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## Voluntary Planning Agreement – Land on the Corner of Parramatta Road, Good Street and Cowper Street, Granville

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City of Parramatta Council ABN 49 907 174 773

Airbosi Pty Ltd ACN 075 674 690

Sitana Pty Limited ABN 49 093 102 179

Brodieville Pty Limited ABN 68 107 201 482

*Wilson*  
*B. Roddy*  
*except as*

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# Planning agreement

Dated

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## Parties

|                    |   |
|--------------------|---|
| <b>Council</b>     | <b>City of Parramatta Council ABN 49 907 174 773</b><br>of 126 Church St, Parramatta NSW 2150 |
| <b>Airbosi</b>     | <b>Airbosi Pty Ltd ACN 075 674 690</b><br>of 10 Crown Street, Woolloomooloo NSW 2011          |
| <b>Sitana</b>      | <b>Sitana Pty Ltd ABN 40 093 102 179</b><br>of 10 Crown Street, Woolloomooloo NSW 2011        |
| <b>Brodieville</b> | <b>Brodieville Pty Ltd ABN 68 107 201 481</b><br>of 10 Crown Street, Woolloomooloo NSW 2011   |

## Background

- A The Land Owner owns the Land.
- B The Developer has entered into an agreement with the Land Owner to develop the Land.
- C The Developer submitted a planning proposal to Council in December 2014 seeking amendments to the LEP.
- D Gateway Determination under section 56 of the Act was granted by the Delegate of the Minister for Planning, subject to conditions on 9 November 2015.
- E The planning proposal was amended in accordance with the Gateway Determination and seeks the following changes to the LEP:
  - (i) Rezone the Land from part B2 Local Centre and part B6 Enterprise Corridor to B4 Mixed Use.
  - (ii) Increase the maximum Height of Building control from 15m and 21m to 82m (25 storeys) for the majority of the Land and to 17m (4 storeys) for the part of the Land fronting Good Street.
  - (iii) Increase the maximum Floor Space Ratio control applying to the Land from part 2:1, part 3:1 and part 3.5:1 to 6:1 across the whole of the site.
  - (iv) Introduce a Design Excellence clause to require the site to undertake a design excellence competition that will not enable any bonus height or FSR provisions.

- (v) Introduce a site specific clause limiting non-residential floor space to a maximum of 4,000sqm.
- F In connection with the Planning Proposal and the proposed Instrument Change, the Developer and Land Owner have offered to deliver works and pay monetary contributions for public purposes including affordable housing and roads and traffic management.
- G In accordance with section 93F of the Act, this Agreement formalises the arrangement between the Parties for the delivery of the Contributions in connection with the Planning Proposal.

## Agreed terms

### 1 Definitions and interpretation

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#### 1.1 Definitions

In this document, unless context indicates a contrary intention:

| Term                  | Definition   |
|-----------------------|--|
| <b>Act</b>            | means the <i>Environmental Planning and Assessment Act 1979</i> (NSW).   |
| <b>Address</b>        | means a party's address set out in the Notices clause (clause 13) of this document.  |
| <b>Agreement</b>      | means this Planning Agreement.   |
| <b>Approval</b>       | means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this document.   |
| <b>Authority</b>      | means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person.  |
| <b>Bank Guarantee</b> | <p>means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:</p> <ul style="list-style-type: none"> <li>(a) Australia and New Zealand Banking Group Limited;</li> <li>(b) Commonwealth Bank of Australia;</li> <li>(c) Macquarie Bank;</li> <li>(d) National Australia Bank;</li> <li>(e) St George Bank Limited;</li> <li>(f) Westpac Banking Corporation; or</li> <li>(g) Other financial institution approved by the Council.</li> </ul> <p>to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to Council.</p> |

| <b>Term</b>                                | <b>Definition</b>  |
|--|--|
| <b>Barn</b>                                | means the building on the Land known as the Barn, which is listed as a local heritage item (I157) under clause 5.10 and Schedule 5 of the LEP.   |
| <b>Business Day</b>                        | means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays.   |
| <b>Certificate of Practical Completion</b> | means the written certificate confirming the Works, or part of the Works, have been completed to the Council's satisfaction issued in accordance with the Construction Terms.  |
| <b>CPI</b>                                 | means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.   |
| <b>Construction Terms</b>                  | means the construction terms in schedule 5.  |
| <b>Contributions</b>                       | means the dedication of land free of cost, the carrying out of work, or the provision of any other material public benefit detailed in Schedule 2.   |
| <b>Dedication Land</b>                     | means those parts of the Land to be dedicated to Council in accordance with this Agreement, described in Table 1 of Schedule 2 and generally shown on the plan at Annexure A.  |
| <b>Developer</b>                           | means Airbosi Pty Ltd.   |
| <b>Development</b>                         | means any future mixed use development on the Land.  |
| <b>Development Application</b>             | has the same meaning as in the Act.  |
| <b>Development Consent</b>                 | has the same meaning as in the Act and as may be granted in respect of the Development.  |
| <b>Discretion</b>                          | has the meaning set out in clause 12.1.  |
| <b>Dispute</b>                             | means a dispute about the terms and operations of this Agreement.  |
| <b>Easement</b>                            | means the easement for public access covering the proposed pedestrian laneway across the Land linking Parramatta Road and Cowper Street.   |
| <b>Easement land</b>                       | means the land covered by the Easement as described in Table 1A of Schedule 2.   |
| <b>Easement terms</b>                      | means the terms of a public access easement as set out in Schedule 3.  |
| <b>Fax Number</b>                          | means a party's facsimile number set out in the Notices clause (clause 13) of this document.   |
| <b>Gateway Determination</b>               | means the determination by Marcus Ray Deputy Secretary, Planning Services dated 9 November 2015 pursuant to section 56(2) of the Act that an amendment to the Parramatta Local Environmental Plan 2011 should proceed to exhibition. |
| <b>GST</b>                                 | has the same meaning as in the GST Law.  |
| <b>GST Law</b>                             | has the same meaning given to that term in <i>A New Tax</i>  |

| Term                         | Definition  |
|------------------------------|---|
| <b>Instrument Change</b>     | <p><i>System (Goods and Services Tax) Act 1999</i> (Cth) and any other Act or regulation relating to the imposition or administration of the GST.</p> <p>means the amendments to the LEP in response to the Planning Proposal, including any increase in maximum building height and floor space ratio controls applying to the Land.</p>   |
| <b>Insolvent</b>             | <p>means the occurrence of any of the following:</p> <ul style="list-style-type: none"> <li>(a) a Party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);</li> <li>(b) a Party becomes unable to pay its debts as they fall due;</li> <li>(c) a Party enters into any arrangement with creditors;</li> <li>(d) a Party becomes subject to external administration within the meaning of Chapter 5 of the <i>Corporations Act 2001</i> (Cth), including having a receiver or administrator appointed over all or any part of its assets; or</li> <li>(e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (d) above occurs in relation to a party, including the court appointment of a receiver.</li> </ul> |
| <b>Land</b>                  | <p>means land on the corner of Parramatta Road, Good Street and Cowper Street, Granville as listed in Schedule 1.</p>   |
| <b>Land Dedication</b>       | <p>means the dedication of land as summarised in Table 1 of Schedule 2.</p>   |
| <b>Land Owner</b>            | <p>means Sitana Pty Limited and Brodieville Pty Limited.</p>  |
| <b>Law</b>                   | <p>means:</p> <ul style="list-style-type: none"> <li>(a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;</li> <li>(b) any Approval, including any condition or requirement under it; and</li> <li>(c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b) above.</li> </ul>  |
| <b>LEP</b>                   | <p>means the Parramatta Local Environmental Plan 2011.</p>  |
| <b>Monetary Contribution</b> | <p>means that part of the monetary contribution payable under this Agreement in accordance with clause 5.2.</p>   |
| <b>Notice</b>                | <p>has the meaning set out in clause 13.1.</p>  |
| <b>Notice of Dispute</b>     | <p>has the meaning set out in clause 8.2.</p>   |
| <b>Parties</b>               | <p>means the parties to this Agreement.</p>   |



| <b>Term</b>              | <b>Definition</b>   |
|--------------------------|---|
| <b>Planning Proposal</b> | means the Planning Proposal (Department Ref: PP_2015_PARRA_007_00) to amend the land use zones (to B4 Zone), floor space ratio (to a minimum of 6:1) and building height provisions (to a height of 82m for a majority of the site and 17m fronting Good Street), as well as to require a design competition process and ensure provision of non-residential floor space for land at the corner of Parramatta Road, Good Street and Cowper Street, Granville, generally described in Recital E. |
| <b>Register</b>          | means the Torrens Title register maintained under the <i>Real Property Act 1900</i> (NSW).  |
| <b>Roads Act</b>         | means the <i>Roads Act 1993</i>   |
| <b>Strata Plan</b>       | means a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the <i>Strata Schemes Development Act 2015</i> or the <i>Strata Schemes Management Act 2015</i>   |
| <b>Units</b>             | means the three (3) x two (2) bedroom units located within the Development to be dedicated to Council under this Agreement.   |
| <b>Unit Dedication</b>   | means the dedication of three (3) x two (2) bedroom units located within the Development as described in Table 3 of Schedule 2.   |
| <b>Works</b>             | means the works required in Schedule 4  |

## 1.2 Interpretation

In this document:

- (a) a reference to a clause, schedule, annexure or party is a reference to a clause of, and a schedule, annexure or party to, this document and references to this document include any schedules or annexures;
- (b) a reference to a party to this document or any other document or agreement includes the party's successors, permitted substitutes and permitted assigns;
- (c) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a document or agreement (including a reference to this document) is to that document or agreement as amended, supplemented, varied or replaced;
- (e) a reference to this document includes the agreement recorded by this document;
- (f) a reference to legislation or to a provision of legislation (including subordinate legislation) is to that legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (g) if any day on or by which a person must do something under this document is not a Business Day, then the person must do it on or by the next Business Day;

- (h) a reference to a person includes a corporation, trust, partnership, unincorporated body, government and local authority or agency, or other entity whether or not it comprises a separate legal entity; and
- (i) a reference to 'month' means calendar month.

## **2 Planning Agreement under the Act**

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The parties agree that this document is a planning agreement within the meaning of section 93F of the Act.

## **3 Application of this document**

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This document applies to:

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

## **4 Operation of this document**

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- (a) The parties agree that this document operates on and from the date it is executed by the parties.
- (b) This Agreement will remain in force until:
  - (i) it is terminated by operation of Law; or
  - (ii) all obligations are performed or satisfied.

## **5 Contributions to be made under this document**

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### **5.1 The Contributions**

- (a) The Developer agrees that if the Instrument Change is made it will make the Contributions to Council which are to be made:
  - (i) for the public purpose specified in Column 1 of Table 4 in Schedule 2;
  - (ii) to the extent or in the amount referred to in Column 2 of Table 4 in Schedule 2 and any other provision of this Agreement; and
  - (iii) at the times referred to in Column 3 of Table 4 in Schedule 2.
- (b) The Developer shall include in a Development Application lodged in respect of the Development the Contributions set out in Schedule 2 of this Agreement and must:
  - (i) comply with any condition of Development Consent requiring provision of the Contributions; and

- (ii) not seek to amend such conditions of Development Consent; and
- (iii) not appeal to the Land and Environment Court in respect of the same; and
- (iv) not take any other action to avoid complying with such conditions,

provided that the conditions on the Development Consent for the Development reflect and are not inconsistent with the agreement between the parties regarding the Contributions set out in this Agreement.

## 5.2 Monetary Contribution

- (a) The Developer will pay to Council a monetary contribution of \$400,000.00 or an amount calculated in accordance with the following formula, whichever is the greater:

$$\$400,000.00 \quad \times \quad \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this Agreement}}$$

- (b) The Monetary Contribution must be paid to Council in instalments as follows:
- (i) 25% of the Monetary Contribution upon the Instrument Change occurring;
  - (ii) 50% of the Monetary Contribution prior to the issue of a Construction Certificate for the Development; and
  - (iii) 25% of the Monetary Contribution prior to the issue of an Occupation Certificate for the Development, or prior to the registration of any Strata Plan, whichever is earlier.
- (c) The Developer is not required to pay the instalments of the Monetary Contribution specified in clauses 5.2(b)(i) and (ii) if the Developer provides to the Council Bank Guarantees in accordance with clause 9.3 as security for those payments, in which case the Developer must pay the full amount of the Monetary Contribution prior to the issue of an Occupation Certificate for the Development.
- (d) The instalments comprising the Monetary Contribution and any other cash contribution required to be made under this Agreement, 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.
- (e) The payment of the instalments of the Monetary Contribution and any other cash contribution required to be made under this Agreement will be taken to have been made when the Council notifies the Developer in writing that a bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (f) For the avoidance of doubt an additional cash contribution per unit in excess of 350 units is required to be paid in accordance with Schedule 2.

## 5.3 Works

- (a) The Developer will carry out the Works in accordance with this Agreement, including the Construction Terms and any Development Consent granted for the Works.

- (b) The Works or any part of the Works required under this Agreement will be taken to have been completed for the purposes of this Agreement when a Certificate of Practical Completion has been issued for those Works.
- (c) The Works or any part of the Works required under this Agreement will be taken to have been delivered to Council when the land on which those Works are located is dedicated to Council.
- (d) The Works must be completed prior to the dedication of the land on which the Works are located, or the grant of an Easement over the land, as required by this Agreement.
- (e) The parties agree and acknowledge that the Works serve the following public purposes:
  - (i) the provision of affordable housing for the community;
  - (ii) roads and traffic management; and
  - (iii) pedestrian accessibility and amenity.

#### **5.4 Land Dedication**

- (a) The Developer must dedicate to the Council, at no cost to the Council, the Dedication Land freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, easements, rights, charges, rates and contracts in, over or in connection with the land, including but not limited to, municipal rates and charges, water rates and land tax.
- (b) The obligation to dedicate the Dedication Land will be taken to have been satisfied when either:
  - (i) a Certificate of Title is issued by NSW Land and Property Information identifying the Council as the registered proprietor of that land without encumbrances as required by clause 5.4(a) and its dedication as a public road under the Roads Act; or
  - (ii) when the Dedication Land is dedicated to Council by operation of the registration of a plan of subdivision in accordance with section 9 of the Roads Act.
- (c) The Dedication Land must be dedicated or transferred to Council prior to the issue of an Occupation Certificate for the Development or any part of the Development.
- (d) Despite clause 5.4(a), if having used its best endeavours, the Developer cannot ensure that the Dedication Land is free from any relevant encumbrance and affectation, then:
  - (i) the Developer may request that the Council agree to accept the land subject to those encumbrances and affectations; and
  - (ii) if the encumbrance or affectation:
    - (A) does not prevent the future use of the Dedication Land for the public purpose for which it is to be dedicated under this Agreement; and
    - (B) is not a charge against the Dedication Land, and
    - (C) is an encumbrance or charge that Council would not be restricted from granting or extinguishing over public road under the *Roads Act 1993*,

the Council must not withhold its agreement unreasonably and otherwise, the Council may withhold its agreement at its absolute discretion.

## 5.5 Unit Dedication

- (a) The Developer must, at no cost to Council construct, finish and fit out the Units in accordance with clause 5.3 prior to the Unit Dedication.
- (b) Within 15 Business Days after:
  - (i) the issue of the first Occupation Certificate for the Development, which must authorise occupation and use of the Units; or
  - (ii) the registration of a Strata Plan for any part of the Development,

whichever occurs later, the Developer must transfer the Units to the Council in accordance with any relevant provisions of the Construction Terms and so that immediately on transfer, the Council will have an estate in fee simple in possession, freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this Agreement.

- (c) The obligation under clause 5.5(b) will be taken to have been fulfilled for the purposes of this Agreement when the transfer of the Units to Council is shown on the Register.
- (d) The parties acknowledge and agree that the Units are to be constructed, finished and dedicated to Council under this Agreement for the purposes of the provision of affordable housing and the Council intends to engage an approved community housing provider for the ongoing management of the Units.
- (e) The Developer must, in accordance with the provisions of the Construction Terms, ensure that, when the Unit Dedication occurs, Council have the benefit of any defects liability warranty given by a builder for the Development and the Units, together with any other warranties and guarantees in accordance with the Construction Terms.

## 5.6 Public Access and Easements

- (a) The Developer will, at no cost to Council, register against the title to the Land:
  - (i) a covenant prohibiting any building or structures, including pillars, other than structures approved by the Council (acting reasonably) for the purposes of enhancing public domain areas, to be constructed on the Easement Land, which covenant may be limited in height and depth depending on the approved Development; and
  - (ii) an easement in gross permitting public access to the Easement Land generally in accordance with the Easement Terms.
- (b) Any requirement to register an easement, covenant or other instrument against the title to the Land will be satisfied when the Developer provides to the Council a copy of the relevant title search showing the registration of the instrument.
- (c) Any covenant required under clause 5.6(a) must be registered prior to the issue of any Construction Certificate authorising works on the Easement Land.
- (d) Any easement, required under clause 5.6 (a) must be registered:
  - (i) prior to the issue of an Occupation Certificate for any building on the Land forming part of the Development; or

- (ii) on registration of any subdivision plan applying to the Easement Land, whichever is the later.
- (e) The parties agree that the proposed covenant and easement under this clause will serve the following public purposes:
  - (i) To increase the amount of land for footpaths and roads and improve existing pedestrian and traffic management in the vicinity of the Land.
  - (ii) To improve pedestrian circulation and the amenity of the public domain in the vicinity of the Land.

## **6 Application of sections 94, 94A and 94EF of the Act**

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- (a) This document does not exclude the application of section 94, section 94A and section 94EF of the Act to the Development or any other development on the Land.
- (b) Benefits under this document must not be taken into consideration under section 94(6) of the Act for the purposes of determining any contributions payable under the Act for the Development or any other development on the Land.

## **7 Registration of this Agreement**

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### **7.1 Registration of this document**

- (a) The Land Owner represents and warrants that on the date of this Agreement it is the registered proprietor of the Land.
- (b) The Developer agrees that it will procure the registration of this document, under the *Real Property Act 1900* NSW) in the relevant folios of the Register for the Land in accordance with section 93H of the Act.
- (c) The Developer at its own expense will, promptly after this document is executed, 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; or
    - (B) is seized or possessed of an estate or interest in the Land; and
  - (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 document in accordance with clause 7.1(b).

- (d) 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 document with the Registrar-General as soon as reasonably practicable after this document is executed but in any event, no later than ten Business Days after that date; and
  - (ii) to procure the registration of this document by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this document is lodged for registration.
- (e) The Developer will provide documentary evidence that the registration of this Agreement has been completed to Council within five Business Days of receiving confirmation that the registration has occurred.
- (f) The Land Owner agrees and acknowledges that on registration of this Agreement, in accordance with section 93H of the Act, the Land Owner will be bound by this Agreement and the Land Owner and the Developer will be jointly and severally liable for all of the obligations imposed on the Developer under this Agreement.

## 7.2 Caveat

- (a) The Developer acknowledges and agrees that:
  - (i) when this Agreement is executed, Council is deemed to have acquired, and the Developer is deemed to have granted, an equitable estate and interest in the Units for the purposes of section 74F(1) of the *Real Property Act 1900 (NSW)* and consequently Council has sufficient interest in the Units in respect of which to lodge a caveat over the Land notifying that interest;
  - (ii) it will notify the Council of the registration of any Strata Plan creating the strata lots containing the Units within 5 Business Days of registration; and
  - (iii) it will not object to Council lodging a caveat in the relevant folios of the Units comprising the Unit Dedication once the Strata Plan is registered, nor will it seek to remove any such caveat lodged by Council.

## 7.3 Removal from Register

The Council will provide a release and discharge of this document 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 document, and is not otherwise in default of any of the obligations under this document.

## 8 Dispute resolution

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### 8.1 Reference to dispute

If a dispute arises between the parties in relation to this document, 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.

## 8.2 Notice of Dispute

The party wishing to commence the dispute resolution processes must give written notice (**Notice of Dispute**) to the other party 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.

## 8.3 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, expert determination in accordance with clause 8.6 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.

## 8.4 Further Notice if not settled

If the dispute is not resolved within 15 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 8.5 or by expert determination under clause 8.6.

## 8.5 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 8.5 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 five Business Days of receipt of the Determination Notice notify each other of their representatives that 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 five Business Days of the resolution);
- (f) the parties agree to be bound by a mediation settlement and unless waived by the parties, 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 unreasonable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

## **8.6 Expert determination**

If the dispute is not resolved under clause 8.3 or clause 8.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) the dispute must be determined by an independent expert in the relevant field:
  - (i) agreed upon and appointed jointly by Council and the Developer; and
  - (ii) in the event that no agreement is reached or no appointment is made within 30 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) the expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) the determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) the expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) any determination made by an expert pursuant to this clause is final and binding upon the parties unless:

- (i) within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
- (ii) the determination is in respect of, or relates to, termination or purported termination of this document by any party, in which event the expert is deemed to be giving a non-binding appraisal.

## 8.7 Litigation

If the dispute is not finally resolved in accordance with this clause 8, then either party is at liberty to litigate the dispute.

## 8.8 No suspension of contractual obligations

Subject to any interlocutory order obtained under clause 8.1, the referral to or undertaking of a dispute resolution process under this clause 8 does not suspend the parties' obligations under this document.

## 9 Enforcement

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### 9.1 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 8 of this Agreement.

### 9.2 Transfer documents

- (a) Prior to the issue of an Occupation Certificate for any part of the Development, the Developer will deliver to Council:
  - (i) a direction to the Registrar-General, duly executed by the Developer, requiring the Registrar-General to deliver the certificates of title for the Units directly to the Council;
  - (ii) a form of transfer under the *Real Property Act 1900* for the purpose of the Unit Dedication when relevant strata lots are created, with the Developer named as transferor and Council named as transferee, properly executed by the Developer but with the description of land omitted, which omission Council is entitled to rectify by inserting the proper title reference to the Units that will be appropriate at the time of lodgement of the transfer; and
  - (iii) any other document (for example, a discharge of mortgage or withdrawal of caveat) in registrable form as is necessary to ensure that Council is able to

register the transfer of the land the subject of the Unit Dedication, or an irrevocable undertaking from the relevant person issuing the document that the document together with any certificates of title held by the person will be produced for registration on request for the purposes of the Unit Dedication under this Agreement.

- (b) If, at any time, certificates of title for the Units are provided, issued to or received by the Developer, the Developer must immediately provide the certificate of title to the Council, to be held by the Council until the Unit Dedication is effected in accordance with this Agreement.
- (c) The documents referred to in clause 9.2(a) and clause 9.2(b) are to be held by Council as security for the performance by the Developer of the obligations imposed on it under this Agreement.
- (d) If the Unit Dedication is not effected in accordance with this document, the Council may, at the Developer's cost, lodge for registration any or all of the documents referred to in clause 9.2(a) and clause 9.2(b), and call on any undertaking given in accordance with clause 9.2(a)(iii), so that Council can become the registered proprietor of the Units.
- (e) Until the Developer has performed its obligations under this document, it shall not lodge or suffer or cause to be lodged for registration any document that would, if registered cause any document held by Council under clause 9.2(a) and clause 9.2(b) incapable of being registered or obsolete.

### **9.3 Bank Guarantees**

#### **Monetary Contributions**

- (a) If the Developer elects to provide a Bank Guarantee for the Development instead of paying instalments of the Monetary Contribution as set out in clause 5.2(b), the Developer must provide to Council Bank Guarantees as follows:
  - (i) 25% of the Monetary Contribution payable in accordance with clause 5.2 upon the Instrument Change occurring; and
  - (ii) 50% of the Monetary Contribution payable in accordance with clause 5.2 prior to the issue of a Construction Certificate for the Development.
- (b) Subject to clause 9.3(i) the Council may apply the proceeds of a Bank Guarantee provided under clause 9.3(a) in satisfaction or partial satisfaction of the Developer's obligation to pay the Monetary Contribution in accordance with clause 5.2, together with any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement.
- (c) The Council must promptly return a Bank Guarantee provided under clause 9.3(a) if requested by the Developer and the Developer has paid the whole of the Monetary Contribution to Council.

#### **Works**

- (d) Prior to the issue of a Construction Certificate for any Works required by this Agreement, the Developer must provide to the Council a Bank Guarantee in an amount equivalent to the estimated cost of the Works and the estimated costs of dedicating the land on which the Works are located, as agreed between the Parties, acting reasonably.

- (e) Subject to clause 9.3(i), the Council or any person it authorises, may enter any part of the Land to carry out any part of the Works and may apply the proceeds of a Bank Guarantee provided under clause 9.3(d) towards:
  - (i) the costs of carrying out those Works;
  - (ii) the costs of effecting the Unit Dedication or the Land Dedication in accordance with clause 9.2 or clause 9.4;
  - (iii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement.
- (f) The Council must promptly return a Bank Guarantee provided under clause 9.3(d) to secure the provision of any Works if requested by the Developer and:
  - (i) a Certificate of Practical Completion has been issued for the item of Works to which the Bank Guarantee relates; and
  - (ii) the Developer has provided a Bond or Bank Guarantee for defects liability in accordance with the Construction Terms; and
  - (iii) if the Bank Guarantee relates to other items of Works for which a Certificate of Practical Completion has not been issued, a replacement Bank Guarantee is provided by the Developer in an amount determined by the Council acting reasonably, that is equivalent to the costs of constructing those other items of Works.
- (g) For the avoidance of doubt, the Developer may direct Council in writing to continue to hold a Bank Guarantee in satisfaction of the requirement to submit a Bank Guarantee or Bond for defects liability under the Construction Terms.

**Bank Guarantees Generally**

- (h) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Developer to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The Developer must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.
- (i) The Council may call on a Bank Guarantee provided under this clause if:
  - (i) the Developer is in material or substantial breach of this Agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 9.1 of this Agreement; or
  - (ii) the Developer becomes Insolvent.
- (j) Within 20 Business Days of each anniversary of a Bank Guarantee provided under this clause 9.3, the Developer must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**) in an amount calculated in accordance with the following:

$$A = \frac{B \times D}{C}$$



Where:

A is the amount of the Replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the Replacement Bank Guarantee,

provided A is greater than B.

- (k) On receipt of a Replacement Bank Guarantee provided under clause 9.3(j) the Council must release and return to the Developer, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (l) At any time following the provision of a Bank Guarantee under this clause, the Developer may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (m) Nothing in this clause 9.3 prevents or restricts the Council from taking any enforcement action in relation to:
  - (i) any obligation of the Developer under this Agreement; or
  - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement,

that is not or cannot be satisfied by calling on a Bank Guarantee.

#### 9.4 Compulsory Acquisition

- (a) If the Developer does not dedicate the Dedication Land to Council or grant the Easement as required by this Agreement, the Council may compulsorily acquire the relevant land or interest, in which case the Developer consents to the Council compulsorily acquiring that land or interest 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 call on any Bank Guarantee provided under clause 9.3(d) to cover any costs, including legal costs incurred by the Council on acquisition of the land or interest.
- (b) Clause 9.4(a) constitutes an agreement for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (c) The Developer must ensure the Dedication Land is freed and discharged from all estates, interests, trusts, restrictions, dedications, reservations, rights, charges, rates, strata levies and contracts, except as may be permitted by this Agreement on the date that the Council will acquire the land in accordance with clause 9.4(a).
- (d) The Developer and Land Owner must provide Council, or any person authorised by Council, access to the Land for the purposes of preparing any survey plan or any other document necessary for the compulsory acquisition of the Land.

- (e) 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 or interest under clause 9.4(a) that is not or cannot be recovered by calling on a Bank Guarantee.

## **9.5 Restriction on the issue of Certificates**

- (a) In accordance with section 109F of the Act and clause 146A of the Regulation:
  - (i) the obligation to pay the instalments of the Monetary Contribution under clause 5.2(b)(i) and (ii), or alternatively the provision of Bank Guarantees in accordance with clause 9.3(a), must be satisfied prior to the issue of a Construction Certificate for the Development;
  - (ii) a Construction Certificate must not be issued for any residential unit in excess of 350 units in the Development unless the cash contribution described in Table 2 item (b) of Schedule 2 is paid;
  - (iii) a Construction Certificate must not be issued for any work on the Easement Land unless the covenant required by clause 5.6(a)(i) has been registered; and
  - (iv) a Construction Certificate for the Works or any part of the Works must not be issued unless a Bank Guarantee has been provided to Council in accordance with clause 9.3(d).
- (b) In accordance with section 109H(2) of the Act the obligations to:
  - (i) complete the Works;
  - (ii) dedicate the Dedication Land;
  - (iii) grant the Easement, if that obligation arises in accordance with clause 5.6(d);
  - (iv) provide a Bank Guarantee or Bond for any item of the Works for defects liability under the Construction Terms; and
  - (v) provide the transfer documents for the Council Strata Lot required under clause 9.2 , must be satisfied prior to the issue of an Occupation Certificate for the Development or any part of the Development.

## **9.6 General enforcement**

- (a) Without limiting any other remedies available to the parties, this document may be enforced by any party in any court of competent jurisdiction.
- (b) Nothing in this document prevents:
  - (i) a party from bringing proceedings in the Land and Environment Court to enforce any aspect of this document or any matter to which this document 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 document or any matter to which this document relates.

## 10 Assignment and transfer

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- (a) The parties must not assign or otherwise transfer their rights under this document without the prior written consent of the other party.
- (b) The Land Owner must not assign, transfer or dispose of any right, title or interest in the Land to another person or entity (**Transferee**) unless:
  - (i) the Land Owner satisfies Council that the proposed Transferee is financially capable of complying with the Land Owner's and Developer's obligations under this document;
  - (ii) the Land Owner satisfies 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 document;
  - (iv) the Transferee delivers to the Council replacement Bank Guarantees as required by this Agreement;
  - (v) any default under any provisions of this document has been remedied by the Developer or waived by the Council on such conditions as the Council may determine; and
  - (vi) the Land Owner and the Transferee pay the Council's reasonable costs in relation to the novation deed and the assignment.

## 11 Review

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### 11.1 Review after Instrument Change

- (a) If, within 10 Business Days of the Instrument Change, the Developer notifies Council that it considers the Instrument Change is not generally consistent with the Planning Proposal, the Parties agree to review the terms of this Agreement, in the circumstances and in the manner determined by the parties.
- (b) The parties agree that the objective of any review in accordance with clause 11.1(a) is to ensure that the contributions provided under this Agreement are commensurate with the benefits received by the Developer and the development potential of the land consequent on the Instrument Change.
- (c) Any dispute regarding a notice issued by the Developer or any stage of the review required by this clause 11.1 may be referred by either party for dispute resolution in accordance with clause 8.

## 12 No fetter

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### 12.1 Discretion

This document 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 Instrument Change or the granting of Development Consent for the Development (all referred to in this document as a '**Discretion**').

### 12.2 No fetter

No provision of this document is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this document 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 clause 12.2(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 document has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this document which is to be held to be a fetter to the extent that is possible having regard to the relevant court judgment.

## 13 Notices

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### 13.1 Notices

Subject to clause 13.2, any notice given under or in connection with this document (**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 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 document:

|                  |                                |
|------------------|--------------------------------|
| <b>Name</b>      | City of Parramatta Council     |
| <b>Attention</b> | The Chief Executive Officer    |
| <b>Address</b>   | PO Box 32, Parramatta NSW 2124 |
| <b>Fax</b>       | 02 9806 5917                   |

|                  |                               |
|------------------|-------------------------------|
| <b>Name</b>      | Airbosi Pty Limited           |
| <b>Attention</b> | Evian Delfabbro               |
| <b>Address</b>   | PO Box 3219 Wareemba NSW 2046 |
| <b>Fax</b>       | 02 8241-5699                  |





|                  |  |
|------------------|--|
| <b>Name</b>      | Sitana Pty Limited                       |
| <b>Attention</b> | Brian Roddy                              |
| <b>Address</b>   | 10 Crown Street, Woolloomooloo, NSW 2011 |
| <b>Fax</b>       | 02 9358-4046                             |

|                  |  |
|------------------|--|
| <b>Name</b>      | Brodieville Pty Limited                  |
| <b>Attention</b> | Brian Roddy                              |
| <b>Address</b>   | 10 Crown Street, Woolloomooloo, NSW 2011 |
| <b>Fax</b>       | 02 9358-4046                             |

- (c) is taken to be given and 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 13.1(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 4.00pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

### 13.2 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 document;
  - (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this document; and
  - (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:

|                  |                              |
|------------------|------------------------------|
| <b>Name</b>      | City of Parramatta Council   |
| <b>Attention</b> | The Chief Executive Officer  |
| <b>Email</b>     | council@parracity.nsw.gov.au |

|                  |                             |
|------------------|-----------------------------|
| <b>Name</b>      | Airbosi Pty Limited         |
| <b>Attention</b> | Evian Delfabbro             |
| <b>Email</b>     | evian.delfabbro@bigpond.com |

|                  |                    |
|------------------|--------------------|
| <b>Name</b>      | Sitana Pty Limited |
| <b>Attention</b> | Brian Roddy        |
| <b>Email</b>     | rroddy@bigpond.com |

|                  |                         |
|------------------|-------------------------|
| <b>Name</b>      | Brodieville Pty Limited |
| <b>Attention</b> | Brian Roddy             |
| <b>Email</b>     | rroddy@bigpond.com      |

- (b) The recipient of a Notice served under this clause 13.2 must:
- (i) promptly acknowledge receipt of the Notice; and
  - (ii) keep an electronic copy of the Notice.
- (c) Failure to comply with clause 13.2(b) does not invalidate service of a Notice under this clause.

### **13.3 Receipt of Notices sent by email**

- (a) A Notice sent under clause 13.2 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 13.3(a) 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 4.00pm (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.

## **14 General**

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### **14.1 Amendments**

This document may only be amended by written agreement between all parties.

### **14.2 Counterparts**

This document may be signed in any number of counterparts. All counterparts together make one instrument.

### 14.3 No merger

The rights and obligations of the parties under this document do not merge on completion of any transaction contemplated by this document.

### 14.4 Entire agreement

- (a) This document supersedes all previous agreements about its subject matter. This document embodies the entire agreement between the parties.
- (b) To the extent permitted by law, any statement, representation or promise made in any negotiation or discussion, is withdrawn and has no effect except to the extent expressly set out or incorporated by reference in this document.
- (c) Each party acknowledges and agrees that it does not rely on any prior conduct or representation by the other party in entering into this document.

### 14.5 Further assurances

Each party must do all things reasonably necessary to give effect to this document and the transactions contemplated by it.

### 14.6 No waiver

- (a) The failure of a party to require full or partial performance of a provision of this document does not affect the right of that party to require performance subsequently.
- (b) A single or partial exercise of or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy.
- (c) A right under this document may only be waived in writing signed by the party granting the waiver, and is effective only to the extent specifically set out in that waiver.

### 14.7 Governing law and jurisdiction

- (a) New South Wales law governs this document.
- (b) Each party irrevocably submits to the non-exclusive jurisdiction of the New South Wales courts and courts competent to hear appeals from those courts.

### 14.8 Severability

- (a) A clause or part of a clause of this document that is illegal or unenforceable may be severed from this document and the remaining clauses or parts of the clause of this document continue in force.
- (b) If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this document in the relevant jurisdiction, but the rest of this document will not be affected.

### 14.9 Representations and warranties

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

#### 14.10 Legal expenses

- (a) The Developer must pay the Council's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this Agreement, including the reasonable costs of obtaining any legal advice in connection with this Agreement, no later than 30 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Developer agrees to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this Agreement in accordance with the Act.
- (c) The Developer agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this Agreement.

#### 14.11 GST

- (a) Words and expressions which are not defined in this document 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 document are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this document, 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) For the avoidance of any doubt the parties agree that Contributions are exempt from GST.
- (e) If the Council is obligated 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 it is required to make.

#### 14.12 Relationship between parties

- (a) Nothing in this document:
  - (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.

#### **14.13 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 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 5.00pm on the specified day, it is taken to have been done on the following Business Day.

#### **14.14 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.



## Schedule 1 Land

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The Land is made up of 15 allotments and fronts Parramatta Road, Good Street and Cowper Street in Granville and comprises the following allotments:

- Lot 1 DP783581 (61 Cowper Street, Granville)
- Lot 12 DP575064 (142 Parramatta Road, Granville)
- Lot 1 DP1075357 (138 Parramatta Road, Granville)
- Lot 2 DP1075357 (138 Parramatta Road, Granville)
- Lot 3 DP1075357 (138 Parramatta Road, Granville)
- Lot 4 DP1075357 (138 Parramatta Road, Granville)
- Lot 5 DP1075357 (138 Parramatta Road, Granville)
- Lot 6 DP1075357 (138 Parramatta Road, Granville)
- Lot 1 DP604204 (26 Good Street, Granville)
- Lot 7 Sec A DP979437 (38 Good Street, Granville)
- Lot 1 DP721626 (134 Parramatta Road, Granville)
- Lot 1 DP76041 (32 Good Street, Granville)
- Lot 1 DP998948 (59 Cowper Street, Granville)
- Lot 1 Sec A DP979437 (38 Good Street, Granville)
- Lot 2 Sec A DP979437 (38 Good Street, Granville)

## Schedule 2 Contributions

### Table 1. Land Dedication

Dedication of the following land to Council:

- a) That part of the Land required to establish a 6 metre setback from the existing road kerb, for the whole of the Land fronting Parramatta Road; (**Parramatta Road Land**),
- b) That part of the Land required to establish a 2.8 metre setback from the existing road kerb, for the whole of the Land fronting Good Street (**Good Street Land**), and
- c) That part of the Land constituting a vehicular laneway linking Bold and Cowper Streets (**Bold and Cowper Street Land**),

generally as shown on the plan at Annexure A.

### Table 1A. Easement Land

Grant of an easement for public access in accordance with the Easement Terms over a through pedestrian laneway linking Parramatta Road and Cowper Street (Parramatta Road and Cowper Street Land) generally as shown on the plan at Annexure A.

### Table 2. Cash Contribution

Payment of the following cash contributions (adjusted in accordance with increases in the CPI as required by this Agreement):

- a) \$400,000,00.00 to Council; and
- b) a cash contribution of \$5,000.00 for every additional residential unit which is approved to be developed on the Land in excess of 350 residential units.

### Table 3. Unit Dedication

Three (3) x Two 2 bedroom units within the Development for affordable housing constructed, fitted out and dedicated to Council. Each unit will contain two bedrooms, at least one bathroom, plus storage area, kitchen, lounge area and laundry (or laundry cupboard). The strata title for each unit shall include one basement car space.

| <b>Table 4. Timing of contribution, dedication of land, grant of easement, carspace</b>   |  |  |
|---|--|--|
| <b>Purpose of Development Contribution</b>  | <b>Development Contribution</b>  | <b>Date for making Development Contribution</b>  |
| Dedication of land for pedestrian amenity and public road purposes  | The embellishment and dedication of the Dedication Land to Council in accordance with clause 5.3 and clause 5.4.   | Works and Land Dedication are to be completed in accordance with clause 5.3 and clause 5.4 prior to the issue of any Occupation Certificate for the Development.   |
| Provision of cash contribution towards works that meet the infrastructure demands and other needs of the community as identified within the Parramatta Road Urban Transformation Strategy | <ol style="list-style-type: none"> <li>1. Payment to Council of \$400,000.00 indexed in accordance with clause 5.2 of this Agreement.</li> <li>2. Payment of \$5,000.00 per unit in excess of 350 units which are approved to be developed, increased in accordance with increases in the CPI from the date of this Agreement to the date of payment.</li> </ol> | <ol style="list-style-type: none"> <li>1. Payment is to be made in accordance with clause 5.2 of this Agreement.</li> <li>2. Payments for additional units are to be made prior to the issue of a Construction Certificate being issued for these additional units.</li> </ol> |
| Affordable Housing  | Construction, fit-out and dedication to Council, at no cost to the Council, of the Units.  | Works and Unit Dedication to be completed in accordance with clause 5.5.   |
| Pedestrian accessibility and amenity  | The embellishment of the Easement Land and the creation of a covenant restricting buildings and an easement over the pedestrian laneway linking Parramatta Road and Cowper Street.   | Covenant and easement to be registered in accordance with clause 5.6.  |



## Schedule 3 Easement Terms

### **Easement A – Proposed Pedestrian Laneway Linking Parramatta Road and Good Street**

- 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 companion animals (as defined in the Companion Animals Act 1998) or other small pet animals; and
  - (b) on foot without vehicles (other than wheelchairs or other disabled access aids), unless vehicles are being used to access the building on the Land via clearly identified entry and exit points;
 for all lawful purposes.
- 2 The owner of the Easement Land must, to the satisfaction of Council, acting reasonably:
  - (i) keep the Easement Land (including any services in, on or under the Easement Land) in good repair and condition;
  - (ii) maintain and repair the Easement Land and all improvements on the Easement Land;
  - (iii) keep the Easement Land clean and free from rubbish; and
  - (iv) maintain sufficient public liability insurance covering the use of the Easement Land in accordance with the terms of this Easement.
- 3 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.
- 4 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.
- 5 The owner of the Easement Land may erect safety signage and any other appropriate signage and may erect CCTV cameras in the Easement Land.
- 6 The owner of the Easement Land may engage security personnel to monitor and control the behaviour of the public 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.
- 7 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 temporarily 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.
- 8 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:

- (c) Carry out works in the Easement Land for the purposes of enhancing the Easement Land;
  - (d) 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 within the Easement Land; and
  - (e) 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.
- 9 The Council is solely empowered to release this Easement.
- 10 This Easement may only be varied by written agreement between the Council and the owner of the Easement Land.

## Schedule 4 Works

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For the purposes of this Schedule 4, the terms "Parramatta Road Land", "Good Street Land" and "Bold and Cowper Street Land"; have the same meaning as in Table 1 of Schedule 2.

### 1 Works to Construct and Fit-Out the Units

Subject to final design, construction and fit-out of the Units including, but not limited to, the following:

- (a) A single car space plus storage area
- (b) Kitchen cupboards, bench tops and splashbacks
- (c) Kitchen sink, cooktop, oven, range hood, refrigerator and dishwasher
- (d) Bathroom vanity with taps and mixers and mirror
- (e) Shower, shower screens and bath (if final design allows) in bathroom with taps and mixers
- (f) Toilet suites
- (g) In built wardrobes in bedrooms
- (h) All doors and door hardware
- (i) Carpeting, tiling or other flooring throughout as agreed
- (k) BCA compliant wall systems with plasterboard, sheeting and painting (at least one undercoat and two top coats)
- (l) Plasterboard ceilings
- (m) Framed windows and sliding doors
- (n) Electrical, lighting and data connections throughout including two double GPO's to kitchen; hard wired power connections as required to all appliances; power connections to living room, bedrooms and laundry as required; telephone, internet, TV and Pay TV points to living room and bedrooms as required; access controls to common area doors; security intercom (video if available); lighting throughout.
- (o) Air conditioning if available
- (p) Laundry tub, washing machine and dryer in laundry space or cupboard

At the time of making this Agreement no design plans are available to the Developer. As such it is not possible to provide a detailed schedule of finishes for the Unit Dedication. The design of the Units will comply with the requirements of the NSW Department of Planning and Environment Apartment Design Guidelines 2015 as amended from time to time. This will include provision of adequate ventilation and solar access for the Units.

The Developer warrants that the units in the Unit Dedication will be situated throughout the Development and will be fit for the purpose of residential accommodation. In addition to the items specified above, the Units will be completed and finished to the same standard as all units available for sale to the general public. This includes flooring, appliances, light fittings, paint, fixtures, fittings and joinery.

The Developer agrees to consult Council about the design, location and proposed finishes of the Units in accordance with the Construction Terms.

**2 Works to the Barn on the Parramatta Road Land**

Works to deconstruct and reconstruct the façade of the Barn so that no part of the Barn is located on the Parramatta Road Land. Such works will include but are not limited to survey, design, obtaining all necessary approvals, engineering, demolition, earthworks, relocation of utilities and construction works.

**3 Works to Embellish the Parramatta Road Land and Good Street Land**

Works including but not limited to survey, design, engineering, demolition, earthworks, relocation of utilities, installation of lighting and construction works necessary to embellish the Parramatta Road Land and the Good Street Land so that the subject land is:

- (a) accessible and suitable for use by the public as a footpath;
- (b) consistent with the public domain; and
- (c) at grade flush with the adjacent public footpath.

All such works to be carried out in accordance with any Development Control Plan applying to the Land, any Development Consent granted for the Works and Council's public domain manuals and codes, including any technical requirements for footpaths.

**4 Works to construct a public road on the Bold and Cowper Street Land**

Works including but not limited to survey, design, engineering, demolition, earthworks, relocation of utilities and construction works necessary to construct a public road on the Bold and Cowper Street Land. All such works to be carried out in accordance with any Development Control Plan applying to the Land, any Development Consent granted for the Works and Council's public domain manuals and codes, including any technical requirements for footpaths.

**5 Works to Embellish the Easement Land**

Works including but not limited to survey, design, engineering, demolition, earthworks, relocation of utilities, installation of lighting and construction works necessary to embellish the Easement Land so that the subject land is:

- (a) accessible and suitable for use by the public as a pedestrian thoroughfare;
- (b) open to the sky with no over-hanging building elements, with the exception of approved building elements;
- (c) located at natural ground level;
- (d) activated at natural ground level;
- (e) overlooked and suitably lit;
- (f) consistent with the public domain;
- (g) at grade flush with the adjacent public footpath; and
- (h) named in accordance with Council approval and appropriately signed.

All such works to be carried out in accordance with any Development Control Plan applying to the Land, any Development Consent granted for the Works and Council's public domain manuals and codes, including any technical requirements for footpaths.

## Schedule 5 Construction terms

### 1 Interpretation

For the purposes of this Schedule 5, the defined terms in clause 1 of this Agreement and the Interpretation principles in clause 1.2 of this Agreement will apply and, unless context indicates a contrary intention:

**Builder** means any entity contracted under the Construction Contract to carry out the Works.

**Construction Contract** means the contract to carry out the Works (whether or not that is a contract for the Works only or forms part of a contract for the building of other components of the Development).

**Defects Liability Period** means in respect of each item of building works which together comprise the Works the period of 12 months from the date on which the Certificate of Practical Completion is issued for the Works.

**Detailed Design** means the final specifications and finishes for the Works prepared in accordance with clause 5 of this Schedule 5 and will include the design of the Works, the location for the Works, installation specifications and estimated costs of construction and/or installation.

**Services** means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a development consent within the meaning of the Act or an Approval and which are necessary or desirable for the construction or operation of the Development.

**Superintendent** means the Superintendent appointed under any Construction Contract.

### 2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to:

- (a) any requirements or conditions of any Development Consent;
- (b) the requirements of and conditions imposed by all relevant Authorities and all Laws relating to the Development and the construction of the Development.

2.2 If the Developer requires any Approvals in order to carry out the obligations under this Agreement, then the Developer will acquire all Approvals necessary to carry out the Works at its own cost.

2.3 The Developer must ensure that the Works carried out under this Agreement are carried out:

- (a) in accordance with the relevant Development Consent for the Works and all Approvals and the requirements of all Laws, including without limitation, work health and safety legislation; and
- (b) in a good and workmanlike manner and so that they are diligently progressed until completion;

AND it is acknowledged that to the extent that there is any inconsistency between this Agreement and any Approval the terms of the Approval shall take precedence.

### 3 Costs of Works

All costs of the Works must be borne by the Developer.

### 4 Project Management and Contractor Engagement

- 4.1 The Developer will be responsible for managing the Works.
- 4.2 The Developer will ensure that any contractor it engages to carry out the Works agrees to:
  - (a) carry out the Developer's obligations in these Construction Terms as part of any Construction Contract; and
  - (b) request a Council representative to be present at each on-site meeting attended by the Superintendent and to ensure the Council representative is present at the meeting.

**5 Design Development and Approvals**

**5.1 Detailed Design**

- (a) Prior to submitting any Development Application for any part of the Works, the Developer must provide a copy of the draft Detailed Design to the Council for approval.
- (b) Within 28 Business Days of receiving the Detailed Design, Council will respond to the Developer with any suggested amendments to the Detailed Design including any amendments to the proposed layout, location, fit-out and finishes of the Units.
- (c) Council and the Developer must work in consultation with each other to prepare and agree to the Detailed Design and must both act reasonably and with due expedition in their consultations with each other.
- (d) If the Detailed Design is not completed and agreed within 28 Business Days of Council providing its suggested amendments in accordance with clause 5.1(b) of this Schedule, the Council will, in its sole discretion, be entitled to decide on any outstanding or undecided matter or item relating to areas that are to be accessible to the public, provided that any decision made by Council under this clause:
  - (i) is consistent with the obligation to carry out the Works and effect the Land Dedication or the Unit Dedication under this Agreement;
  - (ii) does not materially and adversely affect the Development; and
  - (iii) is not unreasonable.
- (e) Any acceptance by the Council of the Detailed Design under this clause 5.1 is not to be taken as approval of or to any Development Application or Construction Certificate for the Works.

**5.2 Good faith**

The parties must act promptly and in good faith to consult in relation to the Detailed Design.

**6 Carrying out of Works**

**6.1 Communication**

The Developer must keep Council reasonably informed of progress of the Works and provide to Council such information about the Works as Council reasonably requests.

**6.2 Standard of Works**

- (a) Unless otherwise provided, the Developer shall, and must cause the Builder to, use suitable new materials and proper and tradesmanlike workmanship when carrying out the Works.

- (b) The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
  - (i) Any relevant Australian Standard;
  - (ii) Any relevant design standards or guidelines and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this Agreement.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 6.2(b)(ii) of this Schedule 5 from Council if the Council fails to deliver them to the Developer.
- (d) The Developer may but is not obliged to reinstate any Works where damage or destruction is as a result of:
  - (i) Any act or omission of the Council or its employees, consultants or agents relating to any part of the Works under this Agreement; or
  - (ii) The use or occupation by the Council or its employees, consultants or agents, Council's representatives or other contractor of the Council of any part of the Works.

### 6.3 Damage to people, property & utilities

- (a) The Developer is to ensure to the fullest extent reasonably practicable that, in performing its obligations under this Agreement:
  - (i) all necessary measures are taken to protect people and property;
  - (ii) unnecessary interference with the passage of people and vehicles is avoided; and
  - (iii) nuisances and unreasonable noise and disturbances are prevented.
- (b) Without limiting clause 6.3(a) of this Schedule, the Developer is not to obstruct, interfere with, impair or damage any public road, public footpath, public cycleway or other public thoroughfare, or any pipe, conduit, drain, watercourse or other public utility or service on any land except as authorised in writing by the Council or any relevant Authority.

## 7 Inspection

- (a) On completion of the Detailed Design, the Council will provide a schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at specified stages of the construction of the Works (**Inspection Stage**). If the Council does not provide the Inspection Schedule, the Developer must request the Inspection Schedule from the Council prior to the Works commencing.
- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspection Schedule, the Developer must notify the Council of the proposed inspection date (**Inspection Date**).
- (c) On the Inspection Date, or other agreed date, the Developer must ensure that any employees, contractors, agents or representatives of Council have access to and may enter the Land to inspect the Works.

- (d) In addition to carrying out inspections in accordance with the Inspection Schedule, the Council may enter the Land or any part of the Land on which the Works are located to inspect the progress of the Works, subject to:
  - (i) the terms of the Construction Contract (save for any clause of the Construction Contract which prevents the Council from accessing the Land);
  - (ii) giving reasonable notice to the Developer;
  - (iii) complying with all reasonable directions of the Developer; and
  - (iv) being accompanied by the Developer or a nominee, or as otherwise agreed.
- (e) The Council may, acting reasonably, within 5 Business Days of carrying out an inspection (either under clause 7(c) or 7(d) of this Schedule), notify the Developer of any defect or non-compliance in the Works and direct the Developer to carry out work to rectify that defect or non-compliance within a reasonable period of time. Such work may include, but is not limited to:
  - (i) removal of defective or non-complying material;
  - (ii) demolishing defective or non-complying work;
  - (iii) reconstructing, replacing or correcting any defective or non-complying work; and
  - (iv) not delivering any defective or non-complying material to the site of the Works.
- (f) If the Developer is issued a direction to carry out further work under clause 7(e) of this Schedule, the Developer must, at its cost, rectify the defect or non-compliance specified in the Notice within the time period specified in the Notice, provided that it is reasonable having regard to the nature of the works.
- (g) If the Developer fails to comply with a direction to carry out work given under 7(e) of this Schedule, the Council will be entitled to refuse to accept that the Works (or the relevant part of the Works) meet the Council's standards and specifications and may refuse to issue a Certificate of Practical Completion, until the required Works have been completed to the Council's satisfaction, acting reasonably.
- (h) For the avoidance of doubt, any acceptance by the Council that the Developer has rectified a defect or non-compliance identified in a notice issued under clause 7(e) of this Schedule does not constitute:
  - (i) acceptance by the Council that the Works comply with all Approvals and Laws; or
  - (ii) an Approval by the Council in respect of the Works; or
 an agreement or acknowledgment by the Council that the Works or the relevant part of the Works are complete and may be delivered to the Council in accordance with this Agreement.

## **8 Completion**

### **8.1 Practical Completion**

- (a) When the Developer considers that the Works, or any part of the Works, are complete, the Developer must send a Notice to the Council accompanied by complete works as executed plans, any relevant certificates or consents of any public utility authority and a request for written certification from the Council that the Works are complete.



- (b) Within 10 Business Days of receipt of the notice under clause 8.1(a) of this Schedule 5, the Council will carry out an inspection of the Works and will, acting reasonably, either:
  - (i) provide written certification to the Developer that the Works have been completed; or
  - (ii) notify the Developer of any additional information required or matters which must be addressed by the Developer prior to the certification being issued.
- (c) If the Developer is required to provide additional information or address any matters under clause 8.1(b)(ii) of this Schedule 5, the Developer will provide that information to Council or address those matters within 10 Business Days of receiving the notice or within a reasonable period of time and make a further request under clause 8.1(a) of this Schedule 5 for written certification that the Works have been completed.
- (d) Practical completion will be achieved in relation to the Works or any part of the Works when a Certificate of Practical Completion has been issued for those Works.

## 8.2 Delivery of documents

- (a) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works deliver to the Council, complete and legible copies of:
  - (i) all "as built" full-sized drawings, specifications and relevant operation and service manuals;
  - (ii) all necessary certificates including the certificates of any consultants of the Developer that the Council may reasonably require, and Approvals of any public utility authority (where relevant); and
  - (iii) copies of all Approvals required for use of the land subject to the Works.
- (b) The Developer must as soon as practicable, and no later than 20 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Works or any part of the Works, provide the Council with a tour of the land subject to the Works and provide reasonable instructions on the operation and use of the Services on that land.

## 8.3 Assignment of Warranties and Causes of Action

- (a) The Developer must assign (as beneficial owner) or cause to be assigned to Council the benefit of any warranties and guarantees obtained by the Developer and the Builder (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Works.
- (b) To the extent that any such warranties or guarantees cannot be assigned, the Developer must at the request of Council do anything reasonably required by Council to enforce such warranties or guarantees for the benefit of Council.

## 8.4 Defects Liability Period

- (a) During the Defects Liability Period, the Council (acting reasonably) may give to the Developer a notice (**Rectification Notice**) in writing that identifies a defect in the Works and specifies:
  - (i) action required to be undertaken by the Developer to rectify that defect (**Rectification Works**); and
  - (ii) the date on which the defect must be rectified (**Rectification Date**).



- (b) The Developer must comply with the Rectification Notice by:
  - (i) procuring the performance of the Rectification Works by the Rectification Date, or such other date as agreed between the parties;
  - (ii) keeping the Council reasonably informed of the action to be taken to rectify the defect; and
  - (iii) carrying out the Rectification Works.
- (c) The Council must give the Developer and its contractors any access required to carry out the Rectification Works.
- (d) When the Developer considers that the Rectification Works are complete, either the Developer must notify the Council and provide documentation, plans or invoices which establish that the Rectification Works were carried out.
- (e) The Council may inspect the Rectification Works within 15 Business Days of receiving a Notice from the Developer under clause 8.4(d) of this Schedule 5 and, acting reasonably:
  - (i) issue a further Rectification Notice if it is not reasonably satisfied that the Rectification Works are complete; or
  - (ii) notify the Developer in writing that it is satisfied the Rectification Works are complete.
- (f) The Developer must meet all costs of and incidental to rectification of defects under this clause 8.4.
- (g) If the Developer fails to comply with a Rectification Notice, then the Council may do such things or take such action as is necessary to carry out the Rectification Works, including accessing and occupying any part of the Land without further notice to the Developer, and may:
  - (i) call upon any Bond or Bank Guarantee provided to the Council under clause 8.5 of this Schedule 5 to meet its costs of carrying out Rectification Works; and
  - (ii) recover as a debt due to the Council by the Developer in a court of competent jurisdiction, any difference between the amount of the security deposit and the costs incurred by the Council in carrying out Rectification Works.
- (h) The Developer must request that Council inspect the Works 28 days prior to the end of the Defects Liability Period. The Council must inspect the Works at any time after receiving the request from the Developer and before to the end of the Defects Liability Period.
  - (i) If, prior to the end of the Defects Liability Period:
    - (i) the Developer fails to request the inspection, or
    - (ii) the Council does not carry out the inspection,
 the Council may extend the Defects Liability Period so that the inspection may be carried out.

#### 8.5 Security for Defects Liability

- (a) Prior to the issue of a Certificate of Practical Completion for each item of the Works the Developer must deliver to the Council Bonds or Bank Guarantees in an amount equivalent to 2.5% of the construction costs for the particular item of Works.

- (b) The Developer advises and the Council acknowledges its awareness that the Bonds or Bank Guarantees may be supplied by the Builder and form a part of the security held by the Developer from the Builder under the terms of the Construction Contract, provided that:
  - (i) any Bond or Bank Guarantee provided by the Builder benefits the Council and satisfies the requirements of this Agreement; and
  - (ii) the Developer procure an agreement from the Builder that the Council will be entitled to call on any Bond or Bank Guarantee provided by the Builder, in accordance with the terms of this Agreement and the terms of any Construction Contract.
- (c) Within 10 Business Days after the Defects Liability Period for a particular item of Works has expired Council must (if it has not called on it) return the Bond or Bank Guarantee referred to in clause 8.5(a) of this Schedule 5 for that item of Works (or any remaining balance of it) to the Developer.
- (d) Notwithstanding clause 8.5(c) of this Schedule 5, if during the Defects Liability Period for a particular item of Works, the Council issues a Rectification Notice and the Rectification Notice is not complied with, then the Council need not deliver the balance of any Bonds or Bank Guarantees provided to it until that defect has been rectified.
- (e) The Council must deliver the balance of any Bond or Bank Guarantee for the Defects Liability Period to the Developer within 14 days after the Defects Liability Period has ended.

**9 Risk**

The Developer undertakes the Works entirely at its own risk.

**10 Insurance**

- (a) Prior to the commencement of the construction of any of the Works, the Developer must ensure the Builder effects and the Developer must produce evidence to the Council of the following insurances issued by an insurer approved by the Council (acting reasonably) in a form approved by the Council (acting reasonably):
  - (i) construction works insurance for the value of the Works;
  - (ii) public risk insurance for at least \$20 million;
  - (iii) workers compensation insurance as required by Law.
- (b) The Developer must provide evidence of currency of insurance required by clause 10(a) of this Schedule 5 upon request by the Council, acting reasonably, throughout the term of this Agreement.

**11 Indemnities**

The Developer indemnifies the Council, its employees, officers, agents and contractors from and against all Claims in connection with the carrying out by the Developer of the Works except to the extent such Claim arises either directly or indirectly as a result of the Council or its employees, officers, agents, contractors or workmen's negligence, default, act or omission.

**12 Intellectual Property Rights**

The Council acknowledges that the Developer or its contractors hold all rights to copyright and any intellectual property which may exist in the Works. To the extent the Developer have or receive intellectual property rights for the Works, the Developer shall assign those intellectual property rights to Council or permit use thereof.

**13 Risk of contamination**

- (a) The Developer acknowledges and agrees:
  - (i) that it is responsible for the management and remediation of any contamination present upon or under the land on which the Works are to be carried out;
  - (ii) it will attend to any necessary remediation at its own costs; and
  - (iii) to the fullest extent permitted by Law indemnify and release the Council from any Claim which might arise from any contamination with respect to the land on which the Works are to be carried out.
- (b) Prior to the dedication of any part of the Land to Council, the Developer must provide to Council's reasonable satisfaction, certification by a qualified person, that the land is not contaminated and is suitable for the proposed use.

**14 Plans**

The parties acknowledge and agree that further detail and refinement of plans and documents in connection with this Agreement may be necessary having regard to the following matters:

- (a) matters affecting Works not capable of identification on or before the date of this Agreement; or
- (b) by agreement between the parties.

## Execution

EXECUTED as an agreement

Signed for and on behalf of  
City of Parramatta Council ABN 49 907 174 773 in  
accordance with a resolution of the Council  
dated / /20 by:

^ A Wilson  
Signature of

^ [Signature]  
Signature of

^ ANDREW ARTHUR WILSON  
Full name of Lord Mayor

^ GEOFFREY CHARLES DYER  
Full name of Chief Executive Officer

Executed by Airbosi Pty Ltd ACN 075 674 690  
on / /20 by:

^ [Signature]  
Director

^ G. E. Roddy  
Director/Secretary

^ Erivan Linda Delfabbro  
Full name of Director

^ GEOFFREY EDWARD RODDY  
Full name of Director/Secretary

Executed by Sitana Pty Ltd ABN 49 093 102 179  
on / /20 by:

^ [Signature]  
Director

^ G. E. Roddy  
Director/Secretary

^ BRIAN Roddy  
Full name of Director

^ GEOFFREY EDWARD RODDY  
Full name of Director/Secretary

Executed by Brodieville Pty Ltd  
ABN 68 107 201 482  
on     /     /20     by:

^ Brian Roddy  
Director

^ G. E. Roddy  
Director/Secretary



^ BRIAN Roddy  
Full name of Director

^ GEOFFREY EDWARDS RODDY  
Full name of Director/Secretary



**ANNEXURE A**



-  LAND DEDICATION
-  EASEMENT LAND

Handwritten initials or a signature in the bottom right corner of the page.