

ATTACHMENT C

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PLANNING AGREEMENT

Planning Agreement

The Council of the City of Sydney

and

Surry Hills Project Pty Ltd in its capacity as trustee of
the Surry Hills Trust

ABN 33 606 553 477



Sydney 2030 / Green / Global / Connected

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THIS PLANNING AGREEMENT is made on

2017.

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) **Surry Hills Project Pty Ltd ABN 33 606 553 477** in its capacity as trustee of the Surry Hills Trust of Level 5, 45 Jones Street, Ultimo NSW 2007 (the Developer).

BACKGROUND

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

THE PARTIES AGREE AS FOLLOWS:

1. INTERPRETATION

1.1 Definitions

The following definitions apply in this document.

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

Adverse Affectation has the same meaning as in clause 4 of Part 2 of the *Conveyancing (Sale of Land) Regulation 2010 (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.

BASIX Certificate has the same meaning as in the Regulation.

City's Personal Information means Personal Information to which the Developer, or any third party engaged by the Developer, has access directly or indirectly in connection with this document, including the Personal Information of any personnel, customer or supplier of the City (other than the Developer).

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

Community Transport has the meaning given to it in Schedule 3.

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

- (a) the existence of which do not prevent the Developer's Works being reasonably capable of being used for their intended purpose;
- (b) which the Developer has grounds for not promptly rectifying; and
- (c) rectification of which will not affect the immediate and convenient use of the Developer's Works for their intended purpose.

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

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.

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

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

Dealing means the completion of a transaction resulting in a sale, transfer, assignment, novation or encumbrance (other than a mortgage or a charge) 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 in relation to the Developer's Works the period of 12 months from the date on which the Developer's Works reach Completion.

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

Developer's Works means those parts of the Public Benefit described as "Developer's Works" in Item 2 of 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 has the meaning given to it in the Act.

Development Consent means the consent granted to the Development Application for the Development and includes all modifications made under section 96 of the Act.

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

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

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

Government Agency means:

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

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

GST means the same as in the GST Act.

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

Guarantee means an irrevocable unconditional 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);
 - (ii) Baa 1 (Moody's); or
 - (iii) Bbb (Bests);
- (d) be issued on behalf of the Developer;
- (e) have no expiry or end date;
- (f) state the beneficiary as the City;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by the City.

Guarantee Amount(s) means a Guarantee or Guarantees for the total amount listed in Item 5 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 6 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.

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

Occupation Certificate has the same meaning as in the Act.

Permitted Encumbrance means any:

- (a) any encumbrance require as a consequence of the Development Consent;
- (b) encumbrance required to be created under this document;
- (c) encumbrance agreed in writing by the City acting reasonably which would not impede the intended use of all or any part of the Transfer Land.

Personal Information has the meaning set out in the *Privacy Act 1988* (Cth).

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

Planning Proposal means planning proposal number PP_2017_SYDNEY_005_00, known as the '397-399 Cleveland Street and 2-38 Baptist Street Redfern – Surry Hills Shopping Centre.

Privacy Laws means the *Privacy Act 1988* (Cth), the *Privacy and Personal Information Protection Act 1998* (NSW), the *Spam Act 2003* (Cth), the *Do Not Call*

Register Act 2006 (Cth) and any other applicable legislation, principles, industry codes and 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. **Regulation** means the *Environmental Planning and Assessment Regulation 2000 (NSW)*.

Related Party means any:

- (a) 'related body corporate' as that term is defined in section 50 of the Corporations Act 2001 (Cth); and
- (b) venture partner of the Developer under a joint venture partnership or arrangement.

RMS Specifications means any technical directions, guidelines or specifications issued by the Roads & Maritime Services NSW in relation to a shared zone as defined under Rule 24 of the NSW Road Rules (2008), listed non-exhaustively at clause 6 of Schedule 3.

SLEP means the *Sydney Local Environmental Plan 2012*.

SLEP Amendment means an amendment to the SLEP that is made generally in accordance with the Planning Proposal.

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

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

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

Transfer Land means 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.

Trust means the Surry Hills Trust.

Trustee means the entity from time to time acting in the capacity of trustee of the Trust, which on the making of this document is Surry Hills Project Pty Limited (ACN 606 553 477).

1.2 Rules for interpreting this document

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

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

2. APPLICATION OF THE ACT AND THE REGULATION

2.1 Application of this document

This document is a planning agreement within the meaning of section 93F of the Act and applies to:

- (a) the Land; and

- (b) the Development / amendment to the Sydney Local Environment Plan 2012 and the Sydney Development Control Plan 2012.

2.2 Public Benefits to be made by Developer

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

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

2.3 Application of sections 94, 94A and 94EF of the Act

- (a) The application of sections 94, 94A and 94EF of the Act are excluded to the extent set out in Items 5 and 6 of Schedule 2 to this document.
- (b) For the purpose of section 93F(3)(e) of the Act, and as set out in Item 7 of Schedule 2, any benefits under this document for a public purpose will not be taken into consideration in determining a development contribution under section 94 of the Act.

2.4 City rights

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

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

2.5 Explanatory note

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

3. OPERATION OF THIS PLANNING AGREEMENT

3.1 Commencement

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

4. WARRANTIES

4.1 City's warranties

The City 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 Trustee warranties

The Trustee represents and warrants that:

- (a) (**power**) it has power as trustee of the Trust to execute this document and any documents created under or in connection with this document and to carry out the transactions that this document contemplates;
- (b) (**due performance**) in executing this document and any documents created under or in connection with this document and in carrying out the transactions that this document contemplates, the Trustee and its representatives have properly performed their obligations to the beneficiaries of the Trust;
- (c) (**Trust action taken**) all necessary action to authorise the execution and delivery of, and compliance with all the Developer's obligations under, this document has been taken;
- (d) (**sole Trustee**) the Trustee is the only trustee of the Trust;
- (e) (**no removal of Trustee**) no action has been taken to remove the Trustee as trustee of the Trust or to appoint an additional trustee of the Trust.
- (f) (**no default**) the Trustee has not defaulted in the performance of its obligations as trustee of the Trust;
- (g) (**Trust duly constituted**) the Trust is duly constituted and is not void, voidable or otherwise unenforceable;
- (h) (**capacity**) the Trustee is duly incorporated in accordance with the laws of its place of incorporation, validly exists under those laws and has the capacity to sue and be sued in its own name, to own property and to act as trustee of the Trust; and
- (i) (**solvency**) the Trustee is not insolvent.

4.3 Developer warranties

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

5. PUBLIC BENEFITS

5.1 Developer to provide Public Benefits

- (a) The Developer must, at its cost and risk, provide the Public Benefits to the City in accordance with this document.
- (b) The Developer will not be required to commence the carrying out of the Public Benefits before:
 - (i) the commencement of the SLEP Amendment within the meaning of section 34(5) of the Act; and
 - (ii) the granting of a Development Consent for the Development.

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

- (a) When, in the reasonable opinion of the Developer, the Developer's Works have reached Completion, the Developer must notify the City's Representative in writing. That notice must include a statement from the person with direct responsibility and supervision of that work that in their opinion the Developer's Works have reached Completion (**Completion Notice**).
- (b) As soon as reasonably practicable following issue of the Completion Notice, the Developer must provide to the City:

- (i) copies of any warranties, guarantees, maintenance information or other material reasonably required for the City to assume responsibility for the Developer's Works; and
 - (ii) at least three sets of the "as built" drawings of the Developer's Works, including one set in electronic format.
- (c) For the avoidance of doubt, the Developer can issue separate Completion Notices at separate times for different elements of the Developer's Works, however the Developer must ensure that Completion is achieved for the Developer's Works before the due date specified in Item 1 of Schedule 3.

6.3 Inspection by the City

- (a) The City's Representative must inspect the Developer's Works within 5 Business Days of the later of the date that the Completion Notice is received by the City and the date the Developer provides the City with all required documentation in accordance with clause 6.2(b). 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)(i).
- (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:
 - (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.

7. INDEMNITY

- (a) The Developer indemnifies the City against:
 - (i) loss of or loss of use or damage to the City's property and claims in respect of personal injury, illness or death or loss of, or loss of the use of or damage to any other property arising out of or as a consequence of the performance of the Developer's obligations under this document (including by any Personnel), except to the extent that the injury, illness or death, loss of or loss of use or damage suffered or incurred is caused by, or contributed to by, any act or omission of the City (or any person engaged by the City); and
 - (ii) all damage, expense, loss or liability of any nature suffered or incurred by the City arising from any breach of this document by the Developer (or any Personnel), except to the extent that the damage, expense, loss or liability suffered or incurred is caused by, or contributed to by, any breach of this document by the City (or any person engaged by the City).
- (b) The Developer's indemnities detailed in clause 7(a) will terminate on the expiry of the final Defects Liability Period.

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 or 4.3 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 Land and Property Information on the certificate of title to the Land;
 - (ii) warrants that it has obtained or will obtain all consents to the registration of this document on the certificate of title to the Land as required by the Registrar-General of the Land and Property Information; and
 - (iii) must within 60 Business Days of a written request from the City do all things reasonably 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 Land and Property Information;
 - (B) providing the production slip number when the Developer produces the certificate of title to the Land at the Land and Property Information; and
 - (C) providing the City with a cheque for registration fees payable in relation to registration of this document at the Land and Property Information.
 - (iv) The Developer must act promptly in complying with and assisting to respond to any requisitions raised by the Land and Property Information that relate to registration of this document.

9.2 Caveat

- (a) The City may, at any time after commencement of this document, register a caveat over the whole or any part of the Land in order to prevent any transfer of the whole or any part of the Land from the Developer to a third party. 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 title to the Land.
- (b) In exercising its rights under this clause 9.2, the City must do all things reasonably required to:
 - (i) remove the caveat from title to the Land or any part of the Land in relation to which this document has been registered on title; 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.

9.3 Release of this document

- (a) The City agrees to do all things reasonably required by the Developer to, promptly following a request by the Developer:
 - (i) release and discharge this document with respect to the Land or a part of the Land forming the subject of the request if the request concerns a strata lot forming part of the Land; and
 - (ii) execute the relevant documents to enable the Developer to remove the notation of this document from title to the Land or relevant part of the Land forming the subject of the request,

if the City is satisfied that the Developer has provided all Public Benefits in relation to the Land or all the relevant Public Benefits in relation to a strata lot forming part of the Land and is not otherwise in default of its obligations under this document in respect of the Land or relevant part of the Land forming the subject of the request. For the avoidance of doubt, until all Public Benefits have been provided by the Developer under this document, it will be entirely at the City's discretion as to what strata lots forming part of the Land this document is released and discharged from.

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

Upon the expiry of 42 months from the date of the Guarantee (the "Adjustment Date"), the City may issue a notice to the Developer requiring an adjustment to the Guarantee Amount. In such circumstances, the Guarantee Amounts are to be adjusted to a revised amount by applying the following formula:

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

where:

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

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

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

B is the Index Number most recently published before the date of the Guarantee for the Adjustment Date; and

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

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)(i);
 - (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 rectify a Defect in accordance with clause 8.2 of this document;
 - (vii) 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;
 - (viii) the Developer's Works do not reach Completion within 48 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); or
 - (ix) the City incurs any other expense or liability in exercising its rights and powers under this document.
- (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; and

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

10.4 **Expenditure by the City**

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

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

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

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

(b) If:

- (i) 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
- (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 to the City in accordance with Item 1 of Clause 1 of Schedule 3 and Clause 3 of 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 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;
 - (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 Expert Determination

- (a) If the Dispute is not resolved within the Resolution Period, then the Dispute may be referred to expert determination if both parties agree in writing to such referral.

- (b) If the parties agree to expert determination in accordance with clause 11.3(a), the parties must refer the expert determination to an independent expert to be appointed by the President of the Law Society of NSW within 5 Business Days of the expiry of the Resolution Period.
- (c) The parties agree that the expert determination will be governed by the Law Society of NSW's Rules for Expert Determination current at the date of the Dispute Notice (**Expert Determination Rules**).
- (d) Each party will:
 - (i) bear its own costs in respect of any expert determination; and
 - (ii) unless determined otherwise by the expert, pay one-half of the expert's costs.
- (e) The parties must enter into an agreement with the appointed expert on the terms prescribed by the Expert Determination Rules or such other terms as the parties and the expert may agree.
- (f) The determination of the expert is to be given effect by the parties unless and until it is reversed, overturned or otherwise changed in any subsequent proceedings.

11.4 **Mediation**

- (a) If the Dispute is not resolved within the Resolution Period and the parties do not agree to refer the Dispute to expert determination under clause 11.3, then the parties must endeavour to settle the Dispute by mediation.
- (b) The parties must refer the mediation to a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 5 Business Days of the expiry of the Resolution Period, by a person appointed by the Chair of Resolution Institute or the Chair's designated representative.
- (c) The Resolution Institute Mediation Rules current at the date of the Dispute Notice will apply to the mediation.

11.5 **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.

11.6 **Condition precedent to litigation**

Subject to clause 11.7, a party must not commence legal proceedings in respect of a Dispute unless:

- (a) a Dispute Notice has been given; and
- (b) if clause 11.3 applies, the expert has given his determination under clause 11.3 in accordance with the Expert Determination Rules; or
- (c) if clause 11.4 applies, the parties have not been able to resolve the Dispute by mediation within 20 Business Days of the referral to mediation.

11.7 **Summary or urgent relief**

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

12. **TAXES AND GST**

12.1 **Responsibility for Taxes**

- (a) The Developer is responsible for any and all Taxes and other like liabilities which may arise under any Commonwealth, State or Territory legislation (as amended from time to time) as a result of or in connection with this document or the Public Benefits.
- (b) The Developer must indemnify the City in relation to any claims, liabilities and costs (including penalties and interest) arising as a result of any Tax or other like liability for which the Developer is responsible under clause 12.1(a).
- (c) The indemnity in clause 12.1(b) survives termination or expiry of this document.

12.2 **GST free supply**

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

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

12.3 **Supply subject to GST**

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

- (a) If one party (**Supplying Party**) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (**Receiving Party**) must also pay an amount (**GST Amount**) equal to the GST payable in respect of that supply.
- (b) Subject to first receiving a tax invoice or adjustment note as appropriate, the receiving party must pay the GST amount when it is liable to provide the consideration.
- (c) If one party must indemnify or reimburse another party (**Payee**) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause 12.3(a) if the payment is consideration for a taxable supply.
- (d) If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause 12.3(a) will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.
- (e) The Developer will assume the City is not entitled to any input tax credit when calculating any amounts payable under this clause 12.3.

- (f) In this document:
 - (i) consideration includes non-monetary consideration, in respect of which the parties must agree on a market value, acting reasonably; and
 - (ii) in addition to the meaning given in the GST Act, the term "GST" includes a notional liability for GST.

13. DEALINGS

13.1 Dealing by the City

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

13.2 Dealing by the Developer

- (a) Prior to registration of this document in accordance with clause 9, the Developer must not Deal with this document or the Land without:
 - (i) the prior written consent of the City, which must not be unreasonably withheld or delayed; and
 - (ii) the City, the Developer and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City, acting reasonably.
- (b) On and from registration of this document in accordance with clause 9.1:
 - (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 subdivision, stratum subdivision or strata subdivision. The City may consent to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of a strata plan. If the City is satisfied that the Developer has provided all Public Benefits in relation to the Land or all the relevant Public Benefits in relation to a strata lot forming part of the Land and is not otherwise in default of its obligations under this document in respect of the Land or relevant part of the Land, the City must not withhold its consent;
 - (iii) subject to clause 13.2(b)(i), the Developer must not otherwise Deal with this document to a third party (including a Related Party) 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.

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

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) use its best endeavours to extinguish all redundant encumbrances and those that, in the City's opinion acting reasonably, would unreasonably impede the intended use of all or any part of the Transfer Land, other than Permitted Encumbrances.
- (b) The Developer must comply with any reasonable directions by the City relating to the Transfer Land, including but not limited to the creation of any encumbrances over the Transfer Land, other than Permitted Encumbrances.

14. **TERMINATION**

- (a) The City may terminate this document by notice in writing to the Developer if:
 - (i) any subsequent amendment to the SLEP; or
 - (ii) any other environmental planning instrument,

affects the height of any proposed development applying to the Land.

- (b) If the City terminates this document then:
 - (i) the rights of each party that arose before the termination or which may arise at any future time for any breach or non-observance of obligations occurring prior to the termination are not affected; and
 - (ii) the Developer must take all steps reasonably necessary to minimise any loss 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 AND DISCLOSURES**

15.1 **Use and disclosure of Confidential Information**

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

- (a) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this document; or

- (b) disclose any of the Confidential Information except in accordance with clauses 15.2 or 15.3.

15.2 **Disclosures to personnel and advisers**

- (a) The receiving party may disclose Confidential Information to an officer, employee, agent, contractor, or legal, financial or other professional adviser if:
 - (i) the disclosure is necessary to enable the receiving party to perform its obligations or to exercise its rights under this document; and
 - (ii) prior to disclosure, the receiving party informs the person of the receiving party's obligations in relation to the Confidential Information under this document and obtains an undertaking from the person to comply with those obligations.
- (b) The receiving party:
 - (i) must ensure that any person to whom Confidential Information is disclosed under clause 15.2(a) keeps the Confidential Information confidential and does not use it for any purpose other than as permitted under clause 15.2(a); and
 - (ii) is liable for the actions of any officer, employee, agent, contractor or legal, financial or other professional adviser that causes a breach of the obligations set out in clause 15.2(b)(i).

15.3 **Disclosures required by law**

- (a) Subject to clause 15.3(b), the receiving party may disclose Confidential Information that the receiving party is required to disclose:
 - (i) by law or by order of any court or tribunal of competent jurisdiction; or
 - (ii) by any Government Agency, stock exchange or other regulatory body.
- (b) If the receiving party is required to make a disclosure under clause 15.3(a), the receiving party must:
 - (i) to the extent possible, notify the disclosing party immediately it anticipates that it may be required to disclose any of the Confidential Information;
 - (ii) consult with and follow any reasonable directions from the disclosing party to minimise disclosure; and
 - (iii) if disclosure cannot be avoided:
 - (A) only disclose Confidential Information to the extent necessary to comply; and
 - (B) use reasonable efforts to ensure that any Confidential Information disclosed is kept confidential.

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

On termination of this document 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**

- (a) 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.
- (b) Where it is reasonable to do so having regard to its role as a public authority and its statutory duties, the City will provide the Developer with reasonable notice prior to the issue any information, publication, document or article for publication in any media concerning this document or the Public Benefits and will have regard the Developer's reasonable objections or comments.

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 fax. 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 fax, it is taken to have been received when the addressee actually receives it in full and in legible form.
- (b) A person's address and fax number 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. **LIMITATION OF LIABILITY**

- (a) For the purpose of this clause 17, the following words have the following meanings:
 - (i) **Trust** means the Surry Hills Trust; and
 - (ii) **Trustee** means Surry Hills Project Pty Limited (ACN 606 553 477).
- (b) The Trustee enters into and performs this document and the transactions it contemplates only as trustee of the Trust. This applies in respect of any past and future conduct (including omissions) relating to this document or those transactions.

- (c) Under and in connection with this document and those transactions and conduct:
- (i) the Trustee's liability (including for negligence) is limited to the extent it can be satisfied out of the assets of the Trust. The Trustee need not pay any such liability out of other assets;
 - (ii) another party may only do the following (but any resulting liability remains subject to this clause):
 - (A) prove and participate in, and otherwise benefit from, any form of insolvency administration of the Trustee but only with respect to Trust assets;
 - (B) exercise rights and remedies with respect to Trust assets, including set-off;
 - (C) exercise contractual rights; and
 - (D) bring any other proceedings against the Trustee, seeking relief or orders that are not inconsistent with the limitations in this clause,and may not otherwise:
 - (E) bring proceedings against the Trustee;
 - (F) take any steps to have the Trustee placed into any form of insolvency administration (but this does not prevent the appointment of a receiver, or a receiver and manager, in respect of Trust assets); or
 - (G) seek by any means (including set-off) to have a liability of the Trustee to that party (including for negligence) satisfied out of any assets of the Trustee other than Trust assets.
- (d) Clauses 17(a) and 17(c) apply despite any other provision in this document but do not apply with respect to any liability of the Trustee to another party (including for negligence):
- (i) to the extent that the trustee has no right or power to have Trust assets applied towards satisfaction of that liability, or its right or power to do so is subject to a deduction, reduction, limit or requirement to make good, in any case because the Trustee has acted fraudulently, negligently, beyond power or improperly in relation to the Trust; or
 - (ii) under any provision which expressly binds the Trustee other than as trustee of the Trust (whether or not it also binds it as trustee of the Trust).
- (e) The limitation in clause 17(c)(i) is to be disregarded for the purposes (but only for the purposes) of the rights and remedies described in clause 17(c)(ii), and interpreting this document and any security for it, including determining the following:
- (i) whether amounts are to be regarded as payable (and for this purpose damages or other amounts will be regarded as payable if they would have been owed had a suit or action barred under clause 17(c)(ii) been brought);
 - (ii) the calculation of amounts owing; or

(iii) whether a breach or default has occurred,

but any resulting liability will be subject to the limitations in this clause.

18. GENERAL

18.1 Governing law

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

18.2 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.

18.3 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, save that the Developer's liability for the City's reasonable legal costs incurred in the preparation and negotiation of this document is capped at \$10,000 (exclusive of GST).
- (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.

18.4 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.

18.5 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.

18.6 **Time for doing acts**

(a) If:

- (i) the time for doing any act or thing required to be done; or
- (ii) a notice period specified in this document,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

(b) If any act or thing required to be done is done after 5pm on the specified day, it is taken to have been done on the following Business Day.

18.7 **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.

18.8 **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.

18.9 **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.

18.10 **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.

18.11 **Operation of this document**

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

- (b) Any right that a person may have under this document is in addition to, and does not replace or limit, any other right that the person may have.
- (c) Any provision of this document which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this document enforceable, unless this would materially change the intended effect of this document.

18.12 Operation of indemnities

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.

18.13 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.

18.14 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.

18.15 Counterparts

This document may be executed in counterparts.

Schedule 1

AGREEMENT DETAILS

ITEM	TERM	DESCRIPTION
1.	Land	<p>Folio 31/1223099; Folio 1/1107252; Folio 2/112938; Folio 1/72567</p> <p>2-38 Baptist Street and 397-399 Cleveland Street, Redfern</p>
2.	Development	<p>Mixed use development comprising retail, commercial and residential uses. The Development will include public domain works and provision of a public open space area.</p> <p>The total Gross Floor Area (GFA) of the Development permitted on the Land under the SLEP will be no less than 24,488 square metres.</p>
3.	City's Representative	<p>Name: Director, Planning, Development and Transport</p> <p>Address: Level 1, 456 Kent Street, Sydney NSW 2000</p> <p>Fax number: +612 9265 9518</p>
4.	Developer's Representative	<p>Name: Fabrizio Perilli, Chief Executive Officer, Toga Development and Construction</p> <p>Address: Level 5, 45 Jones Street, Ultimo NSW</p> <p>Fax number: (02) 9356 1073</p>
5.	Guarantee Amount	<p>The parties agree the Guarantee Amounts for the Developer's Works and Community Transport are to be determined by a Quantity Surveyor, as agreed by the Parties and at the cost of the Developer, at the time of the submission of the first Development Application for the site. Separate Guarantees shall be provided for each of the following Public Benefits:</p> <ol style="list-style-type: none"> 1. Public Park 2. Laneway

		<p>3. Marriot Street Footway</p> <p>4. Community Transport</p>
6.	Guarantee Amount Due Date	<p>For the Guarantee for the Community Transport, prior to any demolition works commencing at the Development.</p> <p>For all other Guarantees, prior to the issue of the first Construction Certificate for the Development (other than the issue of a Construction Certificate for demolition, excavation or remediation works)</p>

Schedule 2

REQUIREMENTS UNDER THE ACT AND REGULATION (CLAUSE 2)

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

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
1.	<p>Planning instrument and/or development application (section 93F(1) of the Act)</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument;</p> <p>(b) made, or proposes to make, a Development Application; or</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) Yes</p> <p>(c) No</p>
2.	<p>Description of land to which this document applies (section 93F(3)(a) of the Act)</p>	<p>Item 1 of Schedule 1.</p>
3.	<p>Description of change to the environmental planning instrument to which this document applies and/or the development to which this document applies (section 93F(3)(b) of the Act)</p>	<p>The Development and the environmental planning instrument as described in clause 2.1.</p>
4.	<p>The scope, timing and manner of delivery of Public Benefits required by this document (section 93F(3)(c) of the Act)</p>	<p>Schedule 3 and Annexure A.</p>
5.	<p>Applicability of sections 94 and 94A of the Act (section 93F(3)(d) of the Act)</p>	<p>The application of sections 94 and 94A of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under sections 94 or 94A will be required to be paid.</p>

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
6.	Applicability of section 94EF of the Act (section 93F(3)(d) of the Act)	The application of section 94EF of the Act is not excluded in respect of the Development and for the avoidance of doubt, contributions (if any) under section 94EF will be required to be paid
7.	Consideration of benefits under this document if section 94 applies (section 93F(3)(e) of the Act)	Benefits are not to be taken into consideration in determining a development contribution under section 94 of the Act.
8.	Mechanism for Dispute Resolution (section 93F(3)(f) of the Act)	Clause 11
9.	Enforcement of this document (section 93F(3)(g) of the Act)	Clause 10
10.	No obligation to grant consent or exercise functions (section 93F(9) of the Act)	Clause 2.4
11.	Registration of this document (section 93H of the Act)	Clause 9
12.	Whether certain requirements of this document must be complied with before a construction certificate is issued (clause 25E(2)(g) of the Regulation)	Refer to the explanatory note
13.	Whether certain requirements of this document must be complied with before a subdivision certificate is issued (clause 25E(2)(g) of the Regulation)	Refer to the explanatory note
14.	Whether certain requirements of this document must be complied with before an occupation certificate is issued (clause 25E(2)(g) of the Regulation)	Refer to the explanatory note

ITEM	SECTION OF ACT OR REGULATION	PROVISION/CLAUSE OF THIS DOCUMENT
15.	<p>Whether the explanatory note that accompanied exhibition of this document may be used to assist in construing this document (clause 25E(7) of the Regulation)</p>	Clause 2.5

Schedule 3

PUBLIC BENEFITS (CLAUSE 5)

1. PUBLIC BENEFITS - OVERVIEW

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

Item	Public Benefit	Attributed Value	Due date	Additional specifications
1.	Transfer Land	\$Nil	<p>Before the issue of the first Occupation Certificate of the Development for the Laneway Land and the Marriott Street Footway Land.</p> <p>Before the issue of the final Occupation Certificate for the residential component of the Development for the Public Park Land</p>	<p>Three separate areas of land comprise the Transfer Land:</p> <p>An area of approximately 500 square metres at the southern end of the Land (Public Park Land).</p> <p>An area of approximately 610 square metres for a 9m wide laneway partially adjacent to the Public Park Land at the southern end of the Land (Laneway Land).</p> <p>An area of approximately 279 square metres for a footpath running along Marriott Street on the western side of the Land, which is to be located 3m from the back of the existing kerb on Marriott Street (Marriott Street Footway Land).</p> <p>Plans showing the indicative location of the Transfer Land are contained in Annexure A to this document.</p>

2.	Developer's Works	<p>The parties agree the Attributed Values for the Developer's Works are to be determined by a Quantity Surveyor, as agreed by the Parties and at the cost of the Developer, at the time of the submission of the first Development Application for the site. The Developer's Works include:</p> <ol style="list-style-type: none"> 1. Public Park; 2. Laneway; and 3. Marriot Street Footway. 	<p>Before the issue of the first Occupation Certificate for the Development for the Laneway Works and the Marriott Street Footway Works.</p> <p>Before the issue of the final Occupation Certificate for the residential component of the Development or unless otherwise agreed with the City, acting reasonably for the Public Park Land.</p>	<p>The Developer's Works includes works on the three separate areas of the Land that are to be transferred to the City as described in Item 1 of clause 1 of Schedule 3 above:</p> <p>The embellishment of the Public Park Land to create a Public Park (Public Park Works).</p> <p>The construction of a 9m wide laneway to provide partially pedestrian only access and part share way access (Laneway Works).</p> <p>The construction of a public footpath on Marriott Street which is to be located 3m from the back of the existing kerb on Marriott Street (Marriott Street Footway Works).</p> <p>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.</p>
3.	Sustainability Measures	Not applicable	<p>For the residential component, prior to the issue of the Final Occupation Certificate for the residential Development</p> <p>For the commercial and retail component of the development, prior to the Final Occupation Certificate for the</p>	See clause 7 of Schedule 3

			commercial and retail Development	
4.	Community Transport	The parties agree the Attributed Values for the Community Transport is to be determined by a Quantity Surveyor, as agreed by the Parties and at the cost of the Developer, at the time of the submission of the first Development Application for the site.	To commence upon closure of the existing supermarket on the Land and operating until the opening to the public of the new supermarket on the Land.	See clause 8 of Schedule 3

2. PAYMENT OF MONETARY CONTRIBUTION

Not applicable

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 Item 1 of 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 plan of stratum subdivision or strata plan; 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 a deposited plan is registered in the register of plans held with the Registrar-General that dedicates land as a public road (including a temporary public road) under the *Roads Act 1993* (NSW) or creates a public reserve or drainage reserve under the *Local Government Act 1993* (NSW).

3.3 Obligations on transfer

- (a) The requirement for the Developer to transfer the Transfer Land to the City is satisfied where:
 - (i) the City is given:
 - (A) an instrument in registrable form under the *Real Property Act 1900* (NSW) duly executed by the Developer as transferor that is effective to transfer the title to the Transfer Land to the City when executed by the City as transferee and registered;
 - (B) the written consent to the registration of the transfer of any person whose consent is required to that registration; and
 - (C) a written undertaking from any person holding the certificate of title to the production of the certificate of title for the purposes of registration of the transfer.
- (b) The Developer is to do all things reasonably necessary to enable registration of the instrument of transfer to occur.
- (c) 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 charges) except for any Permitted Encumbrances and any encumbrances agreed in writing by the City in its absolute discretion.
- (d) 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.
- (e) 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 2010* (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) any modification to the Development Consent made and approved under section 96 of the Act or any other development consent granted that relates to the Developer's Works; and
- (e) the reasonable requirements of the City, including in regard to the Standards.

4.2 Final design of Developer's Works

- (a) No later than 3 months prior to the lodging of a Development Application for the Development (or a later time approved by the City in writing) 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; and
 - (ii) 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 are approved, by reference to the plans and specifications set out in Annexure A. 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 (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; or
 - (ii) 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.

- (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; and
 - (ii) provide the City with a copy of the construction design drawings.
- (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 clause 4.3(b) 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 which would lead to a substantial 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.

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 3.3(e) 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 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 Item 2 of 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, may:

- (a) inspect the Developer's Works during the course of construction at reasonable times and on reasonable notice, and must comply at all times during any such inspection with the Developer's work health and safety policies and procedures; and
- (b) notify the Developer's Representative of any material or significant defect, error or omission relating to the construction or installation of the Developer's Works identified during or as the result of an inspection.

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.

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 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
- 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

RMS Specifications

Technical Direction TTD 2016/001

7. SUSTAINABILITY MEASURES

7.1 Residential Component

- (a) For the residential component of the Development, the Developer commits to the achievement of:
- (i) an energy BASIX score at least 5 points above the target required for a BASIX Certificate;
 - (ii) a water BASIX score at least 5 points above the target required for a BASIX Certificate.
- (b) The Developer must provide the City with a copy of all BASIX Certificates issued for the Development prior to the commencement of the Development.
- (c) If the Developer receives a BASIX score less than that specified in clause 7.1, then the Developer will discuss and agree with the City what alternative measures it will put in place in order to achieve a sustainable residential Development.

7.2 Commercial and Retail Component

- (a) The Developer commits to:
- (i) the achievement of a certified design rating of at least 4 stars under the Green Star Interiors GBCA rating tool for the supermarket fit-out, and will use reasonable endeavours to ensure such 4 star rating is obtained by including the maximising of greenhouse gas emission credits comparable to other existing 4 Star Green Star Coles supermarkets.
 - (ii) exceeding design for National Construction Code Section J.
- (b) The Developer will keep the City informed of its progress in relation to the achievement of its commitments under clause 7.2(a) at regular intervals.
- (c) Prior to the issue of the final Occupational Certificate for the commercial and retail component of the Development, the Developer will:
- (i) provide the City with a copy of the Green Star Certified Rating Certificate issued by GBCA for the design of the Development;
 - (ii) inform the City as to whether or not it has exceeded design for National Construction Code Section J.
- (d) If the Developer does not receive a certified design rating of at least 4 stars under the Green Star Interiors GBCA rating and/or fails to exceed design for National

Construction Code Section J, then the Developer will discuss and agree with the City what alternative measures it will put in place in order to achieve a sustainable commercial and retail Development.

8. COMMUNITY TRANSPORT

- (a) The Developer must, at its cost, provide a community bus commencing on the closure of the existing supermarket at the Site and operating until the opening to the public of the new supermarket at the Site, subject to the following requirements:
- (i) The community bus will run from the Site to the Coles Supermarket at 1 Crystal Street, Waterloo on a return trip basis.
 - (ii) The community bus will operate at a minimum (but subject to any agreed alterations made pursuant to clause 8(e) of this Schedule 3):
 - (A) 1 return trip every two hours on weekdays (Monday to Friday) from 9am to 5pm with passenger pickups at:
 - 40-50 Belvoir Street, Surry Hills (Northcott Public Housing)
 - 55 Morehead Street, Redfern (Poets Corner Public Housing)
 - (B) 1 return trip every two hours on weekends (Saturday and Sunday) from 10am to 3pm with passenger pickups at:
 - 40-50 Belvoir Street, Surry Hills (Northcott Public Housing)
 - 55 Morehead Street, Redfern (Poets Corner Public Housing)
 - (iii) The community bus will have the capacity to hold 21 passengers and will provide for disabled access.
- (b) Prior to commencing the community bus service, the Developer must:
- (i) at its cost, obtain all relevant approvals and consents for the operation of the community bus;
 - (ii) put in place a communications plan to keep users informed of the timetable and any disruptions;
 - (iii) set up a complaints handling process for users and other members of the community;
 - (iv) provide signage at both bus stops regarding the operation and frequency of the Community transport.
- (c) The Developer must monitor the operation of the community bus service and report to the City at monthly intervals on its performance. The report will document:
- (i) Duration and frequency of bus trips
 - (ii) Number of complaints (if any) received

- (d) The City will have the right to step-in and take-over the operation of the community bus upon giving 5 Business Days written notice if the service levels have not been met over a period of two consecutive months and/or the number of complaints received exceed 10 (ten) in any given month.
- (e) If requested by either party and having regard to the monthly monitoring report, the parties must meet to discuss the operation of the community bus service and patronage and any necessary alterations to the service (which may result in an increase or decrease to the service and are to be agreed in writing between the parties acting reasonably).
- (f) If the City steps-in pursuant to clause 8 of this Schedule 3, then the provisions of clause 6.4 of the document will apply.

EXECUTED as a deed.

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

Signature of officer

Signature of witness

Name of officer

Name

Position of officer

456 Kent Street, Sydney NSW 2000
Address of witness

EXECUTED by **Surry Hills Project
Pty Ltd ABN 33 606 553 477** in its
capacity as the trustee of the Surry
Hills Trust and in accordance with
s127(1) of the Corporations Act 2001
(Cth):

Signature of director

Signature of director/secretary

Name

Name

ANNEXURE A

Public Benefits – additional plans and specifications

Plans

Cleveland St

Developer's Works

Additional specifications

The Developer's Works will include the following elements to be delivered in accordance with this document:

General

1. Demolition and excavation works as required
2. Remediation of the entire subject site in accordance with the recommendations of an approved Remediation Action Plan
3. Integration works required to marry in new works with adjacent public and private spaces including but not limited to grading works, retaining walls, fencing, paving and landscaping

Public Park Works

4. Provision of and delivery of a new Public Park including:
 - removal of top 500mm layer of soil
 - importation and grading of clean fill, top soil and garden soil to meet required flood levels
 - construction of a 2.5m wide concrete path to the eastern perimeter
 - installation of a 2m wide landscape strip to the southern perimeter with minimum 300mm garden soil and 75mm mulch
 - supply and installation of turf
 - supply and installation planting to the landscape strip
 - supply and installation of four Smart Poles
 - surface and subsoil drainage as required
5. Installation of no more than one 1000 KVA substation on the Public Park Land and creation of associated easements required to service the surrounding area and not the Development.

Laneway Works

6. Provision of and delivery of a new 9m wide laneway as part pedestrian/cycle access and part shared zone to connect into Baptist Lane as identified on the plans in this Annexure A including but not limited to:

- Excavation and grading of subgrade
 - Supply and installation of sub-base, base course and interlock paving
 - Supply, installation and connection of stormwater drainage system
 - Supply and installation of subsoil drainage
 - Supply and installation of street and pedestrian lighting
7. New shared zone is to be designed and constructed in accordance with RMS Specifications and to the City's Standards. The Developer must obtain all permits or approvals required by the RMS Specifications.

Marriott Street Footway Works

8. Provision of and delivery of a 3m wide footpath to length of Marriot Street adjacent to the Development including but not limited to footpaths, utility services, kerb and gutter, tree and shrub planting and signage.

Maintenance during Defects Liability Period

9. Maintenance of all hard elements (including but not limited to timber elements, street furniture, play equipment and surrounds) to preserve optimum aesthetic and functionality in accordance with manufacturers specifications or as reasonably required by the City.
10. Maintain all plants, trees and planted areas in optimum growing condition and appearance. Maintenance to include:
- Water all plants and trees as required to ensure active growth keeping areas moist but not saturated.
 - Apply maintenance period fertiliser in accordance with the manufacturer's specifications.
 - Top up mulch to specified depth.
 - Keep planting areas free of weeds and undesirable grasses. Remove the entire root system. Dispose of all weeds appropriately.
 - Inspect all plants and trees for disease or insect damage weekly. Treat affected material immediately.
 - Remove damaged or diseased growth from plants and trees.
 - Immediately replace any failed or damaged plants and trees. Replacement shall be of equal size and species as the original plant.
 - Reset to proper grades or upright position any plants that are not in their proper growing position.
 - Stakes and ties must be adjusted or replaced as required.

- Pruning: Prune plants and trees to repair mechanical damage, or to improve plant shape and form or to clear footpaths.
- Turfed areas must be mowed when sufficient establishment of turf has occurred including but limited to adequate root contact/anchoring and root depth. All edges must be trimmed. Lawn clippings must be removed from site. Adjust the height of the mower to the lowest level where the lawn has a green appearance without being scalped.
- Top dress lawn if required and replace any areas of subsidence or dead turf which are greater than 1m² in area. Apply lawn fertiliser to ensure healthy growth in the growing season. Remove all weed growth or grass around base of plants in turf by hand. Do not use nylon line type edge trimmers around base of trees.