

Voluntary Planning Agreement

City of Parramatta Council (**Council**)

ABN 49 907 174 773

Karimbla Properties (No.13) Pty Ltd (**Developer**)

ABN 87 115 506 502

Meriton Properties Pty Ltd (**Guarantor**)

ABN 49 000 698 626

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Agreement

Date

Parties

First party

Name City of Parramatta Council (**Council**)
ACN 49 907 174 773
Contact Manager, Land Use Planning
Telephone (02) 9806 5050

Second party

Name Karimbla Properties (No.13) Pty Ltd (**Developer**)
ACN 87 115 506 502
Contact Executive Manger- Planning and Government
Telephone (02) 9287 2888

Third Party

Name Meriton Properties Pty Ltd (**Developer**)
ACN 000 698 626
Contact Executive Manger- Planning and Government
Telephone (02) 9287 2888

Background

- A. On 10 May 2016, the Developer made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. The Instrument Change application was accompanied by an offer by the Developer to enter into this agreement to make contributions for public purposes associated with the Instrument Change and the Development.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics;

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land;

Development means the proposed future development of the site for the purposes of mixed use development containing car parking, retail shops, serviced apartments and residential accommodation;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

Easement Terms means the terms of the Public Easement in Schedule 1;

Fax Number means a party's facsimile number set out in the Notices clause of this agreement;

Guarantor means Meriton Properties Pty Ltd ACN 000 698 626

GST has the same meaning as in the GST Law;

GST Law has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition of or administration of the GST;

Instrument Change means the amendment of the Parramatta LEP to increase the maximum building height limit applying to the Land from 36m to 190m and to increase the maximum floor space ratio limit applying to the Land from 4:1 to 10:1;

Land means Lots 1, 2, 3, 4 and 21 SP 74916, the Common Property SP 74916 and Lots 201, 202, 203 and 204 DP 1082194 known as 180 George Street, Parramatta;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Monetary Contribution means the monetary contribution payable by the Developer under clause 6 of this agreement;

Occupation Certificate means an occupation certificate as defined under section 109C of the Act, and includes an interim Occupation Certificate or a final Occupation Certificate;

Parramatta LEP means the principle Parramatta Local Environmental Plan 2011

Public Easement means the easement for public access to be provided over the Land as shown on the plan at Annexure A and on the terms in Schedule 1 (with necessary amendments to defined terms made for the purposes of registration);

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW); and

Transferee has the meaning given in clause 12.3.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;
- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO or managing director)** the president, CEO or managing director of a body or Authority means any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;

- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in , Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and
- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 93F of the Act.
- (b) Schedule 2 of this agreement summarises the requirements for planning agreements under s 93F of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

- (a) the Instrument Change, and
- (b) the Development, and
- (c) the Land.

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Monetary Contribution

- (a) The Developer will pay to Council a monetary contribution of \$7,179,300.00 or an amount calculated in accordance with the following formula, whichever is the greater:

$$\begin{array}{r} \$7,179,300.00 \quad \times \quad \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this agreement}} \end{array}$$

- (b) The Monetary Contribution must be paid to Council prior to the issue of the first Occupation Certificate for the Development or any part of the Development.
- (c) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (d) The Monetary Contribution will be taken to have been made when the Council notifies the Developer in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (e) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards revitalisation of the Parramatta River foreshore. .

6.2 Public Access and Easements

- (a) The Developer will, at no cost to Council, register the Public Easement against the relevant title to the Land.
- (b) The obligation to register the Public Easement will be taken to have been satisfied when a Certificate of Title is issued by NSW Land and Property Information showing the covenant and Public Easement burdening the relevant Land.
- (c) The Public Easement must be registered on the relevant title of the Land within 12 months of the issue of the the first Occupation Certificate for the Development or any part of the Development.
- (d) The parties agree and acknowledge that the Public Easement will serve the public purpose of enhancing accessibility within the Parramatta CBD and public transport facilities.
- (e) The Developer acknowledges and agrees that Council may require any part of the Development within the Public Easement to meet its reasonable standards and specifications for public domain areas.

7 Application of s 94, s 94A and s 94EF of the Act to the Development

- (a) This agreement does not exclude the application of section 94 of the Act to the Development.

- (b) This agreement does not exclude the application of section 94A of the Act to the Development.
- (c) This agreement does not exclude the application of section 93EF of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 94 of the Act.

8 Registration of this agreement

8.1 *Developer Interest*

The Developer represents and warrants to the Council that on the date of this agreement it is the registered proprietor of the Land excluding the common property of SP74916.

8.2 *Registration of this agreement*

- (a) The Developer agrees to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register of the Land (excluding the common property of SP74916) in accordance with section 93H of the Act.
- (b) The Developer at its own expense will, promptly after the execution of this agreement, take all practical steps, and otherwise do anything that the Council reasonably requires to procure:
 - (i) The consent of each person who:
 - (A) has an estate or interest in the Land registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in the Land,
 - (ii) An acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that the mortgagee will adhere to the provisions of this agreement if it takes possession of the Land as mortgagee in possession,
 - (iii) The execution of any documents; and
 - (iv) The production of the relevant duplicate certificates of title,
 to enable the registration of this agreement in accordance with clause 8.2.
- (c) The Developer, at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this agreement with the Registrar-General as soon as reasonably practicable after this agreement comes into operation, but in any event, no later than 10 Business Days after that date; and
 - (ii) to procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this agreement is lodged for registration.

8.3 *Removal from Register*

- (a) The Council will provide a release and discharge of this agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided

the Council is satisfied the Developer has duly fulfilled its obligations under this agreement, and is not otherwise in default of any of the obligations under this agreement.

- (b) Council agrees that if the Land is subdivided such that development takes place in more than one stage, the registration of this agreement will be removed from the title of any allotment of the Land subject to a strata scheme under the *Strata Schemes (Freehold Development) Act 1973*, provided that this agreement remains registered against the title to the common property within the strata scheme.

8.4 *Caveat*

- (a) The Developer acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council must, at the Developer's cost, register a withdrawal of any caveat in respect of the Land within five Business Days after the Developer complies with clause 8.2 and must not lodge any other caveats on the titles to any of the Land.

9 Review of this agreement

- (a) This agreement may be reviewed or modified. Any review or modification of this agreement will be conducted in the circumstances and in the manner determined by the parties.
- (b) No modification or review of this agreement will be of any force or effect unless it is in writing and signed by the parties to this agreement.
- (c) A party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

10 Dispute Resolution

10.1 *Reference to Dispute*

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 *Notice of Dispute*

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and

- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert advice about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5.

10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);

- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 Enforcement

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.
- (b) In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Guarantor*

- (a) The Guarantor has agreed to guarantee the performance of the Developer's obligations under this Agreement.
- (b) The Guarantor agrees that it is liable to Council for:
 - (i) the due performance and observance by the Developer of all the provisions in this Agreement; and
 - (ii) the payment of all money which the Developer is obliged to pay to the Council under this Agreement.
- (c) The Guarantor is liable even if:
 - (i) the Developer or any Guarantor dies, or becomes mentally incapable or insolvent;
 - (ii) the Council gives the Developer any time, forbearance or other indulgence;
 - (iii) the Council does not exercise any of its rights under this Agreement, or waives or defers any of those rights;

- (iv) the Developer or any Guarantor have any actual or alleged set-off, defence, counter-claim or other deductions; and
- (v) the Council, or any other person does anything or omits to do anything which would, but for this provision, affect or discharge the Guarantor's liability.

11.3 *Restriction on the issue of Certificates*

In accordance with section 109H of the Act, the obligation to pay the Monetary Contribution under clause 6.1 must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.

11.4 *Compulsory Acquisition*

- (a) If the Developer does not register the Public Easement as required by this agreement, the Council may compulsorily acquire the relevant interest of the Easement Land, in which case the Developer consents to the Council compulsorily acquiring that interest in the Land for compensation in the amount of \$1.00 without having to follow the pre-acquisition procedures in the *Land Acquisition (Just Terms Compensation) Act 1991* and may recover from the Developer as a debt due, any costs, including legal costs, incurred by the Council on acquisition of the interest.
- (b) Clause 11.4(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) The Developer indemnifies and keeps indemnified the Council against all Claims made against the Council as a result of any acquisition by the Council of the whole or any part of the interest in the Land under clause 11.4(a).
- (d) The Developer must pay the Council, promptly on demand, an amount equivalent to all costs, including legal costs, incurred by the Council acquiring the whole or any part of the relevant land under clause 11.4(a).

11.5 *General Enforcement*

- (a) Without limiting any other remedies available to the parties, this agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this agreement prevents:
 - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this agreement or any matter to which this agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this agreement or any matter to which this agreement relates.

12 *Assignment and Dealings*

12.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld.

- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

12.2 *Arrangements with Mortgagee*

- (a) The Developer agrees with the Council that if the Developer mortgages the Land after this agreement is entered into it must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Developer, and the mortgagee who will be providing finance for the Works so that the mortgagee accepts that the responsibilities set out in this agreement are binding upon the mortgagee in the event that the Developer defaults on the mortgage and the mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the Developer by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer.

12.3 *Transfer of Land*

- (a) The Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) The Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer obligations under this agreement;
 - (ii) The Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) The Transferee delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this agreement;
 - (iv) The Transferee delivers to the Council replacement Bonds or Bank Guarantees as required by this agreement;
 - (v) Any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (vi) The Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.
- (b) The parties agree that clause 12.3(a) does not apply if the Transferee is acquiring an interest in the Land as a purchaser of one or more lots in a strata scheme, (whether or not the plan has, at the date of exchange, been registered at the Land and Property Information).

13 *Approvals and consents*

Except as otherwise set out in this agreement, and subject to any statutory obligations, a party may give or withhold an approval or consent to be given under this agreement in

that party's absolute discretion and subject to any conditions determined by the party. A party is not obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 Discretion

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 No fetter

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) They will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) In the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and
- (c) To endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

15 Notices

15.1 Notices

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this agreement:

- (i) to City of Parramatta Council:
PO Box 32, Parramatta, NSW 2124
Fax: 02 9806 5917
Email: Council@cityofparramatta.nsw.gov.au
Attention: Manager, Land Use Planning
- (ii) to Karimbla Properties (No.13) Pty Ltd:
L11 528 Kent Street, SYDNEY
Fax: (02) 9287 2777
Email: generalcounsel@meriton.com.au
Attention: Director

- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 Notices sent by email:

- (a) A party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;
 - (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
 - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
 - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
 - (A) to City of Parramatta Council: Attention: Manager, Land Use Planning Council@cityofparramatta.nsw.gov.au
 - (B) to (ii) to Karimbla Properties (No.13) Pty Ltd: Attention: Executive Manager – Planning and Government
generalcounsel@meriton.com.au
- (b) The recipient of a Notice served under this clause 15.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2 does not invalidate service of a Notice under this clause.

15.3 Receipt of Notices sent by email

- (a) A Notice sent under clause 15.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;

(ii) when the Notice enters an information system controlled by the recipient;
or

(iii) when the Notice is first opened or read by the recipient,

whichever occurs first.

(b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 *Relationship between parties*

(a) Nothing in this agreement:

(i) constitutes a partnership between the parties; or

(ii) except as expressly provided, makes a party an agent of another party for any purpose.

(b) A party cannot in any way or for any purpose:

(i) bind another party; or

(ii) contract in the name of another party.

(c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 *Time for doing acts*

(a) If the time for doing any act or thing required to be done or a notice period specified in this agreement 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 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 *Joint and individual liability and benefits*

Except as otherwise set out in this agreement, any agreement, covenant, representation or warranty under this agreement by two or more persons binds them jointly and each of them individually, and any benefit in favour of two or more persons is for the benefit of them jointly and each of them individually.

16.5 *Variation*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.6 Counterparts

This agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

16.7 Legal expenses and stamp duty

- (a) The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect and release and discharge of this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Developer agrees to pay or reimburse the reasonable costs and expenses reasonably incurred by Council in connection with the advertising and exhibition of this agreement in accordance with the Act.

16.8 Entire agreement

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 Representations and warranties

The parties represent and warrant that they have the power and authority to enter into this agreement and comply with their obligations under the agreement and that entry into this agreement will not result in the breach of any law.

16.10 Severability

If a clause or part of a clause of this agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this agreement, but the rest of this agreement is not affected.

16.11 Invalidity

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 Waiver

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or

remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

- (b) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

16.13 GST

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer must pay the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.
- (d) If the Council is obliged to pay any GST on any supply made under or in accordance with this agreement, the Developer indemnifies the Council for the amount of any such payment is required to make.

16.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

Schedule 1 Public Access Easement Terms

In this Schedule:

Easement Land means that part of the Land the subject of the Public Easement.

- 1 The owner of the Easement Land grants to the Council and members of the public full and free right to go, pass and repass over the Easement Land at all times:
 - (a) with or without animals; and
 - (b) on foot without vehicles (other than wheelchairs or other disabled access aids);for all lawful purposes.
- 2 The owner of the Easement Land must, to the satisfaction of Council, acting reasonably:
 - (a) keep the Easement Land (including any services in, on or under the Easement Land) in good repair and condition;
 - (b) maintain and repair the Easement Land and all improvements on the Easement Land;
 - (c) keep the Easement Land clean and free from rubbish; and
 - (d) maintain sufficient public liability insurance covering the use of the Easement Land in accordance with the Public Easement.
- 3 If the owner of the Easement Land does not perform any obligation under clause 2 the Council may undertake the required work and recover the costs of all such work from the owner of the Easement Land as a liquidated debt.
- 4 The owner of the Easement Land must ensure that any rules made by an Owner's Corporation relating to the Easement Land have been approved by the Council, acting reasonably.
- 5 If any member or members of the public loiter or congregate, for any purpose which the owner of the Easement Land, acting reasonably, considers to be a nuisance or a safety risk, the owner may either remove those members of the public, or arrange for their removal by an appropriate authority.
- 6 The owner of the Easement Land may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Easement Land.
- 7 The owner of the Easement Land may engage security personnel to monitor and control the behaviour of the public using the Easement Land, including but not limited to prohibiting smoking, consumption of alcohol (except within licensed areas), passage of animals, bicycles and skateboards and the like in accordance with any rules made by an Owner's Corporation relating to the Easement Land.
- 8 The owner of the Easement Land may with the Council's prior written consent (except in the case of an emergency, in which case the Council's prior written consent is not required) temporarily close or restrict access through all or part of the Easement Land for the time and to the extent necessary but only on reasonable grounds for the purposes of:

- (a) construction, construction access, repairs, maintenance, replacement and alteration to the Easement Land or any improvements in, on or under the Easement Land; or
 - (b) security, public safety or evacuation of the Easement Land and adjoining buildings
- 9 Subject to ensuring the provision of access in accordance with above clause 1 of this Schedule, the owner of the Easement Land may, provided any necessary planning approvals are obtained:
- (a) Install or erect works of art, street furniture, awnings, tables and chairs associated with ground floor commercial premises, notice boards or any other similar improvements at ground level on the Easement Land; and
 - (b) Use the Easement Land,
- in a manner consistent with Parramatta City Council Outdoor Dining Policy adopted 9 July 2012 and amended 25 February 2013, or any such policy of the Council that replaces that policy.
- 10 The Council is solely empowered to release the Public Easement.
- 11 The Public Easement may only be varied by written agreement between the Council and the owner of the Easement Land.

Schedule 2

Summary of requirements (section 93F)

Subject and subsection of the Act	Planning Agreement
<p>Planning instrument and/or Development Application – Section 93F(1)</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p>	<p>x Yes <input type="checkbox"/> No</p> <p>x Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes x No</p>
<p>Description of the land to which the planning Agreement applies – Section 93F(3)(a)</p>	<p>See the definition of Land in clause 1</p>
<p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 93F(3)(b)</p>	<p>See Clause 6</p>
<p>Applicability of section 94 of the Act – Section 93F(3)(d)</p>	<p>See Clause 7</p>
<p>Applicability of section 94A of the Act – Section 93F(3)(d)</p>	<p>See Clause 7</p>
<p>Applicability of section 94EF of the Act – Section 93F(3)(d)</p>	<p>See Clause 7</p>
<p>Mechanism for dispute resolution – Section 93F(3)(f)</p>	<p>See Clause 10</p>
<p>Enforcement of the Planning Agreement – Section 93F(3)(g)</p>	<p>See Clause 11</p>
<p>Registration of the Planning Agreement – Section 93F(3)(g)</p>	<p>See Clause 7</p>
<p>No obligation to grant consent or exercise functions – Section 93F(9)</p>	<p>See clause 14 (no fetter)</p>

Executed as an agreement

Executed by City of Parramatta City)
Council under seal in accordance with a)
resolution of the Council on [insert date]:)

.....
Signature of [insert position]

.....
Signature of [insert position]

.....
Print name

.....
Print name

[Insert further execution clauses as required for each party]



