

Planning Agreement - Jones Street Footpath

The Council of the City of Sydney

and

Landream Pyrmont Pty Limited

ACN 630 686 341

CONTENTS

CLAUSE	PAGE
1. INTERPRETATION	1
1.1 Definitions	1
1.2 Rules for interpreting this document.....	6
2. APPLICATION OF THE ACT AND THE REGULATION	7
2.1 Application of this document	7
2.2 Public Benefits to be made by Developer	7
2.3 Application of sections 7.11, 7.12 and 7.24 of the Act	8
2.4 City rights.....	8
2.5 Explanatory note	8
3. OPERATION OF THIS PLANNING AGREEMENT	8
3.1 Commencement	8
4. WARRANTIES	8
4.1 Mutual warranties	8
4.2 Developer warranties	9
5. PUBLIC BENEFITS	10
5.1 Developer to provide Public Benefits	10
6. COMPLETION.....	10
6.1 Date of Completion	10
6.2 Developer completion notice	10
6.3 Inspection by the City	11
6.4 Delay to the completion of Developer's Works	11
7. INDEMNITY	13
8. DEFECTS LIABILITY.....	14
8.1 Security for Defects Liability Period	14
8.2 Defect in the Developer's Works	14
9. REGISTRATION.....	14
9.1 Registration of this document	14
9.2 Release of this document.....	15
10. ENFORCEMENT	16
10.1 Developer to provide Guarantee	16
10.2 Adjustment of Guarantee Amount.....	16
10.3 Right of City to claim on Guarantee.....	17
10.4 Expenditure by the City	17
10.5 Top-up and return of Guarantee	17
11. DISPUTE RESOLUTION	18
11.1 Application.....	18
11.2 Negotiation	18
11.3 Mediation.....	19
11.4 Not use information	20

11.5	Condition precedent to litigation	20
11.6	Summary or urgent relief.....	20
12.	TAXES AND GST	20
12.1	Responsibility for Taxes	20
12.2	GST free supply	20
12.3	Supply subject to GST	20
13.	DEALINGS.....	21
13.1	Dealing by the City	21
13.2	Dealing by the Developer.....	21
14.	TERMINATION	23
15.	CONFIDENTIALITY, DISCLOSURES AND PRIVACY.....	23
15.1	Use and disclosure of Confidential Information	23
15.2	Disclosures to personnel and advisers	24
15.3	Disclosures required by law.....	24
15.4	Receiving party's return or destruction of documents	25
15.5	Security and control	25
15.6	Media releases	25
15.7	Privacy	25
16.	NOTICES	25
17.	GENERAL	26
17.1	Governing law	26
17.2	Liability for expenses.....	26
17.3	Relationship of parties.....	26
17.4	Giving effect to this document.....	26
17.5	Time for doing acts	26
17.6	Severance.....	27
17.7	Preservation of existing rights	27
17.8	No merger	27
17.9	Waiver of rights.....	27
17.10	Operation of this document.....	27
17.11	Operation of indemnities.....	28
17.12	Inconsistency with other documents.....	28
17.13	No fetter.....	28
17.14	Counterparts.....	28
1.	PUBLIC BENEFITS - OVERVIEW.....	33
1.1	Acquisition of Transfer Land	34
1.2	City to effect transfer of Transfer Land	34
1.3	Relocation of existing services on Transfer Land	34
1.4	Easement for public access over the Transfer Land	35
1.5	Partial road closure of part of Jones Street forming the Transfer Land	35
1.6	Licence for Developer's access to Transfer Land prior to Acquisition	35
1.7	Obligations on acquisition of Transfer Land	35
2.	FINAL DESIGN OF THE DEVELOPER'S WORKS	35
2.1	Scope of Developer's Works	35

3.	CONSTRUCTION OF DEVELOPER'S WORKS.....	36
3.1	Insurance	36
3.2	Approvals and consents	36
3.3	Construction work.....	37
3.4	Inspections by the City	37
4.	STANDARDS.....	37

Schedules

1	Agreement Details	29
2	Requirements under the Act and Regulation (clause 2)	30
3	Public Benefits (clause 5)	33

Draft

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) **Landream Pyrmont Pty Ltd** ACN 630 686 341 of Level 12, 41 Exhibition Street, MELBOURNE VIC 3000 (the **Developer**).

BACKGROUND

- (A) The Developer 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)*.

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.

Completion means the point at which the Developer's Works are complete except for minor defects:

- (a) the existence of which do not prevent the Developer's Works being reasonably capable of being used for their intended purpose; and

- (b) rectification of which will not affect the immediate and convenient use of the Developer's Works for their intended purpose.

Completion Notice means a notice issued by the Developer in accordance with clause 6.2.

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, and is used in this document to refer to a Construction Certificate for the construction of the Jones Street Building built form, and excluding any Construction Certificate that may be required for any earlier stage of the Development such as for demolition of existing structures, site preparation, remediation or other preliminary works.

Corporations Act means the *Corporations Act 2001* (Cth).

Dealing means selling, transferring, assigning, or novating, and, where appearing, **Deal** has the same meaning. However, any subdivision of the Land (or part of the Land) by registration of a strata plan does not constitute a Dealing.

Defect means any error, omission, defect, non-conformity, discrepancy, shrinkage, blemish in appearance or other fault in the Public Benefits or any other matter which prevents the Public Benefits from complying with the terms of this document.

Defects Liability Period means, in relation to the Developer's Works, the period of 12 months from the date on which the Developer's Works reach Completion.

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

Developer's Works means those parts of the Public Benefit described as "Developer's Works" in clause 1 of Schedule 3 and Annexure A, to be delivered by the Developer in accordance with this document.

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, but excludes any development application solely seeking development consent for site preparation works such as demolition of existing structures, site preparation, remediation or preliminary works related to the development approved by D/2019/649.

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.

GST means the same as in the GST Act.

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

Guarantee means a bank guarantee, insurance bond or documentary performance bond for the Guarantee Amount which must:

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised

deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:

- (i) BBB + (Standard & Poors and Fitch);
 - (ii) Baa 1 (Moody's); or
 - (iii) Bbb (Bests);
- (d) be issued on behalf of the Developer;
- (e) not nominate an expiry or end date that is before the end of the Defects Liability Period;
- (f) state the beneficiary as the City;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by the City, acting reasonably.

Guarantee Amount(s) means the total amount listed in Item 6 of Schedule 1 of this document.

Guarantee Amount(s) Due Date means the date or milestone by which the Developer must provide the Guarantee Amount to the City, set out at Item 7 of Schedule 1.

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

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;

- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Jones Street Building means the building with frontage to Jones Street to be constructed, subject to consent to the Stage 2 DA, within the building envelope approved by and described as the "Jones Block" in Condition 7 of Schedule 1A of D/2019/649, and intended for residential, recreational centre and childcare centre uses, as shown in the Concept Envelope plans approved in Condition 2 of Schedule 1A of D/2019/649.

Jones Street Footpath Works means the design and construction of a new (partially cantilevered) concrete footpath, kerb and gutter to Jones Street, adjacent to the Land, including relocation of services in accordance with Council's technical specifications. The indicative specifications for design of these works are identified in Annexure A, and will be detailed and conditioned as part of any Stage 2 DA.

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.

Occupation Certificate has the same meaning as in the Act, being an Occupation Certificate for the Jones Street Building.

Personal Information means:

- (a) personal information within the meaning of the *Privacy and Personal Information Protection Act 1998* (NSW);
- (b) health information within the meaning of the *Health Records and Information Privacy Act 2002* (NSW); and
- (c) any information which does not fall within the scope of paragraphs (a) and (b) above, but is personal information within the meaning of the *Privacy Act 1988* (Cth).

Personnel means, as the context requires, the City's or Developer's officers, employees, agents, contractors or subcontractors.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Health Records and Information Privacy Act 2002* (NSW); the *Spam Act 2003* (Cth), the *Do Not Call Register Act 2006* (Cth) and any other applicable legislation, regulations, guidelines, codes and the City's Policies relating to the handling of Personal Information.

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

Quantity Surveyor means a qualified independent and practising quantity surveyor with at least five years' experience in the assessment of building and construction costs.

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

Stage 2 DA means any subsequent development application lodged in relation to D/2019/649, which is intended to be the first stage of development to be constructed under D/2019/649, but excluding any development application solely seeking development consent for site preparation works such as demolition, site preparation, remediation or preliminary works related to the development approved by D/2019/649.

Standards means the policies, procedures and standards for carrying out the Developer's Works, listed non-exhaustively at clause 4 of Schedule 3.

Subdivision of Land has the same meaning as in the Act.

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.

Transfer Land means the land that will be acquired by the Developer from the City (or the relevant roads authority if not the City), being the extent of public road land along Jones Street, adjoining the Land that will be required for the Jones Street Footpath Works, as shown indicatively in Annexure E to this document. The dimensions of the land to be acquired by the Developer is to be identified following the survey described at clause 1.1 of Schedule 3.

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.
 - (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.

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 legally entitled, with the consent of the City in its capacity as registered proprietor of the Land at the date of this document, to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document, except for any consents from registered interest holders that may be required by NSW Land Registry Services to effect the registration of this document on title to the Land. The City agrees to promptly, and within 10 Business Days of receiving a request from the Developer, provide its consent as landowner of the Land and Transfer Land to the making of any applications, including development applications, for any Authorisations required to carry out the Developer's Works or to register subdivision plan required to create the Transfer Land as a separate lot;
 - (ii) all work performed by the Developer and the Developer's 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

- (iii) 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. The obligation of the Developer to provide Public Benefits in accordance with this document will be satisfied upon the latest to occur of the following events:

- (a) the Developer becomes the registered proprietor of the Transfer Land;
- (b) the easement and covenant for public access and maintenance set out in Annexure D and described in clause 1 of Schedule 3 are registered on title to the Transfer Land; and
- (c) the expiration of the Defects Liability Period in respect of the Developer's Works.

6. **COMPLETION**

6.1 **Date of Completion**

The Developer must ensure that the Developer's Works reach Completion on or before the date or milestone referred to in clause 1 of Schedule 3 of this document.

6.2 **Developer completion notice**

When, in the reasonable opinion of the Developer, the Developer's Works have reached Completion, the Developer must notify the City's Representative in writing and must include in that notice:

- (a) a statement from the person with direct responsibility and supervision of that work that in their opinion the Developer's Works have reached Completion; and
- (b) due to a portion of the Developer's Works (kerb and gutter) being constructed on public road that will be a City asset, at least three sets of the "as built" drawings of the Developer's Works, including one set in electronic format,

(Completion Notice).

For the avoidance of doubt, the Developer can issue separate Completion Notices at separate times for different elements of the Developer's Works, however the Developer must ensure that Completion is achieved for the Developer's Works before the due date specified in Item 1 of Schedule 3.

6.3 **Inspection by the City**

- (a) The City's Representative must inspect the Developer's Works within 5 Business Days of the date that the Completion Notice is received by the City. The City's Representative may refuse to complete the inspection until the Completion Notice has been issued with all required documentation attached in accordance with clause 6.2. Within 10 Business Days of the date of the inspection by the City's Representative, the City must by written notice to the Developer:
 - (i) state that Completion has been achieved;
 - (ii) state that Completion has not been achieved and, if so, identify the Defects, errors or omissions which, in the reasonable opinion of the City's Representative, prevent Completion; or
 - (iii) issue a notice under clause 6.4(a)(i), without the need for the Developer to make a request by notice in writing under that clause.
- (b) Nothing in this clause 6.3, or any notice issued under this clause 6.3 (including a notice under clause 6.4(a)(i)), will:
 - (i) reduce or waive in any manner the Developer's responsibility to:
 - (A) deliver the Developer's Works in accordance with this document; or
 - (B) the Developer's responsibility to correct Defects, errors or omissions, whether or not these are identified by the City; or
 - (ii) create any liability for the City in relation to any defective aspect of the Developer's Works.

6.4 **Delay to the completion of Developer's Works**

- (a) The City may permit the Developer to delay Completion of the Developer's Works (or any part of the Developer's Works):
 - (i) in the circumstances set out in clause 6.3(a)(iii); and
 - (ii) if the Developer makes a request by notice in writing not to complete the Developer's Works (or any part of the Developer's Works) within the time specified in this document and nominating an alternative time by which the Developer's Works (or that part of the Developer's Works) is to be completed,by issuing a notice in writing to the Developer:
 - (iii) stating that completion of the items identified in that notice is not required by the time specified in this document; and
 - (iv) nominating the agreed alternative time by which the Developer's Works (or any part of the Developer's Works) is to be completed. The parties agree to act reasonably in agreeing an alternative

time by which the Developer's Works (or any part of the Developer's Works) are to be completed.

- (b) The Developer may only make a request referred to in clause 6.4(a)(ii) in relation to parts of the Developer's Works the delay of which will not affect safe and unimpeded access to the Jones Street Building, except where there is alternative access to the podium level.
- (c) If the City issues a notice in relation to a request referred to in clause 6.4(a)(ii), the Developer:
 - (i) must promptly deliver to the City an additional Guarantee to the value of 50% of the value of the Developer's Works. For the avoidance of doubt, the additional Guarantee provided under this clause 6.4(c)(i) is in addition to the Guarantee required under clause 10; and
 - (ii) recognises, without limiting the operation of clause 10.3, that clauses 10.3(a)(ii) and 10.3(a)(iii) will apply to allow the City to make an appropriation from the Guarantee required under clause 10 in accordance with clauses 10.3(a)(ii) and 10.3(a)(iii).
- (d) Except where the City has accepted the Developer's offer under clause 6.4(e), if the Developer fails to complete the whole of the Developer's Works in the form and to the standards required under the Development Consent or this document within 12 months of the commencement of the construction of the Jones Street Building then the City may, after giving reasonable notice in writing to the Developer of not less than 20 Business Days, either:
 - (i) complete the Developer's Works itself, and if at that time the Developer is the owner of the Transfer Land, the Developer:
 - (A) agrees to promptly provide any consent as the Landowner of the Transfer Land to the City that is required by NSW Land Registry Services to allow the City to lodge any easement required under this document over the Transfer Land; and
 - (B) agrees to do all things reasonably necessary, in its capacity as Landowner of the Transfer Land, to allow the City to complete the Developer's Works; or
 - (ii) obtain all necessary Authorisations to modify the Developer's Works to reasonably achieve the objectives identified in the Development Consent and this document, provided that such modifications are not to increase the cost of the Developers Works as identified in the table at clause 1 of Schedule 1,

and may recover all costs of and reasonably incidental to that work from the Developer. The City can claim on the Guarantee(s) in order to exercise this right, in which case the provisions of clause 10 will apply. To the extent that the City's costs exceed the amount of the

Guarantee(s), the City can recover this amount from the Developer as a debt due and owing to the City.

- (e) Within 10 Business Days of receiving the City's notice under clause 6.4(d) that the City intends to complete the Developer's Works itself, the Developer may offer in writing to provide the City with an additional Guarantee to secure the delivery of the Developer's Works, to the value of 50% of the Guarantee required by clause 10.1. If the City accepts this offer and the additional Guarantee is provided, the City must refrain from exercising its rights under clause 6.4(d) to complete the Developer's Works for another 6 month period.
- (f) The parties agree that if an additional Guarantee is provided by the Developer under clause 6.4(c), an additional Guarantee is not required from the Developer under clause 6.4(e).
- (g) If the City exercises its rights under clause 6.4(d) to complete the Developer's Works and at that time the Developer is the owner of the Transfer Land:
 - (i) the Developer grants the City a licence for the period necessary for the City to access the Transfer Land to carry out, or procure the carrying out, of the Developer's Works; and
 - (ii) the City agrees to comply, and ensure its Personnel comply, with any applicable Environmental Laws or the requirements of any relevant Authorisations when carrying out the Developer's Works.
- (h) The City may only access the Transfer Land under clause 6.4(g)(i) above after first giving reasonable notice to the Developer of the intention to access the Transfer Land.

7. 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 City is otherwise indemnified in respect of that damage, expense, loss or liability and except where that 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 or any sub-contractor of such a person). Except in relation to incidents prior to the date of the transfer of the Transfer Land giving rise to damage, expense, loss or liability, the Developer is released from all liability under this clause after the earlier of date on which the Developer Deals with this document, the Land or the Transfer Land in accordance with clause 13.2 (where relevant) and on registration of a strata plan of subdivision.

8. DEFECTS LIABILITY

8.1 Security for Defects Liability Period

Until the expiry of the Defects Liability Period, the City may retain from the Guarantee an amount equal to 10% of the Attributed Value of the Developer's Works as security for the Developer's performance of its obligations under this clause 8. The Developer must make any necessary arrangements to allow the provision of the Guarantee for the Defects Liability Period in accordance with this clause.

8.2 Defect in the Developer's Works

(a) If:

- (i) the Developer is in breach of clause 4.2 of this document; or
- (ii) the City notifies the Developer of a Defect in the Developer's Works within the Defects Liability Period,

then, following written notice from the City, the Developer must promptly correct or replace (at the Developer's expense) the defective elements of the Developer's Works.

(b) If the Developer is unable or unwilling to comply with clause 8.2(a), or fails to rectify the Defect within three months (or such longer period as is agreed between the parties) of receiving notice from the City under clause 8.2(a), the City may:

- (i) rectify the Defect itself;
- (ii) make a claim on the Guarantee in accordance with clause 10 for the reasonable costs of the City in rectifying the Defect; and
- (iii) to the extent the costs incurred to rectify the Defect exceeds the Guarantee, recover the reasonable costs from the Developer as a debt due and owing to the City.

(c) If the City requires access to the Transfer Land to rectify any Defect, and at that time the Developer is the Landowner of the Transfer Land, the Developer grants the City and its contractors a licence for such period as is necessary for the City and its contractors to access the Transfer Land to carry out, or procure the carrying out, of the rectification works.

9. REGISTRATION

9.1 Registration of this document

(a) The Developer:

- (i) consents to the registration of this document at the NSW Land Registry Services on the certificate of title to the Land as caveator under registered caveat AP11958, noting that the Developer is not the registered proprietor of the Land at the date of this document; and

- (ii) 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 of the NSW Land Registry Services; and
 - (B) providing the City with a cheque for registration fees payable in relation to registration of this document at NSW Land Registry Services.

The Developer must act promptly on request from the City to assist the City to comply with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

9.2 Release of this document

- (a) If the City, acting reasonably, is satisfied that the Developer has:
 - (i) become the registered proprietor of the Transfer Land;
 - (ii) achieved registration of the easement and covenant for public access and maintenance set out in Annexure D and described in clause 1 of Schedule 3 on title to the Transfer Land; and
 - (iii) achieved Completion of the Developer's Works as described in clause 6,

then the City must promptly do all things reasonably required to remove this document from the certificate of title to the Land, or from any subsequent certificate of title that is created upon the subdivision of the Land.

- (b) Despite anything in clause 9.2(a), upon the registration of:
 - (i) a plan of subdivision of the Land to create a separate lot for the Jones Street Building or for any other building constructed on the Land in accordance with the Development Consent, if this document is at that time registered on the title to the Land, the City must promptly do all things reasonably required to remove this document from the certificate of title to any other lots created by that plan of subdivision, being lots formerly comprising part of the Land, but that do not comprise the lot containing the Jones Street Building or the lot on which is located such other building as has been constructed on the Land; or
 - (ii) a strata plan of subdivision of the lot to be created by the registration of the plan described at clause 9.2(b)(i) that contains the Jones Street Building or such other building as has been constructed on the Land, the City must promptly do all things reasonably required to remove this document from the certificate of title to all strata and stratum lots created by that strata plan,

except, in the case of the Jones Street Building only, for the common property lot.

- (iii) for the avoidance of doubt, this document is not required to be registered and may be removed from the title to the common property lot for the Jones Street Building if the easement and covenant for public access and maintenance referred to in Schedule 3 have been registered.

10. ENFORCEMENT

10.1 Developer to provide Guarantee

The Developer must deliver the Guarantee for the Guarantee Amount to the City by the Guarantee Amount Due Date.

10.2 Adjustment of Guarantee Amount

- (a) Subject to clause 10.2(b), following each anniversary of the date of the Guarantee (the "Adjustment Date") and at any time prior to the expiry of the Defects Liability Period, the Guarantee Amounts are to be adjusted to a revised amount by applying the following formula:

$$\mathbf{RGA} = \mathbf{GA} \times (\mathbf{A/B})$$

where:

RGA is the revised guarantee amount applicable from the relevant Adjustment Date

GA is the Guarantee Amount that is current on the relevant Adjustment Date

A is the Index Number most recently published before the relevant Adjustment Date

B is the Index Number most recently published:

- (i) before the date of the Guarantee for the first Adjustment Date; and
- (ii) before the preceding Adjustment Date for every subsequent Adjustment Date

If after the formula is applied the revised Guarantee Amount will be less than the amount held at the preceding Adjustment Date, the Guarantee Amount will not be adjusted.

- (b) If the Guarantee Amount is adjusted under clause 10.2(a), the Developer is not required to provide the City with a replacement Guarantee for that revised Guarantee Amount until such time as the City notifies the Developer that the City is ready to exchange the then current Guarantee held by the City, following which the City and the Developer must promptly exchange the then current Guarantee held by the City with a replacement Guarantee for that revised Guarantee Amount from the Developer.

10.3 **Right of City to claim on Guarantee**

- (a) The Developer agrees that the City may make an appropriation from the Guarantee in such amount as the City, acting reasonably, thinks appropriate if:
 - (i) an Insolvency Event occurs in respect of the Developer;
 - (ii) the City has issued a notice under clause 6.4(a) deferring completion of the Developer's Works, or any part of them;
 - (iii) the Developer fails to deliver the Developer's Works in accordance with clause 6.4(b);
 - (iv) the Developer fails to rectify a Defect in accordance with clause 8.2 of this document;
 - (v) the City incurs any other expense or liability in validly exercising its rights and powers under this document which expense or liability is not recovered or recoverable from any third party.
- (b) Any amount of the Guarantee appropriated by the City in accordance with clause 10.3 must be applied only towards:
 - (i) the costs and expenses incurred by the City rectifying any default by the Developer under this document; and
 - (ii) carrying out any Developer's Works required to achieve the Public Benefits.

10.4 **Expenditure by the City**

If the City claims on the Guarantee to Complete the Developer's Works, then the City:

- (a) is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Developer's Works to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount; or
- (b) may expend more than the Guarantee Amount only if it is reasonably necessary to do so to ensure the Developer's Works reach Completion. If the City expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer.

10.5 **Top-up and return of Guarantee**

- (a) If the City calls upon the Guarantee in accordance with this clause 10 then the Developer must immediately provide to the City a replacement Guarantee to ensure that, at all times until the Guarantee is released in accordance with paragraph (b), the City is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.
- (b) If:

- (i) this document is terminated; or
- (ii) a Dealing occurs in accordance with this document and the third party to that Dealing provides to the City a replacement Guarantee; or
- (iii) the monies secured by the Guarantee have not been expended;
- (iv) the City has concurred with Completion in accordance with clause 6.3(a)(i) of this document, taking into account any approved non-completion of Public Benefits approved by clause 6.4(a) of this document; and
- (v) the City has been provided with the security for the Defects Liability Period in accordance with clause 8.1,

then the City will promptly return the Guarantee or Guarantees to the Developer following the issue of a notice pursuant to clause 6.3(a)(i) of this document.

- (c) If, following expiry of the Defects Liability Period, the City is satisfied that all defects have been rectified in accordance with clause 8 then the City must promptly return to the Developer the portion of the Guarantee(s) retained by the City as security for the Defects Liability Period.

11. **DISPUTE RESOLUTION**

11.1 **Application**

Any Dispute must be determined in accordance with the procedure in this clause 11.

11.2 **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 11; 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, 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.

11.3 Mediation

- (a) If the Dispute is not resolved within 10 Business Days of the meeting referred to in clause 11.2 (or such further period as agreed in writing by them), either party may give to the other a written notice calling for determination of the Dispute (**Determination Notice**) by mediation.
- (b) The mediation must be conducted in Sydney (or as agreed in writing between the parties) and in accordance with the Institute of Arbitrators and Mediators of Australia Mediation Rules (current as at the date of the Dispute), except where they conflict with this clause 11.3, in which case this clause 11.3 will prevail.
- (c) The parties will agree a mediator who has:
 - (i) reasonable qualifications and practical experience in the area of the Dispute; and
 - (ii) no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment.
- (d) If the parties cannot agree a mediator within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator who meets the criteria in clause 11.3(c).
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the City is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution).
- (f) The parties will seek to resolve the Dispute in good faith in accordance with the outcome of the mediation.

- (g) Each party will bear its own professional and expert costs incurred in connection with the mediation, and the costs of the mediator will be shared equally by the parties.

11.4 **Not use information**

The purpose of any exchange of information or documents or the making of any offer of settlement under this clause 11 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 11 for any purpose other than in an attempt to settle the Dispute.

11.5 **Condition precedent to litigation**

Subject to clause 11.6, a party must not commence legal proceedings in respect of a Dispute until mediation has been undertaken in accordance with clause 11.3 and the requirement in clause 11.3(f) has been fulfilled.

11.6 **Summary or urgent relief**

Nothing in this clause 11 will prevent a party from instituting proceedings to seek urgent injunctive, interlocutory or declaratory relief in respect of a Dispute.

12. **TAXES AND GST**

12.1 **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 12.1(a).

12.2 **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.

12.3 **Supply subject to GST**

To the extent that clause 12.2 does not apply to a supply made under this document, this clause 12.3 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 12.3(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 12.3(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 12.3.
- (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.

13. **DEALINGS**

13.1 **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.

13.2 **Dealing by the Developer**

- (a) Prior to registration of this document in accordance with clause 9, the Developer must not Deal with this document or the Land, other than to acquire the Land from the City in accordance with the Put and Call Option Deed between the Developer, the City, Shu Li and Xiaoyang Shen dated 21 December 2018, without:

- (i) the prior written consent of the City which must not be unreasonably withheld or delayed; and
 - (ii) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City, acting reasonably and without delay. The preferred form of consent is a deed of novation, and a precedent deed of novation is attached to this document as Annexure C.
- (b) On and from registration of this document in accordance with clause 9:
 - (i) the Developer may Deal with the Land or any part of the Land provided that the Developer and the third party the subject of the Dealing have entered into a deed of novation, a precedent of such is attached to this document as Annexure C;
 - (ii) the Developer may lodge for registration with NSW Land Registry Services a:
 - (A) plan of subdivision (including a strata or stratum plan of subdivision), and the City consents to this document remaining registered only on the certificate of title to the lot containing the Jones Street Building and must do all things required to release this document from the certificate of title to the other lots created by the registration of that plan, as described at clause 9.2(b)(i); and
 - (B) plan of strata subdivision of the Land or of any part of the Land, including a lot or stratum lot created upon the registration of a plan of subdivision as described in clause 13.2(b)(ii)(A), and the City consents to this document remaining registered only on the certificate of title to the common property of the strata plan for the Jones Street Building, upon registration of the strata plan and must do all things required to release this document from the certificate of title to the other strata lots created by the registration of that plan, as described at clause 9.2(b)(ii). For the avoidance of doubt, it is intended this document will not be registered on title to any residential lots created following the registration of a strata or stratum plan of subdivision of the Land or any part of the Land;
 - (iii) the Developer may Deal with the Land or any part of the Land without the consent of the City if that Dealing is required to comply with any Authorisation (including the Development Consent); and
 - (iv) 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 which must not be unreasonably withheld or delayed; and

- (B) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City. The preferred form of consent is a deed of novation, and a precedent deed of novation is attached to this document at Annexure C.
- (c) The Developer must pay the City's reasonable costs and expenses relating to any consent or documentation required due to the operation of this clause 13.2.

14. **TERMINATION**

- (a) Either party may terminate this document by notice in writing to the Developer if the Development Consent lapses or is surrendered by the Developer, or if the Developer does not for any reason acquire the Land in accordance with the Put and Call Option Deed between the Developer, the City, Shu Li and Xiaoyang Shen dated 21 December 2018.
- (b) If this document is terminated then, this clause continues to operate and:
 - (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) the City will return the Guarantee(s) to the Developer after first deducting any amounts owing to the City or costs incurred by the City by operation of this document. If in exercising its rights under this document the City expends more money than the Guarantee Amount then the amount in excess of the Guarantee Amount will be deemed to be a debt due and owing to the City by the Developer; 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.

15. **CONFIDENTIALITY, DISCLOSURES AND PRIVACY**

15.1 **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 15.2 or 15.3.

15.2 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 15.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 15.2(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 15.2(b)(i).

15.3 Disclosures required by law

- (a) Subject to clause 15.3(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 15.3(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.

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

On termination of this document, if requested by the other party, 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.

15.5 **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.

15.6 **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, which must not be unreasonably withheld or delayed.

15.7 **Privacy**

- (a) Without limiting its obligations at law with respect to privacy and the protection of Personal Information, the Developer:
 - (i) must not, directly or indirectly collect, use or disclose any Personal Information under or in connection with this document except to the extent necessary to perform its obligations under this document; and
 - (ii) must in the delivery of the Public Benefits and the performance of all its other obligations under this document comply with the Privacy Laws and must not do any act or engage in any practice that would breach the Privacy Laws or which if done or engaged in by the City would be a breach of any Privacy Laws.

16. **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.

17. GENERAL

17.1 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.

17.2 Liability for expenses

- (a) The Developer must pay any applicable fees and charges adopted in the City's Revenue Policy relating to voluntary planning agreements.
- (b) The Developer must pay its own and the City's reasonable legal expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.
- (c) 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.

17.3 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.

17.4 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.

17.5 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.

17.6 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.

17.7 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.

17.8 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.

17.9 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.

17.10 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.

17.11 Operation of indemnities

- (a) Each indemnity in this document survives the expiry or termination of this document, to the extent the indemnifying party has not been released from the indemnity.
- (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.

17.12 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; and
- (b) any Schedule to this document;

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

17.13 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.

17.14 Counterparts

This document may be executed in counterparts.

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	Land	The land comprised in Certificate of Title Lot 200 in Deposited Plan 1224234, and known as 14-26 Wattle Street, Pyrmont.
2.	Development	Development application D/2019/649 for a concept proposal comprising demolition of the existing buildings, removal of trees, and a mixed-use development comprising residential, commercial, childcare and recreational uses at the land at 14-26 Wattle Street, Pyrmont and contained in Lot 200 DP1224234.
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: applications@cityofsydney.nsw.gov.au</p>
4.	Developer's Representative	<p>Name: Mark Girgis</p> <p>Address: Suite 2, Level 44, 225 George St, Sydney NSW 2000</p> <p>Email: mark@landream.com.au</p>
5.	Development Application	D/2019/649, and any Stage 2 DA.
6.	Guarantee Amount	\$500,000.00
7.	Guarantee Amount Due Date	Prior to the first Construction Certificate for the construction of the Jones Street Building.

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.	Planning instrument and/or development application (section 7.4(1) of the Act) The Developer has: (a) sought a change to an environmental planning instrument; (b) made, or proposes to make, a Development Application; or (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(a) No (b) Yes (c) No
2.	Description of land to which this document applies (section 7.4(3)(a) of the Act)	Item 1 of Schedule 1.
3.	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)	Item 2 of Schedule 1.
4.	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)	The provision of Public Benefits by the Developer under this document is required to occur in accordance with Schedule 3 and Annexure A.
5.	Whether this document excludes (wholly or in part) or 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)	Section 7.11 not excluded Section 7.12 not excluded

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
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 in respect of the Development and contributions (if any) under section 7.11 will be required to be paid.
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 11
9.	Enforcement of this document (section 7.4(3)(g) of the Act)	Clause 10
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 9
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Payment of Guarantee Amount must be made prior to the Construction Certificate for construction of the Jones Street Building.
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	N/A
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	<p>Developer's Works</p> <p>The Developer will achieve Completion of the Jones Street Footpath Works before the issue of the first Occupation Certificate for the Jones Street building, unless otherwise agreed with the City.</p> <p>Land acquisition - Transfer Land</p> <p>The Developer is to acquire from the City (or the relevant roads authority if not the City) the Transfer Land, being the extent of public road land adjoining the Land that will be required for the Jones Street Footpath Works by the due date in the table of clause 1 of Schedule 3, being no later than before the issue of the</p>

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
		<p>Occupation Certificate for the Jones Street Building.</p> <p>Grant of Easement</p> <p>The Developer is required to grant to the City an easement for public access by pedestrians and cyclists, or where vehicular access is required by legislation over the Transfer Land. That easement will be granted on terms provided in Annexure D, and is required by to be registered by the due date in the table at clause 1 in Schedule 3, being prior to the grant of Occupation Certificate for the Jones Street Building.</p>
15.	<p>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)</p>	<p>Clause 2.5</p>

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 the table below

	Public Benefit	Attributed Value	Due date	Additional specifications
1.	Transfer Land	\$1.00	<p>The Transfer Land is to be acquired by the Developer after registration of the plan of subdivision required to create the Transfer Land as a separate lot, and upon the earliest to occur of:</p> <ul style="list-style-type: none"> a. transfer of the Land to the Developer; or b. Completion of the Developer's Works; or c. any other time agreed between the parties; <p>but in any case, must occur before the issue of the Occupation Certificate for the Jones Street Building.</p>	The transfer of the Transfer Land shall not be concluded until after the transfer of the Land to the Developer.
2.	Developer's Works	\$500,000.00	<ul style="list-style-type: none"> a. Unless (b) applies, prior to the issue of the Occupation Certificate for the Jones Street Building; or b. in relation to the Developer's Works (or any part of the Developer's 	<p>Design and construction of Jones Street Footpath Works.</p> <p>Registration of an easement and covenant for public access and maintenance over the Transfer Land on the</p>

			Works) the subject of a notice under clause 6.4(a)(ii), at any other time agreed between the parties.	terms set out in Annexure D.
--	--	--	---	------------------------------

1.1 Acquisition of Transfer Land

The Developer must, at its cost, take all steps reasonably required to acquire the Transfer Land from the City (or the relevant roads authority if not the City), by the due date specified in the table at clause 1 of Schedule 3.

The Developer is to prepare a survey of the road at its cost and a plan of subdivision to create a separate lot relating to the Transfer Land prior to the commencement of construction of the Jones Street Footpath Works, for registration at NSW Land Registry Services following the closure of the road.

1.2 City to effect transfer of Transfer Land

The City must, promptly when requested but at the cost of the Developer:

- (a) provide its consent as landowner for any development application needed to achieve creation of the Transfer Lot by a subdivision of land; and
- (b) do all things necessary to enable the Developer register a plan of subdivision to create a separate lot relating to the Transfer Land and to transfer to the Developer the Transfer Land including producing any certificate of title, providing any information, documents or consent, executing any form or Transfer or other instrument necessary to effect the transfer of the Transfer Land to the Developer.

1.3 Relocation of existing services on Transfer Land

The Developer will be responsible for the cost of relocating any existing services located in the Transfer Land that must be removed in order to undertake the Jones Street Footpath Works.

If it is not necessary to remove or relocate services to facilitate the Jones Street Footpath Works, the Developer will do all things reasonably required to assist the City to take an easement in gross over the relevant part of the Transfer Land, to provide access to and to protect the City's services and assets. The terms of any easement in gross are to reflect the standard terms in Schedule 4A of the *Conveyancing Act 1919*. The City agrees to co-operate with the Developer to promptly do all things reasonably necessary to achieve the grant and registration of any easement in gross that may be required.

1.4 Easement for public access over the Transfer Land

The Developer will do all things reasonably required to grant to the City an easement for public access by pedestrians and cyclists, or where vehicular access is required by legislation over the Jones Street Footpath Works, having regard to the structural capability of the structure and that, practically, the cantilevered components of the footpath will not be capable of supporting heavy vehicles such as emergency vehicles. That easement will be granted on the terms in Annexure D, to ensure the Jones Street Footpath operates as if it were part of the Jones Street road reserve. The City agrees to co-operate with the Developer to promptly do all things reasonably necessary to achieve the grant and registration of the above easement. For the avoidance of doubt, the easement for public access may be registered by way of inclusion in the strata plan for the Jones Street Building.

1.5 Partial road closure of part of Jones Street forming the Transfer Land

The Developer and the City agree to co-operate in undertaking the process for closing the part of the public road that will be the Transfer Land. The City agrees to undertake all steps necessary to effect the required partial road closure promptly after receiving a written request from the Developer to do so. The Developer is responsible for all costs or fees incurred in effecting the partial road closure, in accordance with the City's prescribed schedule of fees and charges. The Developer will pay the City's reasonable legal fees incurred for effecting the partial road closure. For information purposes, the indicative steps to the closure of the public road are outlined in Annexure B to this document.

1.6 Licence for Developer's access to Transfer Land prior to Acquisition

From the date of this document until such time as the Developer becomes the registered proprietor of the Transfer Land, the City grants to the Developer a licence to access the Transfer Land to undertake any surveys, investigations to identify, including but not limited to, location of services, Contamination, and undertake geotechnical investigations. Prior to accessing the Transfer Land in reliance on that licence in accordance with this clause 1.6, the Developer is required to provide the City with reasonable notice in writing of not less than 5 Business Days.

1.7 Obligations on acquisition of Transfer Land

The requirement for the Developer to acquire the Transfer Land is satisfied where a deposited plan is registered in the register of plans held with the Registrar-General, along with the registration of an easement and covenant for public access and maintenance over the Transfer Land, unless the parties agree that the easement for public access can be registered at a later date.

2. FINAL DESIGN OF THE DEVELOPER'S WORKS

2.1 Scope of Developer's Works

As at the date of this document, the nature and extent of the required Developer's Works is set out in Annexure A to this document. The parties agree that further design refinement of the Developer's Works may be necessary, having regard to:

- (a) the extent to which the design of the Developer's Works has been approved by the City in any Stage 2 DA;
- (b) conditions affecting the Developer's Works that were not reasonably capable of identification prior to the date of this document; and
- (c) any modification to the Development Consent made and approved under section 4.55 of the Act or any other development consent granted that relates to the Developer's Works.

3. CONSTRUCTION OF DEVELOPER'S WORKS

3.1 Insurance

- (a) During any time when the Developer has access to the Transfer Lot for surveys, investigations and the like and, unless the Developer is at that time the owner of the Transfer Lot, then from commencement of the Developer's Works until expiration of the Defects Liability Period, the Developer must effect and maintain (or cause to be effected and maintained under one or more policies of insurance and without requiring any risk to be double insured) the following insurances held with an insurer licensed by the Australian Prudential Regulation Authority or holding an investment grade rating from Standard & Poors, Moody's or Fitch:
 - (i) worker's compensation insurance or registrations as required by Laws;
 - (ii) public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$20,000,000 covering all aspects of the Developer's Works;
 - (iii) construction works insurance in relation to the Developer's Works; and
 - (iv) motor vehicle third party cover with a limit of indemnity of not less than \$20 million for each and every occurrence.
- (b) The Developer must submit a copy of all certificates of insurance to the City:
 - (i) prior to accessing the Transfer Lot for the purposes of surveys, investigations and the like and, unless the Developer is at that time the owner of the Transfer Lot, prior to commencing construction of the Developer's Works; and
 - (ii) promptly following a written request by the City, provided that such a request is not made more than twice in any 12 month period.

3.2 Approvals and consents

The Developer must, at its cost, obtain all relevant approvals and consents for the Developer's Works, whether from the City or from any other relevant Government

Agency, including any necessary road opening permits. Before commencing the Developer's Works, the Developer must give to the City copies of all approvals and consents for the Developer's Works, other than the Development Consent.

3.3 **Construction work**

The Developer must, at its cost:

- (a) carry out and complete the Developer's Works in accordance with all approvals and consents relating to the Developer's Works, including any approval given by the City under this document; and
- (b) ensure that all Developer's Works are constructed in a good and workmanlike manner in accordance with the Developer's Works Specifications at Annexure A;
- (c) ensure that the Developer's Works are Complete by the due date specified in the table at clause 1 of Schedule 3 and promptly after becoming aware advise the City's Representative of any significant delays in completing the Developer's Works or delays that may impact the delivery of the Developer's Works by the due date specified in clause 1 of Schedule 3.; and
- (d) comply with all reasonable directions of the City in respect to construction of the Developer's Works, but only to those parts of the Developer's Works which will become a City asset.

3.4 **Inspections by the City**

Noting that the Developer's Works will involve kerb and gutter works on public road area which will be an asset of the City, the City, as a party to this document and not in its role as a Government Agency, may:

- (a) inspect the Developer's Works during the course of construction at reasonable times and on reasonable notice; and
- (b) notify the Developer's Representative of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of an inspection which the City reasonably considers relates to the kerb and gutter works and the interaction of the Developer's Works with the adjoining areas.

Any failure by the City to identify a Defect, error or omission will not be construed as amounting to an acceptance by the City of the Defect, error or omission.

4. **STANDARDS**

The following list of Standards are included for information purposes only, and as a guide to the relevant standards for the general nature of the work identified as Developer's Works in this document. The City makes no representation or warranty as to the currency of the standards identified, or their application on the final design of the Developer's Works. The Developer must make its own enquiries regarding whether any standard has been replaced or supplemented. In the event that an Australian Standard prescribed a different level of material, finish, work or

workmanship than those contained in a City standard, then the higher of the two standards will apply. If there is a conflict between City standards then the Developer must request the City nominate the correct and applicable City standard. The City's decision as to the applicable standard is final.

Relevant Australian Standards

- AS 1725 Geotechnical Site investigations
- AS 4455 Masonry Units and segmental pavers
- AS 4678 Earth Retaining Structures
- AS 3600 Concrete Structures
- AS 2876 Concrete kerbs and channels
- AS 1158 Road Lighting
- AS 1743 Road signs
- AS 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures
- AS 2890 Parking Facilities
- AS 1428 Design for Access and Mobility
- AS 4454 Composts, soil conditioners and mulches

City Standards

- City of Sydney Contaminated Lands DCP 2004
- Sydney Street Code 2013
- Sydney Lights Code 2013
- City of Sydney Access Policy
- Sydney Street Technical Specification and Drawings
- City of Sydney Street Tree Master Plan 2011

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
Authorised delegate pursuant to
section 377 of the Local Government
Act 1993

Name

Position of officer

456 Kent Street, Sydney NSW 2000

Address of witness

EXECUTED by **Landream Pyrmont
Pty Limited ACN 630 686 341** in
accordance with s127(1) of the
Corporations Act 2001 (Cth):

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE A

Developer's Works Specifications

- Concrete pedestrian footway to minimum of 1200mm and maximum of 1500mm wide including Balustrade, noting there are parts of this structure that may be cantilevered:
 - in accordance with Sydney Street – Technical Specification, Sections B3 Concrete Works Construction and B5 Footways Construction for the on-grade part of the footway, and where possible for the cantilevered part of the footway or as required as a suitable alternative
 - to Certified Engineer's Design with supporting Geotechnical Report
 - sediment and erosion control
 - strip and clear existing area
 - excavate for new footpath
 - disposal of material as required
 - trim, regrade to required contours and compact
 - allow for base
 - 120mm reinforced concrete footpath with edge thickening for the on-grade part of the footway, and where possible for the cantilevered part of the footway or as required as a suitable alternative
 - stabilisation on edge of concrete footpath on grade for full length of scope - for fill/retaining wall/additional anchors etc.
 - in-situ concrete kerb and gutter (assume no additional drainage) in accordance with Sydney Streets – Technical Specifications, Sections B4 Kerb and Gutter Construction including road restoration
 - interface with existing Harbour Mill Pavement
 - architectural balustrade
- Grid Mesh or 150mm supported by 300 PFC Steel Beams:
 - 200UC59 Steel Up Right Member chemically anchored to natural rock face
 - 300PFC beams (2t);
 - bearing pad at corbel on building
 - mesh decking including secondary steel framing
 - architectural balustrade.

ANNEXURE B

Indicative process for road closures

Step No.	Action	Indicative Timeframe (Working Days)
1.0	On Initial Application	11
1.1	Receipt and acknowledge an application for closure of a public road	1
1.2	Refer proposal to CITO to determine if any objection to closure	5
1.3	Determine road status (City or Crown ownership)	5
2.0	Road Closure to Traffic	35
2.1	Prepare a report for the Local Pedestrian, Cycling and Traffic Calming Committee to secure endorsement to close the road to traffic under section 116 Roads Act 1993	35
3.0	Action taken for City Road closure - Approvals and Notifications	93
3.1	Engage a Surveyor to: - Investigate the status of the road - Prepare identification survey plan and any easements to be retained - Facilitate the road closure process (end to end)	20
3.2	Issue a public notice (Sydney Morning Herald and Sydney Your Say) on proposed closure CPP: Public notice and letter to adjoining residents Consultant Surveyor: Letter to affected service authorities	28
3.3	Consultant surveyor to prepare a report detailing: - Road status - Objections received from service authorities - Proposed easements	Concurrent with 3.2
3.4	Finalise community consultation report	10
3.5	Prepare and lodge a report to Council to close the road under section 38 of the Roads Act 1993. Include supporting documentation from 3.2-3.4	35
4.0	Survey Plan and Subdivisional Approval	105
4.1	Prepare a Plan of Proposed Subdivision	5
4.2	Resolve outstanding objections / creation of easements with identified service authorities	20

4.3	Prepare and lodge application (CL45-36) to City Planners for Road Closure and First Title Creation. Application is to include: i. Plan and/or instrument which created the road ii. Certificate of Title (if road is contained within a title residue) iii. Draft a S88B Instrument for any dealings relating to easements iv. Details of any relevant proposals affecting the City road	1
4.4	City to issue owners consent (Director to sign application)	3
4.5	Monitor and resolve any planning issues arising from the Application	30
4.6	Once Planning Determination approved, prepare and lodge application for a Section 73 Certificate from Sydney Water	20
4.7	Finalise the Plan of Road Closure and First Title Creation	5
4.8	Lodge an application for subdivision to City Planners with Section 73 Certificate	1
4.9	Monitor and resolve any planning issues arising from the Application	10
4.10	Submit approved plan for Attorney's execution	10
5.0	Registration of Subdivisional Plan and Title Issue	31
5.1	Lodge approved plan (11R Form) to LRS	1
5.2	Monitor and resolve any survey or title issues arising from the Application	10
5.3	Secure plan registration from LRS and issue of title in the City's name	20
6.0	Government Gazette Notification	9
6.1	Prepare requisite Notice for Publication in the Government Gazette	1
6.2	Check format and wording with Legal	5
6.3	Seek CEO's approval to publication of the Notice and lodge with parliamentary counsel	2
6.4	Email Gazettal notice to <nswgazette@pco.nsw.gov.au>	1

Total

41 Weeks

ANNEXURE C – DEED OF NOVATION

Draft

Deed of Novation

THIS DEED OF NOVATION is made on _____ between the following Parties:

1. **The Council of the City of Sydney ABN 22 636 550 790** of Town Hall House, 456 Kent Street, SYDNEY NSW 2000 (“**Council**”), and
2. **[Insert Name, ACN and address]** (**[jointly]**), the “**Outgoing Party**”, and
3. **[Insert Name, ACN and address]** (“**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 13.2 of the VPA, at the request of the Council.

1. Definitions and Interpretation

VPA is the Planning Agreement entered into between the Council and the Outgoing Party on **[date]**.

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] in accordance)
with section 127 of the Corporations Act)
)

Signature of Director/Secretary

Signature of Director

Name of Director/Secretary

Name of Director

Executed by **[INSERT INCOMING PARTY**)
NAME AND ACN] in accordance with section)
127 of the Corporations Act:)

Signature of Director/Secretary

Signature of Director

Name of Director/Secretary

Name of Director

ANNEXURE D – EASEMENT

Draft

INSTRUMENT SETTING OUT TERMS OF EASEMENTS OR PROFITS À PRENDRE INTENDED TO BE CREATED OR RELEASED AND OF RESTRICTIONS ON THE USE OF LAND OR POSITIVE COVENANTS INTENDED TO BE CREATED PURSUANT TO SECTION 88B CONVEYANCING ACT 1919.

(Sheet 1 of 5 sheets)

Plan: Plan of easements and positive covenant over **[Insert title of the Jones Street Building]**

Full name and address of the owners of the land: **The Council of the City of Sydney**
Town Hall House, Level 2, 456 Kent Street, Sydney
NSW 2000

Part 1 (Creation)

Number of item shown in the intention panel on the plan	Identity of easement, profit à prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s):	Benefited lot(s), road(s), bodies or Prescribed Authorities:
1	Easement for public access variable width limited in height and depth [#insert consistent with final plan]	[Insert title of the Jones Street Building]	The Council of the City of Sydney
2	Positive Covenant (Public Access)	[Insert title of the Jones Street Building]	The Council of the City of Sydney

Plan:

Plan of easements and positive covenant over **[Insert title of the Jones Street Building]**

Part 2 (Terms)

1 INTERPRETATION

1.1 Definitions

These meanings apply unless the contrary intention appears:

Authorised User means every person authorised by the Council for the purposes of the Easement created by this Instrument. Subject to the terms of the Easement, an Authorised User includes the employees, agents, servants, contractors, workers, licensees and invitees of the Council. An Authorised User includes members of the public.

Act means the *Conveyancing Act 1919* (NSW), as amended from time to time.

Council means The Council of the City Sydney, its successors and any other body serving the same or similar function.

Easement means the easements, restrictive covenant or positive covenants in this Instrument and includes the conditions in relation to that Easement.

Easement Site means in relation to an easement, positive covenant and restrictive covenant in this Instrument, the site of an easement, positive covenant and restriction on use identified on the Plan.

Grantor means the Owner, or if there is more than one jointly the Owners, of an estate in fee simple of a Lot Burdened.

Lot Burdened means a lot referred to in Part 1 of this Instrument as being land burdened by an Easement created by this Instrument.

Owner means every person who is at any time entitled to an estate in a lot referred to in Part 1 of this Instrument as registered proprietor or mortgagee in possession.

Plan means the plan registered together with this Instrument.

1.2 Interpretation

In this Instrument:

- (a) the singular includes the plural and vice versa;
- (b) a reference to any legislation or to any provision of any legislation includes any modification or re-enactment of it, any legislative provision substituted for it and any regulations and statutory instruments issued under it;
- (c) a reference to anything (including any amount) is a reference to the whole or each part of it and a reference to a group of persons is a reference to any one or more of them;
- (d) specifying anything in this agreement after the words including, includes or for example or similar expressions does not limit what else might be included unless there is express wording to the contrary;
- (e) a reference to a right or obligation of two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally; and

Plan:

Plan of easements and positive covenant over **[Insert title of the Jones Street Building]**

- (f) the expression "Grantor" includes the Grantor, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment.

1.3 Headings

Headings do not affect the interpretation of this Instrument.

1.4 Positive covenants and maintenance requirements

A requirement in an Easement which requires the Council or Grantor to maintain or repair an Easement Site or anything in an Easement Site is a positive covenant according to section 88BA of the Act.

1.5 Severability

If a provision of an Easement under this Instrument is void, unenforceable or illegal, then that provision is severed from that Easement and the remaining provisions of that Easement have full force and effect.

2 TERMS OF EASEMENT FOR PUBLIC ACCESS VARIABLE WIDTH LIMITED IN HEIGHT AND DEPTH [#INSERT (IF APPLICABLE)] NUMBERED ONE IN THE PLAN

2.1 Grant

Subject to the Grantor's rights under clauses 2.3 to **Error! Reference source not found.**, the Grantor grants to the Council and its Authorised Users full and free right to go, pass and repass over the Easement Site at all times:

- (a) on foot; and/or
- (b) with wheelchairs or other disabled access aids, bicycles, tricycles or similar non-motorised machines (being walked or ridden), but excluding all other vehicles; and/or
- (c) with or without animals,

for all lawful purposes.

2.2 Purpose of the Easement

The Council and the Grantor acknowledge that the Easement is being provided at no cost to the public and is for the purpose of providing reasonable access over the Easement Site to any member of the public in accordance with and subject to the provisions of this Easement.

2.3 Requirements when exercising rights

When exercising its rights and complying with its obligations under this easement, the Council must (and must ensure its Authorised Users (excluding members of the public)) take all reasonable steps:

- (a) to minimise inconvenience, disturbance or damage to the Grantor, the Lot Burdened and any occupier of the Lot Burdened; and
- (b) to cause as little damage as is practicable to the Lot Burdened and any improvements on it; and

Plan:

Plan of easements and positive covenant over **[Insert title of the Jones Street Building]**

-
- (c) if damage is caused by the Council (or its Authorised Users (excluding members of the public)), restore the Lot Burdened as nearly as practicable to the condition it was in before the damage occurred, as soon as reasonably possible.

2.4 Inspection

The Grantor must upon reasonable notice, permit the Council to enter the Easement Site with any equipment or machinery reasonably necessary to inspect the Easement Site for the purposes of ensuring that the grantor under Positive Covenant numbered 2 in the Plan is complying with its obligations under the Positive Covenant numbered 2 in the Plan.

2.5 Name of the person or Authority empowered to release or vary or modify any or all of the Easement numbered one in the Plan:

The Council of the City of Sydney

3 TERMS OF POSITIVE COVENANT (PUBLIC ACCESS) NUMBERED TWO IN THE PLAN

3.1 Maintenance of Easement Site

The Grantor must:

- (a) at all times, maintain the Easement Site (including any lighting) in good condition and state of repair; and
- (b) not permit the Easement Site to become unsafe; and
- (c) keep the Easement Site clean and free from rubbish.

3.2 Public Liability Insurance

- (a) The Grantor must take out and maintain a public liability insurance policy with respect to any liabilities to Council or to any other person for the death or injury of any person within or about the Easement Site for an amount in respect of any single accident of not less than \$20 million, or such higher amount as may be required by Council (acting reasonably).
- (b) The policy referred to in clause 3.2(a) must:
 - (i) note Council as an interested party; and
 - (ii) be taken out and maintained with reputable insurers which at all times hold at least the Required Credit Rating and who either:
 - (A) have their principal place of business in Australia; or
 - (B) is licensed by the Australian Prudential Regulation Authority to provide insurance in Australia.

3.3 Indemnity

- (a) The Grantor indemnifies the Council against any claims or damages arising from the use of the Easement Site by the Council or any of its Authorised Users under Easement for Public Access numbered One on the Plan

Plan:

Plan of easements and positive covenant over [Insert title of the Jones Street Building]

3.4 Person empowered to release, vary or modify the Positive Covenant numbered two in the Plan:

This Positive Covenant may only be released, varied or modified with the consent of the Council of the City of Sydney.

EXECUTION PAGE

Executed by Council of the City of Sydney

EXECUTED by The Council of the City of Sydney ABN 22 636 550 790 by its attorney under power of attorney registered book in the presence of:

.....)
Signature of witness)	Signature of Attorney
)	
)	
.....)
Name of witness (block letters))	Name of Attorney

ANNEXURE E – TRANSFER LAND PLAN

Drawing SK-1006

Draft

NOTES

- 1 Refer to drawing series DA2-5000 Jones Street design guidelines
- 2 Refer to drawing series DA2-6000 Through-site links design guidelines
- 3 Refer to drawing series DA2-7000 Roof features design guidelines
- 4 Refer to drawing series DA2-8000 Cliff design guidelines
- 5 Refer to drawing series DA2-9000 Landscape design guidelines
- 7 Refer to drawing series DA2-9600 Commercial building articulation guidelines

