CITY OF SYDNEY

Planning agreement

The Council of the City of Sydney ABN 22 636 550 790 and [*party name*] ABN [*insert*]

For the [*agreement description*]

Reference: [insert TRIM number]

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[Insert Annexure if used]

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THIS PLANNING AGREEMENT is made on 20[***insert***].

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) **[Insert name]** ABN **[insert number]** of **[insert address]** (the **Developer**). [***note: this precedent is prepared for situations where the owner is the developer. This is the City's preference for planning agreements***]

BACKGROUND

(A) The Developer is the owner of the Land and intends to undertake the Development on the Land.

(B) The Developer has offered to enter into this document with the City to provide the Public Benefits on the terms of this document.

THE PARTIES AGREE AS FOLLOWS:

1. **INTERPRETATION**

1.1 **Definitions**

The following definitions apply in this document.

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

Adverse Affectation has the same meaning as in Part 3 of Schedule 2 of the *Conveyancing (Sale of Land) Regulation 2022* (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 Policies means all policies and procedures relevant to the provision of the Public Benefits, as notified by the City in writing to the Developer.

SAMPLE

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

Completion means the point at which:

(a) the Developer's Works are complete except for minor defects:

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

(ii) which the Developer has grounds for not promptly rectifying; and

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

(b) to the extent the RAB (CEP) Act or the DBP Act (as applicable) applies to the Developer's Works, the Developer has obtained and submitted all Occupation Certificate(s) for the Developer's Works to the City (and such Occupation Certificates are not invalid by reason of the RAB (CEP) Act or the DBP Act) (as applicable).

Completion Notice means a notice issued by the Developer in accordance with clause 6.1.

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.

Construction Issued Regulated Design means, in respect of the Developer's Works, a "construction issued regulated design" as that term is defined in the DBP Regulation.

SAMPLE

Contamination has the meaning given to that word in the *Contaminated Land Management Act 1997* (NSW).

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

DBP Act means the *Design and Building Practitioners Act 2020* (NSW).

DBP Regulation means the *Design and Building Practitioners Regulation 2021* (NSW).

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

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:

(a) in relation to the Public Benefits other than the Essential Infrastructure, the period of 12 months [***confirm instructions***] from the date on which the Developer's Works reach Completion; and

(b) in relation to the Essential Infrastructure, the period of 24 months [***confirm instructions***] from the date on which the Essential Infrastructure reaches Completion.

Design Compliance Declaration means, in respect of the Developer's Works, a "design compliance declaration" as that term is defined in the DBP Act.

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" and "Essential Infrastructure" in clause 1 of Schedule 3, 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.

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.

SAMPLE

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)*.

Essential Infrastructure means that part of the Public Benefit described as "Essential Infrastructure" in clause 1 of Schedule 3, to be delivered by the Developer in accordance with this document.

Government Agency means:

(a) a government or government department or other body;

(b) a governmental, semi-governmental or judicial person; or

(c) a person (whether autonomous or not) who is charged with the administration of a law.

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

GST means the same as in the GST Act.

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

Guarantee means a bank guarantee 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); or

    (ii) Baa 2 (Moodys);

(d) be issued on behalf of the Developer;

(e) have no expiry or end date;

(f) state the beneficiary as the "Council of the City of Sydney ABN 22 636 550 790";

(g) be irrevocable;

SAMPLE

(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.

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.

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

SAMPLE

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

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

Occupation Certificate has the same meaning as in the Act.

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 the 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.

Quantity Surveyor's Assessment means the assessment by the Quantity Surveyor of the cost to deliver the Developer's Works.

RAB (CEP) Act means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW).

RAB (CEP) Regulation means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Regulation 2020* (NSW).

Regulated Design means, in respect of the Developer's Works, a "regulated design" as that term is defined in the DBP Act.

Regulation means the *Environmental Planning and Assessment Regulation 2021 (NSW)*.

Standards means the policies, procedures and standards for carrying out the Developer's Works, listed non-exhaustively at clause 6 of Schedule 3.

SAMPLE

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 land forming part of the Public Benefit that is to be either dedicated or transferred to the City in accordance with Schedule 3 of this document.

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.

SAMPLE

(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) [***optional***]the Development / [***describe change in environmental planning instrument to which this document applies***].

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 the Act

(a) The application of sections 7.11 and 7.12 of the Act are excluded to the extent set out in Items 5 and 6 of Schedule 2 to this document.

(b) The application of Division 7.1, Subdivision 4 of the Act is not excluded.

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 205 of the Regulation must not be used to assist in construing this document.

3. OPERATION OF THIS PLANNING AGREEMENT

3.1 Commencement

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

SAMPLE

(b) [option if clauses commence at a later date Clauses [insert] commence on [insert date or milestone]].

4. WARRANTIES

4.1 Mutual warranties

Each party represents and warrants that:

(a) (**power**) it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;

(b) (**corporate authority**) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;

(c) (**Authorisations**) it holds each Authorisation that is necessary or desirable to:

(i) enable it to properly execute this document and to carry out the transactions that it contemplates;

(ii) ensure that this document is legal, valid, binding and admissible in evidence; or

(iii) enable it to properly carry on its business as it is now being conducted,

and it is complying with any conditions to which any of these Authorisations is subject;

(d) (**documents effective**) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;

(e) (**solvency**) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and

(f) (**no controller**) no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.

4.2 Developer warranties

(a) The Developer warrants to the City that, at the date of this document:

(i) it is the registered proprietor of the Land;

(ii) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document;

(iii) all work performed by the Developer and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person

SAMPLE

in the industry would expect to be provided by an organisation of the Developer's size and experience; and

(iv) it is not aware of any matter which may materially affect the Developer's ability to perform its obligations under this document.

(b) The Developer warrants to the City that, prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

5. PUBLIC BENEFITS

5.1 Developer to provide Public Benefits

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

5.2 Maintenance of Developer's Works

(a) In this clause 5.2, the following definitions apply:

Maintain means works to bring an item to a state of reasonable condition and in accordance with relevant standards applicable at the time of construction of the item, but does not include removing graffiti or repairing any item damaged as a consequence of vandalism. **Maintained** and **Maintenance** have corresponding meanings.

Maintenance Period is the period of 12 months from the date on which the Developer's Works reach Completion.

Maintenance Schedule means the schedule of proposed Maintenance works as listed in Annexure A under the heading 'Maintenance of Developer's Works'.

(b) The Developer's Works must be Maintained by the Developer during the Maintenance Period in accordance with the Maintenance Schedule.

(c) The Developer must follow the City's Policies and obtain and comply with all Authorisations necessary to carry out the Maintenance required under this clause 5.2.

(d) If, during the Maintenance Period:

(i) the Developer fails to materially comply with the approved Maintenance Schedule and does not rectify that failure within 15 Business Days of being notified of that failure by the City or within a reasonable period of time agreed between the parties; or

(ii) the City becomes aware of an item of the Developer's Works that requires urgent Maintenance to ensure public safety or avoid damage or loss to the public or property,

the City may, by itself, its employees, contractors or agents, carry out the required works and may recover as a debt due and owing to the City, any difference between the amount of the Guarantee and the costs incurred by the City in carrying out the Maintenance work.

SAMPLE

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, and all hold points inspections have been approved by the City, 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;

(b) copies of any warranties, guarantees, maintenance information or other material reasonably required for the City to assume responsibility for the Developer's Works; and

(c) at least two sets of the "as built" drawings of the Developer's Works, including one set in electronic format, , prepared in accordance with the City's Public Domain Manual and Technical Specifications or other policies as applicable,

(**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 clause 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 opinion of the City's Representative, prevent Completion; or

(iii) issue a notice under clause 6.4(a).

(b) Nothing in this clause 6.3, or any notice issued under this clause 6.3, will:

(i) reduce or waive in any manner the Developer's responsibility to:

SAMPLE

(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 **Non-completion of Public Benefits**

(a) If the Developer makes a request by notice in writing not to complete the Public Benefits (or any part of the Public Benefits):

(i) the City may permit the Developer not to complete the Public Benefits (or any part of the Public Benefits) by issuing a notice in writing to the Developer stating that completion of the items identified in that notice is not required to fulfil the Developer's obligations under this document; and

(ii) the City may make a claim on the Guarantee in such amount as the City considers necessary to complete the portion of Public Benefit not being delivered by the Developer.

(b) If the Developer fails to complete the whole of the Public Benefits in the form and to the standards required under the Development Consent or this document then the City may either:

(i) complete the Public Benefits itself, including by exercising its right to compulsorily acquire the Transfer Land in accordance with clause 10.6 of this document; or

(ii) modify the Public Benefits to reasonably achieve the objectives identified in the Development Consent and this document,

and may recover all costs of and reasonably incidental to that work from the Developer. The City can claim on the Guarantee 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, the City can recover this amount from the Developer as a debt due and owing to the City.

(c) If the City exercises its rights under this clause 6.4 to complete the Public Benefits, the Developer grants the City a licence for the period necessary for the City to access the Land to carry out, or procure the carrying out, of the Public Benefits and, to the extent the DBP Act or the RAB (CEP) Act applies to the Developer's Works, the Developer must provide all required assistance to the City to enable the City to comply with the DBP Act and the RAB (CEP) Act (as applicable).

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

SAMPLE

Developer's obligations under this document, except to the extent the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any wilful or negligent act or omission of the City (or any person engaged by the City).

8. DEFECTS LIABILITY

8.1 Security for Defects Liability Period

Until the expiry of the relevant 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 Public Benefits

(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 Public Benefits 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 Public Benefits.

(b) If the Developer is unable or unwilling to comply with clause 8.2(a), or fails to rectify the Defect within three months 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 Land to rectify any Defect, 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 Land to carry out, or procure the carrying out, of the rectification works.

9. REGISTRATION AND CAVEAT

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;

SAMPLE

(ii) warrants that it has obtained all consents to the registration of this document on the certificate of title to the Land; and

(iii) must within 10 Business Days of a written request from the City do all things necessary to allow the City to register this document on the certificate of title to the Land, including but not limited to:

(A) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services; and

(B) providing the City with payment for registration, electronic lodgement and requisition fees (where applicable) required for registration of this document at NSW Land Registry Services.

(iv) The Developer must act promptly in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

9.2 **[optional clause if developer resists registration of planning agreement being a condition precedent to commencement of this document Caveat**

(a) The City may, at any time after the date of this document, register a caveat over the Land preventing any dealing with the Land that is inconsistent with this document. Provided that the City complies with this clause 9.2, the Developer must not object to the registration of this caveat and may not attempt to have the caveat removed from the certificate of title to the Land.

(b) In exercising its rights under this clause 9.2 the City must do all things reasonably required to:

(i) [***note: consider whether Council would prefer to leave the caveat on the title after registration of this document***] remove the caveat from the Land once this document has been registered on the certificate of title to the Land; and

(ii) consent to the registration of:

(A) this document; and

(B) any plan of consolidation, plan of subdivision or other dealing required by this document or the Development Consent. ***end optional clause]***

9.3 **Release of this document**

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

(b) The Developer must, within 10 Business Days of a written request from the City, do all things necessary to allow the City to comply with clause 9.3(a), including but not limited to:

SAMPLE

(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 payment for registration, lodgement and requisition fees (where applicable) required for removal of this document from the certificate of title to the Land by NSW Land Registry Services.

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:

RGA = GA x (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.

SAMPLE

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) the Developer fails to comply with clause 4.2 of Schedule 3 of this document (provision of detailed design drawings and detailed costs estimate);

(ii) the Developer fails to comply with clause 2 of Schedule 3 (payment of Monetary Contribution);

(iii) the City allows the Developer not to complete the Public Benefits, or any part of them, in accordance with clause 6.4(a)(ii);

(iv) an Insolvency Event occurs in respect of the Developer;

(v) the Developer fails to deliver the Public Benefits in accordance with clause 6.4(b);

(vi) the Developer fails to carry out Maintenance in accordance with clause 5.2 of this document;

(vii) the Developer fails to rectify a Defect in accordance with clause 8.2 of this document;

(viii) the detailed designs for the Developer's Works are not finalised between the parties within 12 months of the date of issue of a Construction Certificate that approves the construction of any structures above the ground floor of the Development;

(ix) to the extent the DBP Act applies to the Developer's Works, any Regulated Designs and Design Compliance Declarations for those Regulated Designs in relation to the Developer's Works are not procured by the Developer (or the Developer's Personnel) as required by the DBP Act or the DBP Regulation or otherwise not provided to the City as and when required by this document;

(x) to the extent the RAB (CEP) Act applies to the Developer's Works, the City incurs any other cost, expense or liability in exercising its rights to appeal or make representations under clause 5.5(a)(vi) of Schedule 3 or 5.5(b) of Schedule 3;

(xi) the Developer's Works do not reach Completion within 36 months of the date of issue of the first Construction Certificate in respect of the Development (or such later time as agreed by the City in writing);

(xii) the Developer fails to maintain the Developer's Works in accordance with clause 5.2 and Annexure A; or

(xiii) the City incurs any other expense or liability in exercising its rights and powers under this document.

SAMPLE

(b) Any amount of the Guarantee appropriated by the City in accordance with clause 10.2 must be applied only towards:

(i) the costs and expenses incurred by the City rectifying any default by the Developer under this document;

(ii) carrying out any works required to achieve the Public Benefits;

(iii) to the extent the DBP Act applies to the Developer's Works, the costs and expenses incurred by the City rectifying any failure by the Developer (or the Developer's Personnel) to procure Regulated Designs and Design Compliance Declarations for those Regulated Designs in relation to the Developer's Works as required by the DBP Act or the DBP Regulation and to provide copies of any Regulated Designs and Design Compliance Declarations for those Regulated Designs in relation to the Developer's Works to the City when required by this document; or

(iv) to the extent the RAB (CEP) Act applies to the Developer's Works, any costs, expenses or liabilities incurred by the City in exercising its rights to appeal or make representations under clause 5.5(a)(vi) of Schedule 3 or 5.5(b) of Schedule 3.

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. 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 10.5(b), the City is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.

(b) If:

(i) the monies secured by the Guarantee have not been expended;

(ii) 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

SAMPLE

(iii) 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 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 retained by the City as security for the Defects Liability Period.

10.6 **Compulsory acquisition**

If the Developer fails to transfer or dedicate the Transfer Land or any land forming part of the Essential Infrastructure to the City in accordance with Schedule 3 of this document then the City may compulsorily acquire that land for the amount of $1.00 in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*. The City and the Developer agree that:

(a) this clause 10.6 is an agreement between the Developer and the City for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991 (NSW)*;

(b) in this clause 10.6 the Developer and the City have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition; and

(c) the Developer must pay the City, promptly on demand, an amount equivalent to all costs incurred by the City in acquiring the whole or any part of the Transfer Land or land forming part of the Essential Infrastructure as contemplated by this clause 10.6.

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;

SAMPLE

(B) references to any:

(aa) provisions of this document; and

(bb) acts or omissions of any person,

relevant to the Dispute; and

(C) where applicable, the amount in dispute (whether monetary or any other commodity) and if not precisely known, the best estimate available.

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

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

11.3 **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.

11.4 **Condition precedent to litigation**

Subject to clause 11.5, a party must not commence legal proceedings in respect of a Dispute unless:

(a) a Dispute Notice has been given; and

(b) the Resolution Period has expired.

11.5 **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

SAMPLE

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.

SAMPLE

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 without:

(i) the prior written consent of the City; 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 [***legal note: the preferred form of consent would be a deed of novation. A precedent deed of novation is being prepared, which will be attached to this planning agreement once prepared***]

(b) On and from registration of this document in accordance with clause 9:

(i) the Developer may Deal with this document without the consent of the City only as a result of the sale of the whole of the Land (without subdivision) to a purchaser of the Land;

(ii) the Developer may register a plan of strata subdivision, and the City consents to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of the strata plan; and

(iii) the Developer must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:

(A) the prior written consent of the City; and

(B) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City [***legal note: the preferred form of consent would be a deed of novation. A precedent deed of novation is being prepared, which will be attached to this planning agreement once prepared***]

(c) The Developer must pay the City's costs and expenses relating to any consent or documentation required due to the operation of this clause 13.2.

SAMPLE

13.3 **Extinguishment or creation of interests on Transfer Land**

(a) Prior to the dedication or transfer of the Transfer Land to the City, the Developer must:

(i) extinguish all leases and licences over the Transfer Land; and

(ii) extinguish all redundant encumbrances and those that, in the City's opinion, would unreasonably impede the intended use of all or any part of the Transfer Land.

(b) The Developer must comply with any directions by the City relating to the Transfer Land, including but not limited to the creation of any encumbrances over the Transfer Land.

14. **TERMINATION**

(a) The City may terminate this document by notice in writing to the Developer if the Development Consent lapses or is surrendered by the Developer.

(b) If the City terminates this document under clause 14(a) then:

(i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected;

(ii) the Developer must take all steps reasonably necessary to minimise any loss the each party may suffer as a result of the termination of this document;

(iii) the City will return the Guarantee 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.

SAMPLE

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.

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

On termination of this document the receiving party must immediately:

(a) deliver to the disclosing party all documents and other materials containing, recording or referring to Confidential Information; and

(b) erase or destroy in another way all electronic and other intangible records containing, recording or referring to Confidential Information,

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

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.

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.

SAMPLE

(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. CHAIN OF RESPONSIBILITY

(a) In this clause:

(i) **Chain of Responsibility** means legislation that extends liability for Road Law offences to all parties whose actions, inactions or demands influence conduct on the road particularly in relation to speed, fatigue, vehicle standards, vehicle roadworthiness, load restraint, and mass and dimension.

(ii) **HVNL** means the *Heavy Vehicle National Law* (NSW), regulations and other instruments under it including any codes of practice and any consolidations, amendments, re-enactments or replacements.

(iii) **Heavy Vehicle** has the meaning given to it in the HNVL.

(iv) **Road Law** means any law, regulation or rule relating to the use of a road, restrictions on driving hours (in whichever legislative instrument those requirements may appear), mass, load and restraint requirements for the carriage of goods, dangerous goods, environmental impacts and speed and traffic requirements and includes the HVNL.

(b) The Developer must in connection with any activity carried out on land owned by the City under or in relation to this document:

(i) comply with all Chain of Responsibility legislation and must ensure that any activity relating to a Heavy Vehicle used in connection with this document is undertaken in accordance with all applicable Chain of Responsibility obligations (including any fatigue, speed, mass, dimension or load restraint requirements);

(ii) not ask, direct or require (directly or indirectly) the driver of a Heavy Vehicle or a party in the Chain of Responsibility to do or not do something the Developer knows, or ought reasonably to know, would have the effect of causing the driver to contravene their Chain of Responsibility obligations, including to breach any fatigue, speed, mass, dimension or load restraint requirements;

(iii) ensure that any subcontractors (where any Heavy Vehicle activities are sub-contracted under this document) are contractually bound by similar Chain of Responsibility obligations to those set out in this clause 17(b).

(c) The Developer will ensure that it has proper processes in place to manage its Chain of Responsibility obligations under this clause 17.

(d) The Developer must provide the City, upon request, with all information and documentation reasonably required by the City to monitor or audit compliance with this clause (including permitting inspections of vehicles and business premises).

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18. **MODERN SLAVERY**

[Drafting note: delete this clause 18 if the Developer's public benefit offer outlined in Schedule 3 does not include any Developer's Works or Essential Infrastructure].

(a) In this clause:

(i) **Engaged Entities** means any first tier (direct) suppliers, subcontractors, consultants and contractors engaged by a party in connection with this document;

(ii) **Grievance Mechanism** means a process for handling a complaint or grievance about Modern Slavery that is consistent with the criteria set out in Principle 31 of the 2011 United Nations Guiding Principles on Business and Human Rights;

(iii) **Modern Slavery** has the meaning given to it in section 4 of the *Modern Slavery Act*;

(iv) **Modern Slavery Act** means the *Modern Slavery Act 2018* (Cth);

(v) **Modern Slavery Laws** means all applicable modern slavery laws, statutes, regulations and codes from time to time in force which prohibit the exploitation of workers, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services or similar, including but not limited to the Modern Slavery Act and the *Modern Slavery Act 2018* (NSW);

(vi) **Reasonable Steps** includes:

(A) obtaining awareness of what constitutes and the Modern Slavery and the Modern Slavery Laws in Australia;

(B) undertaking activities to identify and address Modern Slavery risks in the Developer's operations and supply chain (including adherence to Australian labour laws, conducting a Modern Slavery risk assessment and implementing a Modern Slavery policy);

(C) consulting with the Developer's Engaged Entities to identify and mitigate Modern Slavery risks in its supply chain and labour force, including by implementing policies and procedures that reject the exploitation of migrant workers;

(D) providing training necessary to identify Modern Slavery risks, risk management and remediation procedures to Personnel;

(E) having regard to any policy, direction or document released by the New South Wales Office of the Anti-Slavery Commissioner from time to time.

(b) The Developer must:

SAMPLE

(i) not cause or contribute to Modern Slavery or engage in any activity, practice or conduct that constitutes an offence under Modern Slavery Laws or that would constitute an offence if such activity, practice or conduct were carried out in Australia;

(ii) take Reasonable Steps (having regard to the size, nature and industry of the Developer's business) to identify, assess and address Modern Slavery risks within its operations and supply chains;

(iii) comply with any request from the City to provide any information necessary to enable the City to comply with its obligations under the Modern Slavery Laws and undertake any due diligence on the Developer's supply chains as required;

(iv) ensure that it and its Engaged Entities pay its Personnel at least the minimum wage and other entitlements as required by Law;

(v) cooperate in good faith with the City in investigating the circumstances relevant to any potential, suspected or actual breach of any Modern Slavery Laws;

(vi) ensure access to an effective Grievance Mechanism for any Personnel within its operations (including Personnel of its Engaged Entities);

(vii) provide access to documentation and information as reasonably required by the City to verify the Developer's compliance with clause 18(b); and

(viii) include in its contracts with any subcontractors or suppliers, Modern Slavery provisions that are at least as onerous as those set out in this clause 18.

(c) Both parties agree:

(i) to provide reasonable assistance to the other party to comply with this clause 18; and

(ii) to implement systems, procedures and policies as required to meet its obligations under this clause 18.

(d) In the event of any potential, suspected or actual instances of Modern Slavery within its operations or supply chain, the Developer must:

(i) notify the City in writing as soon as practicable with adequate particulars to enable the City to understand the potential, suspected or actual instances of Modern Slavery;

(ii) within 10 Business Days (or such other timeframe as agreed by the parties), prepare a suitable remediation plan that:

(A) outlines the steps that the Developer intends to take to remedy the issue along with an explanation as to how the proposed steps will resolve the issue;

SAMPLE

(B) provides a timeframe for implementation and completion of these steps; and

(C) explains the quantitative/qualitative indicators that will determine when the issue has been resolved

(**Remediation Plan**) for the City to review;

(iii) amend the Remediation Plan to reflect reasonable additional direction provided by the City in relation to any feedback it gives on the Remediation Plan following its review;

(iv) take all reasonable steps to ensure that the Remediation Plan is completed within the period determined by clause 18(d)(ii).

(e) The City may give reasonable assistance to the Developer to prepare and/or implement a Remediation Plan where deemed appropriate.

(f) The Developer must provide the City with evidence of the ongoing implementation of the Remediation Plan promptly upon request.

(g) The parties agree that a breach of clause 18(a) or clause 18(c), or failing to use best endeavours to implement a Remediation Plan will be a material breach of this document (**Modern Slavery Material Breach**).

(h) Where a Modern Slavery Material Breach is not capable of being remedied, or is otherwise not remedied within a reasonable timeframe as agreed by the parties, 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 clause 18.

(i) The Developer represents and warrants that:

(i) it has not, as of the date of this document, engaged in Modern Slavery or breached any Modern Slavery Laws;

(ii) it has disclosed to the extent that it is aware, any actual or reasonably suspected Modern Slavery within its own operations or the supply chain of any of its Engaged Entities and any actions taken to remedy the disclosed event;

(iii) any information provided to the City with respect to Modern Slavery as part of the City's procurement process is accurate, complete and not misleading and/or deceptive in any way; and

(iv) it has taken reasonable steps to ensure that any Engaged Entities engaged in connection with this Agreement have complied and continue to comply with the obligations contained in this clause 18.

19. GENERAL

19.1 Governing law

(a) This document is governed by the laws of New South Wales.

SAMPLE

(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.

19.2 **Access to information**

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

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

(b) information collected by the Developer from members of the public to whom the Developer provides, or offers to provide, services on behalf of the City; and

(c) information received by the Developer from the City to enable the Developer to deliver the Public Benefits.

19.3 **Liability for expenses**

(a) The Developer must pay its own and the City's expenses incurred in negotiating, executing, registering, releasing, administering and enforcing this document.

(b) The Developer must pay for all reasonable costs and expenses associated with the preparation and giving of public notice of this document and the explanatory note prepared in accordance with the Regulations and for any consent the City is required to provide under this document.

19.4 **Relationship of parties**

(a) Nothing in this document creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and

(b) No party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

19.5 **Giving effect to this document**

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

19.6 **Time for doing acts**

(a) If:

(i) the time for doing any act or thing required to be done; or

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(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.

19.7 **Severance**

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this document without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

19.8 **Preservation of existing rights**

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

19.9 **No merger**

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

19.10 **Waiver of rights**

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

(a) no other conduct of a party (including a failure to exercise, or delay in exercising, the right) operates as a waiver of the right or otherwise prevents the exercise of the right;

(b) a waiver of a right on one or more occasions does not operate as a waiver of that right if it arises again; and

(c) the exercise of a right does not prevent any further exercise of that right or of any other right.

19.11 **Operation of this document**

(a) This document contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this document and has no further effect.

(b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.

(c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to

SAMPLE

make this document enforceable, unless this would materially change the intended effect of this document.

19.12 **Operation of indemnities**

(a) Each indemnity in this document survives the expiry or termination of this document.

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

19.13 **Inconsistency with other documents**

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

(a) this document;

(b) any Schedule to this document; and

(c) the provisions of any other document of the Developer,

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

19.14 **No fetter**

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

19.15 **Counterparts**

This document may be executed in counterparts.

SAMPLE

SCHEDULE 1

Agreement Details

ITEM	TERM	DESCRIPTION
1.	**Land**	[***insert folio identifier details and address***]
2.	**Development**	[***insert description of development to be undertaken by developer, including address, uses and any other relevant information***] The total Gross Floor Area of the Development on the Land is [***insert***] square metres.
3.	**City's Representative**	Name: Director, Planning, Development and Transport Address: Level 1, 456 Kent Street, Sydney NSW 2000 Email: Or such alternative representative nominated by the City from time to time and notified in writing to the Developer's Representative
4.	**Developer's Representative**	Name: [***insert***] Address: [***insert street address***] Email: [***insert***] Or such alternative representative nominated by the Developer from time to time and notified in writing to the City's Representative
5.	**Development Application**	[***insert all DA numbers relevant to the development***]
6.	**Guarantee Amount**	A total amount of $[***insert***]. [***please include the amount of the monetary contribution in the above if the payment of the monetary contribution is deferred to a date later than execution of this document***]
7.	**Guarantee Amount Due Date**	[***insert date Guarantee Amounts are to be provided***]

SAMPLE

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) **[option** Yes**/**No**]** (b) **[option** Yes**/**No**]** (c) **[option** Yes**/**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)	[**option**] The Development ***[option*** and**/**or the environmental planning instrument***]*** as described in clause 2.1.
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)	Schedule 3 and Annexure A.
5.	**Whether this document excludes (wholly or in part) of does not exclude the application of section 7.11 or 7.12 to the development** (section 7.4(3)(d) of the Act)	Section 7.11 ***[option*** not excluded **/** partially excluded **/** excluded***]*** Section 7.12 ***[option*** not excluded **/** partially excluded **/** excluded***]***

SAMPLE

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)	***[option*** 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. The application of section 7.11 of the Act is excluded in respect of the Development and contributions (if any) under section 7.11 will not 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)	[***option if document does exclude s94***] Not applicable because this document excludes section 7.11 of the Act. [***option if document does not exclude s7.11***] Benefits ***[option*** to the value of the aggregate of the Attributed Value for each element of the Public Benefits are***/***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** (section 205(2) of the Regulation)	To be inserted
13.	**Whether certain requirements of this document must be complied with before a subdivision certificate is issued** (section 205(2) of the Regulation)	To be inserted
14.	**Whether certain requirements of this document must be complied with before an occupation certificate is issued** (section 205(2) of the Regulation)	To be inserted
15.	**Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this**	Clause 2.5

SAMPLE

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
	document (section 205(5) of the Regulation)	

SAMPLE

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.	Monetary Contribution	$	On or before the date of this document [***confirm instructions if the due date for a monetary contribution is to change***]	[***specify any additional obligations the Developer must comply with when providing the Public Benefits, or details of additional plans and documentation that can be attached at Annexure A***]
2.	Transfer Land	$	After Completion but before the issue of the first Occupation Certificate for the Development.	An area of not less than [***insert***] square metres [***insert any other specifications regarding the land***] Plans showing the indicative location of the Transfer Land are contained in Annexure A to this document. [***specify any additional obligations the Developer must comply with when providing the Public Benefits***]
3.	Developer's Works	$	[***specify on or before a specific date or milestone***]	Plans and specifications showing the nature and extent of the required Developer's Works as at the date of this document are contained in Annexure A to this document. [***specify any additional obligations the Developer must comply with when providing the Public Benefits***]

SAMPLE

4.	Essential Infrastructure	$	[***specify on or before a specific date or milestone***]	Plans and specifications showing the nature and extent of the required Essential Infrastructure as at the date of this document are contained in Annexure A to this document. [***specify any additional obligations the Developer must comply with when providing the Public Benefits***]

2. **PAYMENT OF MONETARY CONTRIBUTION**

2.1 **Payment**

The Developer must pay the Monetary Contribution to the City on the date of this document [***confirm instructions on required date for delivery of monetary contribution***] in cash or by unendorsed bank cheque.

2.2 **Indexation**

If the Monetary Contribution is not paid to the City on the date of this document then at the date of payment the Monetary Contribution must be indexed as follows:

Monetary Contribution (to be provided) =

Monetary Contribution (as per item 1 of clause 1 above) x (A/B)

where:

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

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

If after the formula is applied the Monetary Contribution will be less than the amount stated in item 1 of clause 1 above, the Monetary Contribution will not be adjusted.

2.3 **No trust**

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

SAMPLE

Contribution or comply with any request by the Developer to trace the Monetary Contribution.

2.4 **[*Monetary contribution only planning agreements* Expenditure by the City**

The City will use the Monetary Contribution to achieve the public benefit of [***insert description of proposed works monetary contribution will be used to provide***].

3. **TRANSFER LAND**

3.1 **Dedication of land – decision**

The Developer must, at its cost, take all steps required to transfer the Transfer Land to the City by the due date specified in clause 1 of Schedule 3. As part of this obligation, the Developer must confirm with the City whether the Transfer Land is to be:

(a) dedicated to the City on registration of a plan of subdivision; or

(b) transferred to the City on registration of a transfer instrument.

3.2 **Obligations on dedication**

The requirement for the Developer to dedicate the Transfer Land to the City is satisfied where the Developer provides to the City evidence of registration of a plan of subdivision, including a complete copy of the registered instrument, showing that the Transfer Land has been dedicated to the City in accordance with the requirements of this document.

3.3 **Obligations on transfer**

The requirement for the Developer to transfer the Transfer Land to the City is satisfied where:

(a) a PEXA workspace has been set-up with respect to the transfer and all required parties are present in the workspace;

(b) all written consents for registration have been provided to the City and uploaded into PEXA;

(c) the Transfer has been lodged in PEXA; and

(d) the Developer has provided the City with a title search showing that ownership of the Transfer Land has been transferred to the City in accordance with the requirements of this document.

3.4 **General Obligations**

(a) The Developer is to do all things reasonably necessary to enable registration of the plan of subdivision or transfer instrument to occur.

(b) The Developer must ensure that the Transfer Land is free of all encumbrances and affectations (whether registered or unregistered and including without limitation any charge or liability for rates, taxes and

SAMPLE

charges) except for any encumbrances agreed in writing by the City in its absolute discretion.

(c) The Developer must indemnify and agree to keep indemnified the City against all claims made against the City as a result of any Contamination in, over, under or migrating from the whole or any part of the Transfer Land but only in relation to Contamination that existed on or before the date that the Transfer Land is dedicated to the City in accordance with the requirements of this clause.

(d) The Developer warrants that as at the date of this deed the Transfer Land is not subject to any Adverse Affectation and warrants as to those matters in Schedule 3 of the *Conveyancing (Sale of Land) Regulation 2022*(NSW), unless otherwise notified to and agreed by the City in writing in its absolute discretion.

4. FINAL DESIGN OF THE DEVELOPER'S WORKS

4.1 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;

(b) conditions affecting the Developer's Works that were not reasonably capable of identification prior to the date of this document;

(c) the extent of any refinement of the design of the Developer's Works permitted by this clause 4.1 of Schedule 3;

(d) to the extent the DBP Act applies to the Developer's Works:

(i) any refinement of the Regulated Designs for the Developer's Works required to ensure compliance with the DBP Act or DBP Regulation and to enable Design Compliance Declarations to be issued in respect of those Regulated Designs; and

(ii) any refinement of the Regulated Designs for the Developer's Works required to enable those Regulated Designs to be Construction Issued Regulated Designs and to enable Design Compliance Declarations to be made in respect of those Construction Issued Regulated Designs;

(e) 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; and

(f) the reasonable requirements of the City, including in regard to the Standards.

SAMPLE

4.2 **Final design of Developer's Works**

(a) Within 3 months of the date of this document (or a later time approved by the City in writing) but prior to the issue of the first Construction Certificate for the Development, the Developer must submit to the City's Representative for approval:

(i) detailed design drawings of the Developer's Works that reflect the plans and specifications set out in Annexure A;

(ii) to the extent the DBP Act or the DBP Regulation apply to the Developer's Works, the Regulated Designs and the Design Compliance Declarations for those Regulated Designs; and

(iii) a detailed costs estimate (certified by a Quantity Surveyor) setting out the estimated cost of the Developer's Works.

(b) Within 30 Business Days after the City's Representative has received the detailed design drawings and detailed costs estimate, the City will inform the Developer in writing as to whether the detailed design drawings and costs estimate are approved. If the detailed design drawings or costs estimate are not approved, the City will inform the Developer in writing of what further information or modifications are required and the Developer will have a further 15 Business Days to re-submit the required information, following which the process outlined in this paragraph 4.2(b) will apply again.

(c) Regarding the costs estimate, the Developer agrees that the City may:

(i) reject items included within the Quantity Surveyor's Assessment which are not directly related to the Developer's Works;

(ii) require substantiation for the costs of items where the amount estimated is considered by the City to be excessive;

(iii) require an adjustment to the costs estimate to reflect a variation to the design required under this clause 4.2 of Schedule 3.

(d) If the Developer:

(i) fails to prepare the detailed design drawings or detailed costs estimate;

(ii) fails to provide the Regulated Designs and Design Compliance Declarations referred to in clause 4.2(a)(ii) of Schedule 3 (if applicable); or

(iii) does not provide further information or modify the detailed design drawings or detailed costs estimate,

in accordance with this clause 4.2 of Schedule 3, then the City may exercise its rights under clause 10 of this document in order to carry out the Developer's Works itself at the cost of the Developer.

SAMPLE

(e) The Developer agrees that the value of the Developer's Works may be adjusted following completion of the process set out in this clause 4.2 of Schedule 3. The Developer acknowledges that the scope of the Developer's Works will not change or reduce if the costs required to complete those works is greater than the amount estimated at the date of this document.

4.3 **Preparation of and changes to construction design drawings**

(a) Following approval of the detailed design drawings by the City in accordance with clause 4.2 of Schedule 3, the Developer must promptly:

(i) prepare construction design drawings that comply with the detailed design drawings;

(ii) to the extent the DBP Act or the DBP Regulation apply to the Developer's Works, prepare all necessary Construction Issued Regulated Designs and obtain Design Compliance Declarations for those Construction Issued Regulated Designs; and

(iii) provide the City with a copy of the construction design drawings and the designs and documents referred to in clause 4.3(a)(ii) of Schedule 3.

(b) The City, acting reasonably, may by written notice to the Developer at any time, approve, vary or direct the Developer to vary the construction design drawings so that the Developer's Works reflect:

(i) the Standards;

(ii) a departure or discrepancy from the plans approved under clause 4.2 of Schedule 3; or

(iii) any other standard or specification for materials or methodology for carrying out works that is adopted by the City from time to time, provided that any direction given under this clause 4.3(b)(iii) of Schedule 3 does not significantly increase:

(A) the cost of that element of the Developer's Works; or

(B) the complexity of implementation of the Developer's Works that may lead to a significant delay in the completion of the Developer's Works.

(c) Within 20 Business Days of receiving a notice from the City under clause 4.3(b) of Schedule 3, the Developer must:

(i) to the extent practicable, use reasonable endeavours to comply with the notice given by the City; or

(ii) if the Developer determines that the notice given by the City is unreasonable or impracticable, notify a dispute in accordance with clause 11 of this document.

SAMPLE

If the Developer does not provide any response during the 20 Business Days after receiving a notice from the City under clause 4.3(b) of Schedule 3, it is deemed that the Developer accepts the notice given by the City and will take all steps required to comply with the notice.

(d) The City does not assume or owe any duty of care to the Developer in reviewing any design drawings submitted to it under this clause 3.4(d) of Schedule 3 or for any errors, omissions or non-compliance with this document.

(e) No participation by the City in the development of, the review of, or comments on any design drawings submitted by the Developer will lessen or otherwise affect the Developer's obligations under this document or constitute an acknowledgement by the City that the Developer has complied with its obligations under this document.

5. CONSTRUCTION OF DEVELOPER'S WORKS

5.1 Insurance

(a) 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 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.

5.2 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

SAMPLE

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.

5.3 **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;

(b) ensure that all Developer's Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this document so that the Developer's Works are structurally sound, fit for purpose and suitable for their intended use;

(c) ensure that the Developer's Works are Complete by the due date specified in 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 Public Benefits 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.

5.4 **Inspections by the City**

The City, as a party to this document and not in its role as a Government Agency, will:

(a) issue a set of hold points with the approval of the Plans under clause 4 of Schedule 3;

(b) inspect the Developer's Works in accordance with the hold points during the course of construction at reasonable times and on reasonable notice; and

(c) 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.

The Developer must ensure that it adheres to all hold point inspections during construction. 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.

5.5 **RAB (CEP) Act**

This clause 5.5 of Schedule 3 (other than this sentence) applies only to the extent that the RAB (CEP) Act or the RAB (CEP) Regulation applies to the Developer's Works.

(a) Without limiting any other obligation of the Developer, the Developer:

(i) must ensure that the Developer and its Personnel and their respective employees and agents:

SAMPLE

(A) comply with the RAB (CEP) Act and the RAB (CEP) Regulation;

(B) do not cause the City to contravene the RAB (CEP) Act or the RAB (CEP) Regulation;

(C) do not carry out the Developer's Works in a manner that results in, or could result in:

(aa) a serious defect in relation to a residential apartment building;

(bb) significant harm or loss to the public or occupiers or potential occupiers of any building to which the Developer's Works relates; or

(cc) significant damage to property; and

(D) do not, by any act or omission, cause or contribute to any serious defect or the issue of any prohibition order, stop work order or building work rectification order;

(ii) must immediately provide the City with a copy of any notice issued to the Developer under the RAB (CEP) Act, including any prohibition order, stop work order, building work rectification order, notice of proposed building work rectification order and compliance cost notice;

(iii) must issue an expected completion notice to the Secretary in accordance with the RAB (CEP) Act at least 6 months, but not more than 12 months, before an application is made for an Occupation Certificate for any part of a residential apartment building for which the Developer's Works is being carried out and in any event so as to ensure that:

(A) the Developer's Works are not delayed; and

(B) an Occupation Certificate is able to be applied for at the earliest possible time;

(iv) must issue any required expected completion amendment notice to the Secretary in accordance with the RAB (CEP) Act;

(v) must provide all reasonable assistance to the City in exercising any right to make representations concerning any building work rectification order or right of appeal as contemplated by the RAB (CEP) Act, including by providing the City with any information that may be necessary or required by the City for the purposes of any such representation or appeal;

(vi) acknowledges and agrees that:

(A) the RAB (CEP) Act contemplates particular orders and requirements, including:

(aa) requirements of an authorised officer;

SAMPLE

(bb) stop work orders;

(cc) building work rectification orders; and

(dd) orders of the Court referred to in section 49(3) of the RAB (CEP) Act;

(B) such orders and requirements may be given or otherwise communicated directly to the Developer or otherwise; and

(C) the Developer must ensure that the Developer, its Personnel and their respective employees and agents comply with any such orders and requirements, whether they are given or otherwise communicated directly to the Developer or to any other person; and

(vii) must comply with any compliance cost notice and reimburse the City for any costs incurred by the City in respect of any compliance cost notice, to the extent any such compliance cost notice relates to the Developer's Works.

(b) The Developer must satisfy all obligations imposed on a developer under the RAB (CEP) Act.

(c) The Developer indemnifies the City against any claims against, damages, expenses, losses or liability suffered or incurred by, the City arising out of, or in any way in connection with, any breach by the Developer of clause 5.5(a)of Schedule 3 or 5.5(b) of Schedule 3.

(d) The Developer will not be entitled to make, and the City will not be liable upon, any claim, damage, expense, loss or liability arising out of, or in any way in connection with, the Developer's obligations under this clause 5.5 of Schedule 3.

(e) Except as otherwise provided in clause 1.1, all terms used in this clause 5.5 of Schedule 3 have the meanings given to them in the RAB (CEP) Act.

5.6 **DBP Act and DBP Regulation**

This clause 5.6 of Schedule 3 (other than this sentence) applies only to the extent that the DBP Act and the DBP Regulation applies to the Developer's Works.

(a) Without limiting any other obligation of the Developer, the Developer must ensure that the Developer and its Personnel and their respective employees and agents:

(i) comply with the DBP Act and the DBP Regulation, including by preparing, providing and lodging all necessary or relevant documentation as and when required by, and in the form and method required by, the DBP Act and the DBP Regulation;

(ii) will be registered as required by the DBP Act and the DBP Regulation;

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(iii) do not carry out the Developer's Works in a manner that results in, or could result in:

(A) significant harm or loss to the public or occupiers or potential occupiers of any building to which the Developer's Works relates; or

(B) significant damage to property; and

(iv) do not, by any act or omission, cause or contribute to the issue of any stop work order.

(b) The Developer warrants to the City that the Developer will perform the Developer's Works so as to avoid, and to otherwise not cause or contribute to, any economic loss (as contemplated by Part 4 of the DBP Act) on the part of any owner arising out of or in connection with any defect or otherwise arising out of or in connection with the Developer's Works.

(c) In addition to and without limiting any other duty or obligation assumed by the Developer, the Developer acknowledges and agrees that it owes a duty to the City to exercise reasonable care to avoid economic loss (as contemplated by Part 4 of the DBP Act and whether suffered or incurred by the City or any owner) arising out of or in connection with any defect or otherwise arising out of or in connection with the Developer's Works.

(d) The Developer indemnifies the City against any claims against, damages, expenses, losses or liabilities suffered or incurred by, the City arising out of, or in any way in connection with, any breach by the Developer of this clause 5.6 of Schedule 3.

(e) The Developer must include in any Completion Notice provided under clause 6.2 a statement from each person directly responsible for the lodgement of documents as required by the DBP Act that all necessary and relevant documentation relating to the Developer's Works has been prepared, provided and lodged as and when required by, and in the form and method required by, the DBP Act and DBP Regulation. The Developer must provide a copy of all such documentation referred to in this clause 5.6(e) of Schedule 3 to the City with any Completion Notice.

(f) The Developer will not be entitled to make, and the City will not be liable upon, any claim, damage, expense, loss or liability arising out of, or in any way in connection with, the Developer's obligations under this clause 5.6 of Schedule 3.

(g) Except as otherwise provided in clause 1.1, all terms used in this clause 5.6 of Schedule 3 have the meanings given to them in the DBP Act and the DBP Regulation.

6. 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

SAMPLE

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 – Verge Works, Through site links

- 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

Relevant Australian Standards – Roads (including pedestrian areas)

- 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 4282 Control of the Obtrusive Effects of Outdoor lighting
- AS 1428 Design for Access and Mobility
- AS 3500 Plumbing and Drainage
- AS 3700 Masonry Structures

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- AS 2890 Parking Facilities
- AS 1742 Manual of uniform traffic control devices
- AS 1743 Road Signs

City Standards (All Works)

- 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
- City of Sydney Public Domain Manual

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EXECUTION

EXECUTED as a deed.

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

Signature of officer

Signature of witness

Name of officer

Name of witness

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

456 Kent Street, Sydney NSW 2000

Address of witness

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

Signature of director

Signature of director/secretary

Name

Name

SAMPLE

ANNEXURE A

Public Benefits – additional plans and specifications, , including maintenance requirements (if applicable) [*insert plans of the Transfer Land (in registrable form only) and a full description of the Developer's Works, Maintenance together with detailed plans and specifications. Alternatively, delete if not required*]

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