Representative and the Developer's Representative, or as the person notifies the sender in writing from time to time.

15. **TRUSTEE LIMITATION OF LIABILITY AND WARRANTIES**

15.1 **Limitation of liability**

- (a) In this clause 15.1 and clause 15.2, Trustee means the Developer.
- (b) The Trustee enters into this document only in its capacity as trustee of the Greaton Thomas Unit Trust (**Trust**) constituted under the Trust Deed dated 13 December 2017 as varied on 27 March 2018 (**Trust Deed**) and in no other capacity. A liability arising under or in connection with this document is limited to and can be enforced against the Trustee only to the extent to which it can be and is in fact satisfied out of property of the Trust from which the Trustee is actually indemnified for the liability. Subject to clause 15.1(c), this limitation of the Trustee liability applies despite any other provision of this document and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this document.
- (c) No party to this document may sue the Trustee in any capacity other than as the Trustee of the Trust, including seeking the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to the Trustee or proving in any liquidation, administration or arrangement of or affecting the Trustee (except in relation to property of the Trust).
- (d) The provisions of this clause 15.1 shall not apply to any obligation or liability of the Trustee to the extent that it is not satisfied because, under this document or by operation of law, there is a reduction in the extent of the Trustee's indemnification out of the assets of the Trust as a result of the Trustee's fraud, negligence or wilful default.
- (e) The Trustee is not obliged to do or refrain from doing anything under this document (including incur any liability) unless its liability is limited in the same manner as set out in clauses 15.1(b) to 15.1(d).

15.2 **Trustee warranties**

- (a) The Trustee warrants that, as at the date of this document:
 - (i) the Trustee is the trustee of the Trust;
 - (ii) it has not been removed as the trustee under the Trust Deed;
 - (iii) no release or revocation of the Trustee's powers under the Trust Deed has occurred;

- (iv) it is the sole trustee of the Trust;
 - (v) it is not in breach of the Trust Deed and is entitled to be indemnified or reimbursed out of the assets of the Trust in respect of any liability it incurs under or in respect of this document; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations under this document and all necessary action has been taken under the Trust Deed to authorise the execution and performance of this document.
- (b) If the Trustee's position in respect of the matters specified in clause 15.2(a) changes, the parties are to negotiate, in good faith and without delay, any necessary changes to this document to secure the provision of the Public Benefits.
 - (c) If the Trustee is to be replaced as trustee under the Trust Deed, then the Trustee will procure entry by the replacement trustee into a document with the City on terms approved by the City (such approval not to be unreasonably withheld or delayed) under which the replacement trustee agrees to:
 - (i) be bound by the provisions of this document; and
 - (ii) pay the City's costs in relation to the replacement of the trustee and the costs of registering any new planning agreement on title, if required.
 - (d) Immediately upon the Trustee becoming aware of a proposed termination of the Trust, the Trustee is to notify the City, and the parties are to negotiate, in good faith and without delay, any necessary changes to this document, or other arrangements arising from the proposed termination of the Trust, to secure the provision of Public Benefits.

16. **GENERAL**

16.1 **Governing law**

- (a) This document is governed by the Laws of New South Wales.
- (b) Each party submits to the exclusive jurisdiction of the courts exercising jurisdiction in New South Wales, and any court that may hear appeals from any of those courts, for any proceedings in connection with this document, and waives any right it might have to claim that those courts are an inconvenient forum.

16.2 **Access to information**

In accordance with section 121 of the *Government Information (Public Access) Act 2009 (NSW)*, the Developer agrees to allow the City immediate access to the following information contained in records held by the Developer:

- (a) information that relates directly to the delivery of the Public Benefits by the Developer;

- (b) information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the City; and
- (c) information received by the Developer from the City to enable the Developer to deliver the Public Benefits.

16.3 **Liability for expenses**

- (a) The Developer must pay its own and the City's expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (b) The Developer must pay for all reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulations and for any consent the City is required to provide under this document.

16.4 **Relationship of parties**

- (a) Nothing in this document creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

16.5 **Giving effect to this document**

Each party must do anything (including execute any document), and must ensure that its employees and agents do anything (including execute any document), that the other party may reasonably require to give full effect to this document.

16.6 **Time for doing acts**

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this document,
expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

16.7 **Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this

document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

16.8 Preservation of existing rights

The expiration or termination of this document does not affect any right that has accrued to a party before the expiration or termination date.

16.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this document for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

16.10 Waiver of rights

A right may only be waived in writing, signed by the party giving the waiver, and:

- (a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;
- (b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and
- (c) the exercise of a right does not prevent any further exercise of that right or of any other right.

16.11 Operation of this document

- (a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.
- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

16.12 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document.
- (b) A party may recover a payment under an indemnity in this document before it makes the payment in respect of which the indemnity is given.

16.13 Inconsistency with other documents

Unless the contrary intention is expressed, if there is an inconsistency between any of one or more of:

- (a) this document;
- (b) any Schedule to this document; and
- (c) the provisions of any other document of the Developer,

the order of precedence between them will be the order listed above, this document having the highest level of precedence.

16.14 No fetter

Nothing in this document in any way restricts or otherwise affects the City's unfettered discretion to exercise its statutory powers as a public authority.

16.15 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	Folio Identifier 100/804958 known as 187 Thomas Street, Haymarket
2.	Development	<p>Development of a proposed new tower on the Land up to maximum height of RL 226.8m as contemplated in the Planning Proposal encompassing the setbacks on the Land adjacent to the public domain.</p> <p>The maximum total Gross Floor Area of the Development on the Land is 50,546 square metres.</p>
3.	City's Representative	<p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Email address: gjahn@cityofsydney.nsw.gov.au</p>
4.	Developer's Representative	<p>Name: Nicho Teng</p> <p>Address: Level 20, 20 Bond Street, Sydney NSW 2000</p> <p>Email address: nicho.t@greatondevelopment.com.au</p> <p><i>Copy of general correspondence (excluding notices under clause 14) to:</i></p> <p>Name: Paul Lee</p> <p>Address: Level 20, 20 Bond Street, Sydney NSW 2000</p> <p>Email address: paul.l@greatondevelopment.com.au</p>
5.	Development Application	Means any development application submitted to the City in connection with the Development.
6.	Guarantee Amount	Not used

7.	Guarantee Amount Due Date	Not used
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SCHEDULE 2

Requirements under the Act and Regulation (clause 2)

The below table summarises how this document complies with the Act and Regulation.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p>Planning instrument and/or development application (section 7.4(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
2.	<p>Description of land to which this document applies (section 7.4(3)(a) of the Act)</p>	Item 1 of Schedule 1.
3.	<p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 7.4(3)(b) of the Act)</p>	The Development as described in Item 2 of Schedule 1.
4.	<p>The nature and extent of the provision to be made by the developer under this document, the time or times by which the provision is to be made and the manner in which the provision is to be made (section 7.4(3)(c) of the Act)</p>	Schedule 3 and Annexure A.

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
5.	Whether this document excludes (wholly or in part) of does not exclude the application of section 7.11, 7.12 or 7.24 to the development (section 7.4(3)(d) of the Act)	Sections 7.11 and 7.12 are not excluded to the extent set out in clause 2.3. Section 7.24 is not excluded.
6.	Applicability of section 7.11 of the Act (section 7.4(3)(e) of the Act)	The application of section 7.11 of the Act is not excluded to the extent set out in clause 2.3.
7.	Consideration of benefits under this document if section 7.11 applies (section 7.4(3)(e) of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.
8.	Mechanism for Dispute Resolution (section 7.4(3)(f) of the Act)	Clause 9
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 7
10.	No obligation to grant consent or exercise functions (section 7.4(9) of the Act)	Clause 2.4
11.	Registration of this document (section 7.6 of the Act)	Clause 7
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Yes – payment to the City of Community Infrastructure Monetary Contribution and Affordable Housing Monetary Contribution (Schedule 3)
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	NIL

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	NIL
15.	Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) of the Regulation)	Clause 2.5

SCHEDULE 3

Public Benefits (clause 5)

1. PUBLIC BENEFITS - OVERVIEW

The Developer must provide the Public Benefits in accordance with Schedule 3 and this document. The Attributed Value, timing of delivery and additional specifications relating to the Public Benefits is set out in following table:

Item	Public Benefit – Monetary Contribution	Attributed Value	Due date	Additional specifications
1.	Community Infrastructure Monetary Contribution	\$12,540,234	On or before the issue of the first Construction Certificate for the Development	Refer Annexure A
2.	Affordable Housing Monetary Contribution	Affordable Housing Monetary Contribution Formula in Annexure B	On or before the issue of the first Construction Certificate for the Development	Refer Annexure B
3.	Registration of Restrictive Covenant (if applicable under clause 3(c) of this Schedule 3)	Not applicable	On or before the issue of the first Construction Certificate for the Development	Refer to clause 3 of this Schedule 3 – Covenant substantially in the form set out in Annexure D

2. PAYMENT OF MONETARY CONTRIBUTION

2.1 Payment

The Developer must pay the Monetary Contribution to the City on the due dates stated in Items 1 and 2 in the table in clause 1 of Schedule 3 in cash or by unendorsed bank cheque.

2.2 Indexation

If the Monetary Contribution is not paid to the City on the date of this document then at the date of payment the Monetary Contribution must be indexed in accordance with the formulas set out in **Annexures A** and **B** of this document.

2.3 **No trust**

Nothing in this document creates any form of trust arrangement or fiduciary duty between the City and the Developer. Following receipt of the Monetary Contribution, the City is not required to separately account for the Monetary Contribution, report to the Developer regarding expenditure of the Monetary Contribution or comply with any request by the Developer to trace the Monetary Contribution.

2.4 **Expenditure by the City**

A. Community Infrastructure Monetary Contribution

The City will use the Community Infrastructure Monetary Contribution to achieve the public benefit of public domain improvements identified in the Chinatown and City South Public Domain Plan (available on the City's website at <https://www.cityofsydney.nsw.gov.au/strategies-action-plans/chinatown-public-domain-plan>) such as the Quay Street Upgrade and other projects in the general vicinity of the Development.

B. Affordable Housing Monetary Contribution

The City will use the Affordable Housing Monetary Contribution to achieve the public benefit of increasing the amount of affordable housing in the City of Sydney local government area to achieve the City's affordable housing targets in Sustainable Sydney 2030.

3. **BELOW-GROUND OPTION AND COVENANT**

(a) In clause 3 of Schedule 3:

Approved Purpose means hotel back-of-house, auditorium, multi-purpose presentation facility or laboratory uses as ancillary gross floor area to support related Specific Uses in the above-ground portion of the Building;

Below-Ground Option means an option in the Planning Proposal approved by the City of up to an additional 1.5 : 1 floor space ratio to be located below ground in the Building as gross floor area for the Approved Purpose;

Due Date means the due date stated in Item 1 in the table in clause 1 of Schedule 3 (or date otherwise agreed by the City);

Notice means the Developer's notice in writing that the Development Application will include or not include the Below-Ground Option for the Development;

Specific Uses means uses such as the Tech Hotel and Innovation Hub outlined in the Planning Proposal or similar uses approved by the City; and;

Restrictive Covenant means the Covenant stated in Item 3 in the table in clause 1 of Schedule 3.

(b) The Developer must give the Notice to the City on the same date that the Development Application is lodged.

- (c) If the Notice states that the Development Application includes the Below-Ground Option or no development whatsoever below ground (and the Development Consent includes the Below-Ground Option or no development below ground):
- (i) the Community Infrastructure Monetary Contribution is as specified in clause 1 of Schedule 3;
 - (ii) the Developer must only use the below-ground portion of the Building for an Approved Purpose (or not develop below ground without the City's prior approval); and
 - (iii) the Restrictive Covenant must be registered on the title to the Land. The Developer must, at its cost, take all steps required to register the Restrictive Covenant by the Due Date.

EXECUTION

EXECUTED as a deed.

Signed, sealed and delivered for
THE COUNCIL OF THE CITY OF SYDNEY (ABN 22 636 550 790) by its duly authorised officer, in the presence of:

Signature of officer

Signature of witness

Name of officer

Name

Position of officer

456 Kent Street, Sydney NSW 2000
Address of witness

EXECUTED by **GREATON THOMAS PTY LTD** (ACN 623 405 621) **as trustee for the GREATON THOMAS UNIT TRUST** in accordance with s127(1) of the Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE A

COMMUNITY INFRASTRUCTURE MONETARY CONTRIBUTION

(Clause 5 and Schedule 3)

1. MONETARY CONTRIBUTION RATE

The Monetary Contribution rate for infrastructure is \$600.00 per square metre of Strategic Gross Floor Area.

Strategic Gross Floor Area is the additional floor space granted under the Sydney LEP being the difference between the maximum floor space of 19.54:1 and the following:

- (a) Mapped FSR of 7.5:1;
- (b) Any type of additional floor space under clauses 6.4 to 6.9 of the Sydney LEP (excluding any below-ground floor space under the Restrictive Covenant in Item 3 in the table in clause 1 of Schedule 3).

2. INDEXATION OF RATES

Adjustments are to be made to the Monetary Contribution rates in clause 1 of this **Annexure A** as follows:

Monetary Contribution (to be provided) = Monetary Contribution (as per Annexure A, Clause 1) x (A/B)

Where:

A is the Index Number most recently published before the date the Monetary Contribution is to be paid

B is the Index Number most recently published before the date this agreement commenced in accordance with clause 3.1 of this document

3. PAYMENT

Payment will be by unendorsed bank cheque to the City prior to issue of any Construction Certificate for the Development. In circumstances where no construction certificate is required at all for the Development, payment is required prior to commencement of construction works for the Development.

ANNEXURE B

AFFORDABLE HOUSING MONETARY CONTRIBUTION

(Clause 5 and Schedule 3)

1. BASE MONETARY CONTRIBUTION

The base Monetary Contribution for Affordable Housing is as follows:

- 0.5% x Total Floor Area x \$10,588* – where Development Consent is determined between 1 June 2020 to 31 May 2022
- 1% x Total Floor Area x \$10,588* - where Development Consent is determined from 1 June 2022 onwards

Total Floor Area means the total of the areas of each floor of a building within the outer face of the external enclosing walls and including balconies, but excluding the following:

- columns, fins, sun control devices, awnings and other elements, projections or works outside the general lines of the outer face of the external walls,
- any area of a balcony that is more than the minimum area required by the consent authority in respect of the balcony,
- the maximum ancillary car parking permitted by the consent authority and any associated internal vehicular and pedestrian access to that car parking,
- space for the loading and unloading of goods, and
- space used for public utility undertakings, community facilities or roads.

2. INDEXATION OF RATES

Adjustments are to be made to the Monetary Contribution Rates in clause 1 of this **Annexure B** to account for movements in the cost of housing over time on a quarterly basis, within one week of the first days of March, June, September and December each year.

Rates are adjusted with reference to movements in the median price for strata dwellings in the City of Sydney LGA. The median strata dwelling price is published quarterly in the NSW Government Rent and Sales Report, Table: Sales Price – Greater Metropolitan Region – Strata.

The formula for adjusting the contribution amount is:

Monetary Contribution = Base Contribution Amount x (MDP2/MDP1)

Where:

Base Contribution Amount is the amount calculated in accordance with clause 1 of this **Annexure B**, based on the contribution rates applicable at the time of lodgement of the DA.

MDP1 is the median strata dwelling price applied on the date this agreement commenced in accordance with clause 3.1 of this document.

MDP2 is the median strata dwelling price that applies at the time of payment of the Monetary Contribution.

Monetary Contributions are adjusted and to be confirmed with the City prior to payment being made.

If after the formula is applied the Monetary Contribution will be less than the amount calculated in accordance with clause 2 of this **Annexure B**, the Monetary Contribution will not be adjusted.

3. PAYMENT

Payment will be by unendorsed bank cheque to the City prior to issue of any Construction Certificate for the Development. In circumstances where no Construction Certificate is required at all for the Development, payment is required prior to commencement of use/occupation.

4. CREDIT

Where a future Development Consent for the Development requires an affordable housing monetary contribution under the Sydney LEP (**Future Affordable Housing Contribution**), payment of the Affordable Housing Monetary Contribution calculated under **Annexure B** will be considered by the City to be satisfaction in full of that Future Affordable Housing Contribution even if the monetary contribution required under the Sydney LEP is less than the amount calculated in accordance with this **Annexure B**.

ANNEXURE C

DEED OF NOVATION

(Clause 11)

THIS DEED OF NOVATION is made on 20[insert] between the following Parties:

The Council of the City of Sydney ABN 22 636 550 790
of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (the **Council**);

[Insert name] ABN [insert number]
of [insert address] (the **Outgoing Party**); and

[Insert name] ABN [insert number]
of [insert address] (the **Incoming Party**).

BACKGROUND

- A. The Council and the Outgoing Party are Parties to the VPA.
- B. The VPA relates to the whole of the Land.
- C. The Outgoing Party wishes to [transfer] the [Land/part of the Land] to the Incoming Party.
- D. The Incoming Party agrees to perform the obligations and seeks to obtain the benefits of the Outgoing Party under the VPA.
- E. The Outgoing Party and the Incoming Party have agreed to enter into this Deed of Novation, in accordance with clause 11 of the VPA, at the request of the Council.

THE PARTIES AGREE AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

VPA is the Planning Agreement entered into between the Council and the Outgoing Party on [date], registered number [#].

1.1 Definitions

Words and expressions defined in the VPA have the same meaning in this Deed.

1.2 Headings

Headings do not affect the interpretation of this document.

2. PERFORMANCE OF OBLIGATIONS

2.1 Incoming Party

On and from the date of this Deed, the Incoming Party:

- (a) is substituted for the Outgoing Party as a party to the VPA and acknowledges itself to be bound by the provisions of the VPA, as if the Incoming Party had originally been named as the Outgoing Party in that VPA;

- (b) without limiting clause 2.1(a), must punctually carry out and perform all other obligations of the Outgoing Party under the VPA which are not performed at the date of this Deed; and
- (c) will be:
 - (i) entitled to the benefit of the VPA; and;
 - (ii) entitled to enforce the VPA against Council,as if the Incoming Party had originally been named as the Outgoing Party in that VPA.

2.2 Notices

The Council must address all notices and communications to be given or made by it to the Incoming Party under the VPA to the following address:

[Insert Incoming Party address]

3. PERFORMANCE AFFECTED BY NOVATION

3.1 Performance by Outgoing Party

The Outgoing Party:

- (a) (subject to clause 3.3 of this Deed) releases and discharges Council from its obligations under the VPA and from all claims and demands in respect of the performance of and obligations under the VPA prior to the date of this Deed; and
- (b) warrants to the Council that it has properly performed its obligations under the VPA up to and including the date of this Deed, complying with all contractual requirements.

3.2 Developer's obligations

The Incoming Party must perform all of the Developer's obligations under the VPA as if named as the Developer, whether or not the relevant obligations relate to works that were to be performed prior to the date of this Deed, including the delivery of all Public Benefits to Council.

3.3 Release by Council

Council releases and discharges the Outgoing Party from all of its obligations under the VPA and from all claims and demands in respect of the performance of and obligations under the VPA that arise.

4. GOVERNING LAW

This deed is governed by the laws of New South Wales.

5. FURTHER ACTS

Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.

6. COUNTERPARTS

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

EXECUTED as a deed.

Signed, sealed and delivered for
**THE COUNCIL OF THE CITY OF
SYDNEY** by its duly authorised officer,
in the presence of:

Signature of officer

Signature of witness

Name of officer

Name

Position of officer

456 Kent Street, Sydney NSW 2000

Address of witness

EXECUTED by [**OUTGOING PARTY**]
[**ABN**] in accordance with s127(1) of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

EXECUTED by [**INCOMING PARTY**]
[**ABN**] in accordance with s127(1) of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE D

TERMS OF RESTRICTIVE COVENANT

1. Covenant by Grantor

The Grantor covenants with the Grantee that any premises provided in new and existing Buildings within the Lot Burdened in accordance with the Development Consent that comprise below-ground development floor space must not be developed, redeveloped, consolidated or otherwise varied in a way that would cause one or more of the relevant premises to cease to satisfy each of the following criteria, without the prior written consent of the City:

- (a) have a Gross Floor Area of less than or equal to 3,526 square metres; and
- (b) be used for the Approved Purpose.

2. Persons empowered to release, vary or modify the restriction

This restriction may only be released, varied or modified with the consent of the Grantee.

3. Definitions

Approved Purpose means hotel back-of-house, auditorium, multi-purpose presentation facility or laboratory uses as ancillary gross floor area to support related Specific Uses in the above-ground portion of the Building.

Building means a building on the Lot Burdened.

City means The Council of the City of Sydney.

Development Consent means the consent, as modified from time to time under section 4.55 of the EP&A Act, granted to the development application [# insert] and lodged with Council.

EP&A Act means the *Environmental Planning and Assessment Act 1979 (NSW)* (as amended).

Gross Floor Area has the meaning given in the LEP as at the date of this instrument.

Specific Uses means uses such as [the Tech Hotel and Innovation Hub under the Development Consent] or similar uses approved by the City.