

COMMUNITY CENTRE WORKS AGREEMENT

AGREEMENT DATED

PARTIES

1. **CITY OF PARRAMATTA COUNCIL** (ABN 49 907 174 773) of 126 Church Street, Parramatta NSW 2150 ("**Council**")
2. **KARIMBLA PROPERTIES (NO. 51) PTY LTD** ABN 95 168 601 250 of Level 11, 528 Kent Street, Sydney NSW 2000 ("**Developer**")

RECITALS

- A. The Developer is the owner of the Land.
- B. On 8 November 2019 and 16 December 2020 the Developer and the Minister for Planning and Public Spaces entered into a Planning Agreement that requires the Developer to carry out and complete the Community Centre and transfer the stratum land containing the Community Centre to Council.
- C. The parties have agreed that the Developer will carry out the Community Centre Works on the terms set out in this Agreement.

OPERATIVE PROVISIONS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

The following meanings apply to capitalised terms used in this Agreement unless the context otherwise requires:

Agreement means this Community Centre Works Agreement, including all schedules, attachments and annexures.

Approvals means any certificates, licences, consents, permits, approvals or other requirement of any Government Agency.

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council and may include an insurance bond from an insurer reasonably acceptable to Council on terms and conditions reasonable acceptable to Council.

Business Day means a day (other than a Saturday, Sunday or public holiday) on which banks are open for general banking business in Sydney.

Certificate of Practical Completion means a written certificate confirming that the Community Centre has been completed to Council's satisfaction (acting reasonably).

Construction Terms means the terms and conditions set out in Schedule 3.

Community Centre means the cold shell of a community centre with a minimum area of 1000 square metres predominantly on the street level of a building that is part of the Development, and includes all associated plantrooms, metering rooms and storage areas and which must satisfy the functional requirements identified in Schedule 4.

Community Centre Stratum Lot means a single stratum lot created within a building to be constructed on the Land having an area that accommodates the Community Centre in accordance with the relevant guidelines from NSW Land Registry Services.

Community Centre Works means any building, engineering or construction work in, on, over or under land carried out by the Developer necessary to construct the Community Centre in accordance with Community Centre Works Plan and which must satisfy the functional requirements identified in Schedule 4 .

Community Centre Works Plans means the plan attached this agreement in Schedule 2 and which must satisfy the functional requirements identified in Schedule 4.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land, excluding the selling or transferring of a Lot within the Land created under the Strata Schemes Act

Defects means any defect, deficiency, fault, error or omission in the relevant Community Centre Works and anything that adversely affects, or is likely to adversely affect the appearance, structural integrity or use and enjoyment of the Community Centre Works but excludes any intentional damage to the extent that it is caused by the Council or any other person other than the Developer or the Developer's employees, invitees, agents or contractors.

Defects Liability Period means the period of 12 months from the date on which a Certificate of Practical Completion is issued by Council.

Development has the meaning ascribed to that term under the Planning Agreement.

GST has the same meaning as in the GST Law.

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

Land means the land described in Item 3 of Schedule 1.

Minister means the Minister for Planning and Public Spaces.

Planning Agreement means the planning agreement between the Minister for Planning and Public Spaces and the Developer dated 8 November 2019 and 16 December 2020.

Practical Completion means that the Community Centre Works have been substantially completed to Council's satisfaction (acting reasonably) and Council has issued a Certificate of Practical Completion in accordance with clause 8 of Schedule 3.

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

Subsisting Breach means any breach by the Developer in the performance of its obligations under this document which is not rectified within 14 days of written notice of the breach being provided to the Developer by Council.

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

Transferee has the meaning given in clause 8(d).

Works Security Amount has the meaning given in clause 11(a).

1.2 Interpretation

The following rules of interpretation apply to this Agreement unless the context otherwise requires:

- (a) headings and subheadings are for convenience only and do not affect interpretation; and
- (b) words denoting the singular number include the plural, and the converse also applies; and
- (c) words denoting any gender include all genders; and
- (d) a reference to a person includes a natural person, company, corporation, trust, partnership, joint venture, or any other incorporated or unincorporated body, society, association or entity; and
- (e) a reference to a party in this Agreement includes its successors and permitted assigns and substitutes by way of assignment or novation; and
- (f) a reference to **legislation**, includes any State or Federal statute, enactment, ordinance, code or other legislation, or a section or provision of that legislation, includes any order, regulation, rule, bylaw, proclamation or statutory instrument made or issued under that legislation

and any amendment, modification, consolidation, re-enactment or replacement of, or substitution for, that legislation from time to time; and

- (g) any term or expression defined in any legislation has the statutory meaning given to that term or expression in relevant legislation when used in this Agreement; and
- (h) a reference to **Governmental Agency** means the Crown, any government, any governmental ministry or department, or any Crown, governmental, semi-governmental, statutory, parliamentary, administrative, fiscal, public, municipal, local, judicial or regulatory entity, agency, instrumentality, authority, court, commission, tribunal or statutory corporation having jurisdiction over or in respect of the Land and/or its use; and
- (i) a reference to business day means a day that is not a Saturday, a Sunday or a public holiday in New South Wales; and
- (j) Capitalised terms used in this Agreement that are not defined have the same meaning as given in the Planning Agreement.

2. COMMUNITY CENTRE WORKS

2.1 Prior to commencement of Community Centre Works

Prior to the commencement of the Community Centre Works, the Developer must obtain all necessary Approvals for the Community Centre Works.

2.2 Carrying out and completion of the Community Centre Works

- (a) The Developer must carry out and complete the Community Centre Works:
 - (i) in accordance with the relevant Approvals, the Planning Agreement, this Agreement including the Construction Terms set out at Schedule 3 of this Agreement, and the functional requirements described in Schedule 4 and the Detailed Design in Schedule 2; and
 - (ii) ensure that the Community Centre satisfies the following requirements:
 - (A) consists of one or more areas on multiple levels of the building;
 - (B) comprises at a minimum, a total area of 1000 square metres (excluding the area of the 5 parking spaces), of which an area of 550 square metres must be at street level;
 - (C) has the area at street level facing the public domain on Uhrig Road;
 - (D) is serviced by:
 - (1) sewer;
 - (2) water;

- (3) electrical;
- (4) communications;
- (E) facilitates sufficient solar access and natural ventilation;
- (F) facilitates acoustic privacy from neighbouring lots in the building;
- (G) has floor to underside of slab above in accordance with Schedule 2 and that meet the provisions of the Building Code of Australia;
- (H) satisfies access arrangements that meet the provisions of the Building Code of Australia, including direct access from the street as well as any access requirements in accordance with any relevant legislation;
- (I) has a total of 5 parking spaces that designed in accordance with AS/NZS 2890.1:2004, *Parking facilities, Part 1: Off-street car parking* or AS 2890.2—2002, *Parking facilities, Part 2: Off-street commercial vehicle facilities* and RMS Australian Standard Supplements, Australian Standard—AS2890, *Parking Facilities, Parts 1–6*; and
- (J) satisfies all of the functional requirements described in Schedule 4.

2.3 Practical Completion of the Community Centre Works

- (a) Practical Completion of the Community Centre Works will be determined by Council in accordance with clause 8 of Schedule 3.
- (b) Within 10 Business Days of the issue of a Certification of Practical Completion in accordance with clause 8 of Schedule 3, Council must give the following to the Developer:
 - (i) Not used;
 - (ii) a statement by Council confirming that complete and legible copies of all drawings, specifications, certificates, approvals (including of any public utility authority) the Developer holds in respect of the Community Centre Works have been provided to Council, but only if such drawings, specifications, certificates and approvals have been provided by the Developer to Council's reasonable satisfaction;
 - (iii) a statement by Council confirming that all warranties and guarantees obtained by the Developer with respect to any material or goods incorporated in or forming part of the Community Centre Works have been assigned to Council, but only if such warranties and guarantees have been assigned by the Developer to Council's reasonable satisfaction;
 - (iv) a statement by Council confirming that all rights to the copyright and any intellectual property which may exist in the Community Centre Works that the Developer holds have been assigned to Council, but

only if such rights to copyright and intellectual property have been assigned by the Developer to Council's reasonable satisfaction; and

- (v) such other supporting documentation required by the Minister (or his or her delegates) to determine whether the Community Centre Works have been completed.
- (c) For the avoidance of doubt, the Council is responsible for the conduct of any design and construction of the fit out works within the Community Centre Stratum Lot that occurs after the issue of the Certificate of Practical Completion, but excluding rectification of any Defects.

2.4 Rectification of Defects

- (a) If Council notifies the Developer of a Defect in the Community Centre Works within the Defects Liability Period, then following written notice from Council, the Developer must promptly correct or replace (at the Developer's expense) the defective element of the Community Centre Works and in accordance with clause 8.4 of Schedule 3.
- (b) Council grants the Developer and its contractors a licence for such period as is reasonably necessary for the Developer and its contractors to access the Community Centre Stratum Lot to carry out or procure the carrying out of the rectification works.

2.5 Time for completing the Community Centre Works

- (a) The Developer must:
 - (i) take all reasonable steps necessary to understand the Council's requirements for the Community Centre Works; and
 - (ii) achieve a Certificate of Practical Completion in respect of the whole of the Community Centre Works by prior to the issue of an Occupation Certificate for the final building or part of the final building on the Land.
- (b) The parties agree that completion of the Community Centre Works represents a restriction on the issue of an Occupation Certificate within the meaning of clause 154E of the Environmental Planning and Assessment Regulation 2000 (NSW).

3. COSTS

3.1 Legal Costs

- (a) The Developer shall pay Council's reasonable legal costs in connection with the preparation, negotiation, and completion of this Agreement.

4. NOTICES

All written notices to or by a party to this Agreement:

- (a) must be signed by the sender or, if a company or other incorporated entity, an authorised officer of the sender;

- (b) will be deemed to be duly given or made:
- (i) in the case of delivery in person or by post, when delivered, left or received to or at the address or number of the recipient specified in this Agreement or most recently notified to the sender;

but if delivery or receipt does not occur, or occurs later than 4 p.m. local time, on a business day in the place to which the written notice is sent, it shall be deemed to have been duly given or made at the commencement of the next business day in that place; and

- (c) in the case of written notices to be given to the Council, must be addressed to the Council's contact specified in Item 1 of Schedule 1 or as otherwise most recently notified by the Council to the Developer.

5. VARIATIONS

Any amendment, variation or modification to or of, or consent to departure by any party from the terms of, this Agreement will not bind the parties unless effected by a document signed by the parties.

6. SEVERABILITY

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to that jurisdiction, be ineffective to the extent of that prohibition or unenforceability, without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of that provision in any other jurisdiction.

7. DISPUTES

- (a) If a dispute arises between the parties in relation to this Agreement, the Community Centre Works or Community Centre Stratum Lot, then clauses 9.2 to 9.4 of the Planning Agreement shall apply to the Developer in resolving the dispute with Council, except rather than the president of the Law Society or the president's nominee selecting the mediator, the Minister, with the agreement of the Council, shall be the mediator.
- (b) If the dispute is not resolved within 30 days of the conduct of mediation in accordance with clause 9.4 of the Planning Agreement, any party which has complied with the dispute resolution processes of clause 9 of the Planning Agreement may in writing terminate any dispute resolution process undertaken in accordance with this clause and may then commence court proceedings in relation to the dispute.
- (c) The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 or clause 9 of the Planning Agreement is to attempt to settle the dispute. No party may use information or documents obtained through any dispute

resolution process undertaken for any purpose other than in an attempt to settle the dispute.

- (d) This clause 7 does not prejudice the right of a Party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this document.

8. ASSIGNMENT, DEALINGS AND TRANSFER OF LAND

- (a) Subject to clause 8(e), a party must not assign or deal with any right under this Agreement without the prior written consent of the other party (which consent shall not be unreasonably withheld or delayed).
- (b) Any change of ownership or control (as defined in section 50AA of the Commonwealth Corporations Act 2001) of a party (excluding the Council) shall be deemed to be an assignment of this Agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.
- (d) Subject to clause 8(e), the Developer may not transfer, assign or dispose of the whole or any part of its right, title or interest in the Land (present or future) or in the Development to another person (**Transferee**) unless before it sells, transfers or disposes of that right, title or interest:
 - (i) the Developer satisfies the Council that the proposed Transferee is financially capable of complying with the Developer's obligations under this Agreement;
 - (ii) the Developer satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iii) the Developer delivers to the Council a novation deed signed by the Transferee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee agrees to comply with all the outstanding obligations of the Developer under this Agreement;
 - (iv) the Transferee delivers to the Council replacement bonds or Bank Guarantees as required by this Agreement;
 - (v) any default under any provisions of this Agreement has been remedied or waived by the Council, on such conditions as the Council may determine; and
 - (vi) the Developer and the Transferee pay the Council's reasonable costs in relation to the assignment.
- (e) Notwithstanding clauses 8(a) and (d), if a third party is acquiring an interest in the Land as a purchaser of one or more strata lots in a strata scheme (whether or not the relevant strata plan has been registered at the NSW Land Registry Services), then the Developer is not required to comply with clauses 8.4(a) and (d).

9. CAVEAT

- (a) The Developer acknowledges and agrees that:
 - (i) when this Agreement is executed, the Council is deemed to have acquired and the Developer is deemed to have granted, an equitable

estate and interest in the Land for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in the Land in respect of which to lodge a caveat over the Land notifying that interest unless this document is registered on title; and

- (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for the Land nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Council will within five (5) Business Days, at the Developer's cost provide any consent the Developer may reasonably require to enable this Agreement or any Dealing and plan that is not inconsistent with this Agreement to be registered against the title to the Land; and
 - (c) For the avoidance of doubt, the Developer acknowledges and agrees that any caveat registered by Council against the title to the Land comprising the Community Centre Stratum Lot may be retained on title until the later of:
 - (i) Practical Completion of the Community Centre Works; and
 - (ii) the dedication of the Community Centre Stratum Lot free of cost to Council, the Minister or the Minister's nominee in accordance with the Planning Agreement.

10. BUILDING MANAGEMENT STATEMENT AND STRATA MANAGEMENT STATEMENT

- (a) Prior to the issue of an Occupation Certificate for the building(s) containing Community Centre Stratum Lot, the Developer must provide to Council the draft Building Management Statement or draft Strata Management Statement for the building and obtain Council's prior written consent (which consent shall not be unreasonably withheld and delayed) to the draft Building Management Statement or draft Strata Management Statement. The Developer must ensure that:
 - (i) Council is provided with voting rights under any such Building Management Statement or Strata Management Statement commensurate with the ownership of Community Centre Stratum Lot within the building such as for example voting rights that are proportionate with the areas (for example, gross floor areas or useable areas) of those parts of the building; and
 - (ii) in respect of the division of costs associated with any shared facilities, Council is not required to pay any costs towards shared

facilities that are not used in connection with the Community Centre Stratum Lot.

11. SECURITY WORKS

Provision of Security

- (a) Prior to the issue of any Construction Certificate for the Development, the Developer will provide to Council either the payment of a bond or a Bank Guarantee for \$1,448,935.02 (**Works Security Amount**) as security for the due, prompt and proper observance and performance by the Developer of their obligations under this document.

Form of Security

- (b) In the event of any Subsisting Breach by the Developer, the Council may, without further notice to the Developer, call up the Bank Guarantee or apply the bond for any amount payable to Council. If at any time any money is paid under the Bank Guarantee or the bond, the Developer must at the request of the Council provide the Council with a supplementary or replacement Bank Guarantee or make further payment for the bond so that the amount of the Bank Guarantee or bond held by the Council is the amount properly required to be provided under this document.

Price Index Increases

- (c) On each anniversary of the date of this document the Works Security Amount applicable immediately prior to that anniversary will be increased by the same percentage as the annual percentage increase, if any, in the Price Index most recently published prior to the relevant anniversary. The increased Works Security Amount will be the Security Amount in the subsequent 12 months.

Progressive Release of Security

- (d) Subject to the Developer complying with its obligations under this Agreement, Council will at the request of the Developer release 90% of the Works Security Amount to the Developer upon the achievement of Practical Completion of the Community Centre Works, with 10% of the Works Security Amount retained until the end of the Defects Liability Period.
- (e) Council is only required to release a Bank Guarantee where a replacement Bank Guarantee for the relevant reduced amount of the Works Security Amount is provided by the Developer.
- (f) Within 10 Business Days after the Defects Liability Period for the Community Centre Works has expired Council must (if it has not called on it) return the bond or Bank Guarantee referred to in this clause 11 for that item of Community Centre Works (or any remaining balance of it) to the Developer.
- (g) Notwithstanding clause 11(f), if during the Defects Liability Period for the Community Centre Works, Council issues a Rectification Notice in accordance with clause 8.4 of Schedule 3 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.

12. NO FETTER

- (a) This Agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this Agreement as a "Discretion").
- (b) No provision of this Agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this Agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied;
 - (ii) in the event that (i) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this Agreement has full force and effect; and
 - (iii) to endeavour to satisfy the common objectives of the parties in relation to the provision of this Agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.
- (c) The Developer acknowledges that Council may, at its discretion, include advice on any planning certificate issued under section 10.7(5) of the *Environmental Planning and Assessment Act 1979* (NSW) that this Agreement affects the Land.

13. PLANNING AGREEMENT DEED POLL

The parties acknowledge and agree that if the Council is nominated by the Minister as the 'Minister's nominee' in respect of the transfer of any Land Contribution under the Planning Agreement then insofar as the Planning Agreement relates to the transfer of a Land Contribution or the condition of that Land Contribution, the Planning Agreement operates as a deed poll under which all Developer obligations are also in favour of Council as per Open Space Works Agreement

14. GENERAL

- (a) Nothing in this Agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or

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

Time for doing acts

- (d) If the time for doing any act or thing required to be done or a notice period specified in this Agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (e) If any act or thing required to be done is done after 4.00 pm on the specified day, it is taken to have been done on the following Business Day.

Further assurances

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

Joint and individual liability and benefits

- (g) 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.

Counterparts

- (h) This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

Legal expenses and Taxes

- (i) 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.
- (j) The Developer agrees to pay to Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this Agreement.
- (k) The Developer must pay all Taxes assessed on or in respect of this document and any instrument or transaction required or contemplated by or necessary to give effect to this document except for any stamp duty for the transfer of the Community Centre to the Council.

Entire Agreement

- (l) The contents of this Agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations,

understandings or arrangements made between the parties regarding the subject matter of this Agreement, whether orally or in writing.

Representations and warranties

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

Waiver

- (n) A right or remedy created by this Agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (o) The fact that a party fails to do, or delays in doing, something the party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another party. A waiver by a party is only effective if it is in writing. A written waiver by a party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

GST

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

Governing law and jurisdiction

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

**SCHEDULE 1
REFERENCE SCHEDULE**

Item	Name	Description
Item 1	Council	Name: City of Parramatta ABN: 49 907 174 773 Address: 126 Church Street, Parramatta NSW 2150 Contact: Michael Rogers
Item 2	Developer	Name: Karimbla Properties (No. 51) Pty Limited ABN: 95 168 601 250 Address: Level 11, 528 Kent Street, Sydney NSW 2000 Contact: Matthew Lennartz
Item 3	Land	Lot 8 in Deposited Plan 1228764

**SCHEDULE 2
COMMUNITY CENTRE WORKS P**



Allien Sage

Comer Street
4-6 Uhrig Road, Lidcombe

Ground Floor Plan 1:200
31/8/21

Option E

LAN

Allien Sage Architects
Level 10/11, 100 Pitt Street, Sydney NSW 2000

SCHEDULE 3 CONSTRUCTION TERMS

1 Interpretation

1.1 For the purposes of this Schedule, unless context indicates a contrary intention:

Claim means any allegation, debt, cause of action, liability, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

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

Detailed Design means the final specifications and finishes for the Community Centre Works prepared in accordance with clause 5.2 of this Schedule and will include the design of the Community Centre Works, the location for the Community Centre Works, installation specifications and estimated costs of construction and/or installation.

Development Program means the development program for the Community Centre Works prepared in accordance with clause 5.1 of this Schedule.

Draft Concept Design has the meaning given in clause 5.1(a) of this Schedule.

Final Concept Design has the meaning given in clause 5.1(f) of this Schedule.

Inspection Date has the meaning given in clause 7(b) of this Schedule.

Inspection Schedule has the meaning given in clause 7(a) of this Schedule.

Inspection Stage has the meaning given in clause 7(a) of this Schedule.

Rectification Date has the meaning given in clause 8.4(a)(ii) of this Schedule.

Rectification Notice has the meaning given in clause 8.4(a) of this Schedule.

Rectification Works has the meaning given in clause 8.4(a)(i) of this Schedule.

Services means all water, gas, electricity, television, drainage, sewerage, cable TV, data communications, telecommunications and other services which are required under a Development Consent or an Approval and which are necessary for the construction, operation or occupation of the Community Centre Works and the land to be dedicated to Council under this Agreement.

2 Requirements of Authorities and Approvals

2.1 These Construction Terms must be read and construed subject to the requirements of and conditions imposed by all relevant Governmental Agencies and all Laws relating to the Community Centre Works and the construction of the Community Centre Works.

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 Community Centre Works at its own cost. The Developer must not make any Development Application that is inconsistent with this Agreement, the Community Centre Works Plan, or any other design document approved by Council in accordance with clause 5 of this Schedule.

- 2.3 The Developer must ensure that the Community Centre Works carried out under this Agreement are carried out:
- (a) in accordance with the relevant Approvals for the Community Centre Works and the requirements of all Laws, including without limitation, work health and safety legislation;
 - (b) in accordance with the National Construction Code to the extent required under any Laws, including any regulation or other instrument made under the *Environmental Planning and Assessment Act 1979 (NSW)*;
 - (c) all other relevant codes, standards and specifications that the Community Centre Works are required to comply with under any Laws; and
 - (d) in a good and workmanlike manner and so that they are diligently progressed until Practical 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 Community Centre Works must be borne by the Developer.

4 Project Management and Contractor Engagement

- 4.1 The Developer will be responsible for building and managing the Community Centre Works.

5 Design Development and Approvals

5.1 Draft Concept Design

- (a) The Developer must provide concept designs for the Community Centre Works to Council with the lodgement of a Development Application for the Development (**Draft Concept Design**).
- (b) The Draft Concept Design must be generally in accordance with:
 - (i) the Community Centre Works Plans;
 - (ii) Council's Public Domain Manual applicable at the time;
 - (iii) any other relevant design standards, guidelines, requirements or policies applied by the Council in assessing the adequacy of works or improvements proposed for the public domain or to be accessible to the public; and
 - (iv) the functional requirements described in Schedule 4.
- (c) The Developer will obtain any relevant standards (including design standards), specifications, or guidelines and any other requirements or policies referred to in clause 5.1(b) of this Schedule from Council if the Council fails to deliver them to the Developer.
- (d) The Draft Concept Design must include a Development Program for the Community Centre Works including estimated timeframes for commencement, construction and delivery of the Community Centre Works in relation to milestones or stages of the Development.

- (e) Within 20 Business Days of receiving the Draft Concept Design and Development Program, and subject to the Developer having provided Council all relevant information reasonably requested by Council arising out of or in connection with the Draft Concept Design, Council may notify the Developer in writing of any changes it requires to the Draft Concept Design and Development Program.
- (f) Provided the Council's suggested changes to the Draft Concept Design and Development Program will not result in any substantial increase in costs or significant delay to the Development, the Developer will make those changes and provide a final Concept Design (**Final Concept Design**) and Development Program to Council.
- (g) If the Council does not provide a response to the Final Concept Design or Development Program in accordance with clause 5.2(c) of this Schedule, or the Final Concept Design within 20 Business Days of its receipt, and subject to the Developer having provided Council all relevant information requested by Council arising out of or in connection with those design documents, the Developer must request the response from the Council in writing and if no reply is received within 10 Business Days of the request, the Council will be taken to have accepted the Draft Concept Design and Development Program or the Final Concept Design (as applicable).

5.2 Detailed Design

- (a) Before lodging the Construction Certificate for the Development, the Developer must provide Council a copy of the Construction Certificate drawing (**Detailed Design**) for the Community Centre Works.
- (b) The Detailed Design must be consistent with the Final Concept Design and any Approval for the Community Centre Works.
- (c) Within 20 Business Days of receiving the Detailed Design, and subject to the Developer having provided Council all relevant information requested by Council arising out of or in connection with the Detailed Design for the Community Centre Works, Council must respond to the Developer with any suggested amendments to the Detailed Design for the Community Centre Works.
- (d) Council and the Developer must work in consultation with each other to prepare and agree the Detailed Design for the Community Centre Works and must both act reasonably and with due expedition in their consultations with each other.
- (e) If the Detailed Design for the Community Centre Works is not completed within 20 Business Days of Council providing suggested amendments in accordance with clause 4.2(c) of this Schedule, to avoid possible delays with the completion of those Community Centre Works, the outstanding issues may be referred by either party to dispute resolution in accordance with clause 7 of this Agreement.
- (f) Any acceptance by the Council of the Detailed Design under this clause 4.2 of this Schedule is not to be taken as approval of or to any Construction

Certificate for the Community Centre Works, however the Detailed Design may be used as part of the application for any such certificate.

5.3 Good faith

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

6 Carrying out of Works

6.1 Communication

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

6.2 Standard of Works

- (a) The Developer shall use suitable new materials and proper and tradesmanlike workmanship when carrying out the Community Centre Works.
- (b) The qualitative standard of the design and finishes for the Community Centre Works must be in accordance with the final Detailed Design and any Approvals for the Community Centre Works and must be no less than those described in any relevant Australian Standard.
- (c) The Developer shall be responsible for care of the whole of the Community Centre Works and the Community Centre Stratum Lot from and including the date this Agreement to the later of the:
 - (i) date on which the Community Centre Stratum Lot has been transferred to Council, the Minister or the Minister's nominee free of cost in accordance with the Planning Agreement; and
 - (ii) date of Practical Completion of the Community Centre 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 and the Developer will consult and prepare an agreed schedule of inspections to be undertaken by Council (**Inspection Schedule**) to occur at reasonable specified stages of the construction of the Community Centre Works (**Inspection Stage**)

without causing any delays to the Development. The Inspection Schedule must be agreed and finalised prior to the Community Centre Works commencing.

- (b) Five Business Days prior to reaching an Inspection Stage as set out in the Inspections 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 Community Centre Works.
- (d) In addition to carrying out inspections in accordance with clause 7(a) of this Schedule, the Council may enter the Land or any part of the Land on which the Community Centre Works are to be located to inspect the progress of the Community Centre Works, subject to:
 - (i) giving reasonable notice to the Developer;
 - (ii) complying with all reasonable directions of the Developer; and
 - (iii) 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 Community Centre 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 Community Centre 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 Community Centre Works (or the relevant part of the Community Centre Works) have been completed in accordance with this Agreement and may refuse to issue a Certificate of Practical Completion, until the required Community Centre 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 7(e) of this Schedule does not constitute:
 - (i) acceptance by the Council that the Community Centre Works comply with all Approvals and Laws; or
 - (ii) an approval by the Council in respect of the Community Centre Works; or
 - (iii) an agreement or acknowledgment by the Council that the Community Centre Works (or the relevant part of the Community Centre 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 Community Centre Works, or any part of the Community Centre 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 Community Centre Works are complete.
- (b) Within Business Days of receipt of the notice under clause 8.1(a) of this Schedule, the Council will carry out an inspection of the Community Centre Works and will, acting reasonably, either:
 - (i) provide written certification to the Developer that the Community Centre 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, 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 for written certification that the Community Centre Works have been completed.
- (d) For the purpose of this Agreement, Practical Completion will be achieved in relation to the Community Centre Works or any part of the Community Centre Works when a Certificate of Practical Completion has been issued by Council (acting reasonably) for those Works.
- (e) For the avoidance of any doubt, Council's issue of a Certificate of Practical Completion under this Agreement is solely for the purpose of Council considering whether Practical Completion of the Community Centre Works has been achieved under this Agreement. Council undertakes no responsibility or duty in relation to any aspect of the Community Centre Works by issuing a Certificate of Practical Completion, and does not release the Developer from any of its obligations under this Agreement by issuing a Certificate of Practical

Completion. The Developer is and remains wholly responsible for the delivery and performance of the Community Centre Works.

8.2 Delivery of documents

- (a) The Developer must prior to the issue of the Certificate of Practical Completion in respect of the Community Centre Works or any part of the Community Centre 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 Community Centre Works.
- (b) The Developer must as soon as practicable, and no later than 10 Business Days after the date on which the Certificate of Practical Completion is issued in respect of the Community Centre Works or any part of the Community Centre Works, provide the Council with a tour of the land subject to the Community Centre 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 any entity contracted under the Construction Contract by the Developer to carry out the Community Centre Works (**Builder**) (and capable of assignment) with respect to any material or goods incorporated in or forming part of the Community Centre 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 Community Centre 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 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 of Schedule 3.
- (g) If the Developer fail 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 upon Council providing the Developer with 7 days' prior written notice, accessing and occupying any part of the Land and may:
 - (i) call upon any Bank Guarantee or security still held by Council under this Agreement (if any) 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 or Bank Guarantee and the costs incurred by the Council in carrying out Rectification Works.

9 Risk

The Developer undertakes the Community Centre Works entirely at its own risk.

10 Insurance

- (a) Prior to the commencement of the construction of any of the Community Centre Works, 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 Community Centre Works;
 - (ii) public liability and 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 prior to the commencement of the construction of the Community Centre Works and at all other times Council reasonably requires.

- (c) All insurance policies that the Developer must keep current under this Agreement must:
 - (i) be established with one or more insurance companies which are respectable, reputable and financially sound and approved by Council (such approval not to be unreasonably withheld);
 - (ii) name Council as an insured party; and
 - (iii) cover the parties for their respective interests.

11 Indemnities and Risk of Contamination

- (a) 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 Community Centre 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.
- (b) The Developer acknowledges to the Council:
 - (i) that it is responsible for the management and remediation of any Contamination present upon, in or under the Land;
 - (ii) it will attend to any reasonably necessary remediation upon, in or under the Land at its own cost so the land will be suitable for its proposed use (as certified by a site auditor accredited under the *Contaminated Land Management Act 1997*); and
- (c) to the fullest extent permitted by Law, releases and indemnifies the Council from and against any Claim which might arise from any Contamination with respect to the Land.

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 Community Centre Works. To the extent the Developer has or receives intellectual property rights for the Community Centre Works, the Developer shall, at no cost to Council, assign those intellectual property rights to Council or permit use thereof.

13 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 the Community Centre Works not capable of identification on or before the date of this Agreement; or
- (b) by agreement between the parties.

14 Work Health and Safety

- 14.1 In performing the Community Centre Works, the Developer must comply with all Laws and codes of practice relating to the environment, work health and safety and all relevant Australian Standards. The Developer must ensure that the Community Centre Works and their manner of supply does not put the health and safety of any person at risk.

SCHEDULE 4 CONNECTION OF SERVICES

All services referred to clause 2.2(a)(ii)(D) and any other services required for the functional use of the Community Centre are to be located in a manner consistent with the plan identified in Schedule 2, to ensure that Council does not incur costs in connecting all services. In providing all services, consideration must be given to any relevant legislation, code, Australian standards, and Council policy

Executed as an agreement

SIGNED on behalf of **CITY OF PARRAMATTA COUNCIL** (ABN 49 907 174 773) by its duly authorised officer in the presence of:

 14/09/2021

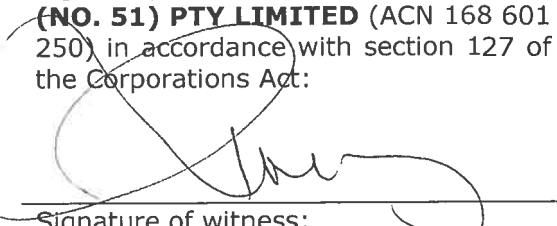
Signature of witness:

Leanne Sutcliffe

Full Name of witness (printed):

By signing this document, the witness states that they witnessed the signature of the signatory over audio visual link in accordance with s14G of the *Electronic Transactions Act 2000* (NSW).

Signed by **KARIMBLA PROPERTIES (NO. 51) PTY LIMITED** (ACN 168 601 250) in accordance with section 127 of the Corporations Act:


Signature of witness:

ROBYN McCULLY

Full Name of witness (printed):

By signing this document, the witness states that they witnessed the signature of the signatory over audio visual link in accordance with s14G of the *Electronic Transactions Act 2000* (NSW).

Brett Newman

Sep 14, 2021

Signature of officer:

Brett Newman, Chief Executive Officer

Name and position of officer (printed):





Signature of Director/Secretary:

DAVID CREMONA

Full Name (printed):

Signature: 
Brett Newman (Sep 14, 2021 12:03 GMT+10)

Email: bnewman@cityofparramatta.nsw.gov.au






BN CEO 2021 0164-02 Attachment 2 - Community Centre Works Agreement for CEO sign(2)

Final Audit Report

2021-09-14

Created:	2021-09-14
By:	Leanne Sutcliffe (lsutcliffe@cityofparramatta.nsw.gov.au)
Status:	Signed
Transaction ID:	CBJCHBCAABAaK3ShvOKASKeI_ZRp02dYnmA4luVRzR0

"BN CEO 2021 0164-02 Attachment 2 - Community Centre Works Agreement for CEO sign(2)" History

-  Document created by Leanne Sutcliffe (lsutcliffe@cityofparramatta.nsw.gov.au)
2021-09-14 - 1:46:51 AM GMT- IP address: 203.38.105.161
-  Document emailed to Brett Newman (bnewman@cityofparramatta.nsw.gov.au) for signature
2021-09-14 - 1:47:37 AM GMT
-  Email viewed by Brett Newman (bnewman@cityofparramatta.nsw.gov.au)
2021-09-14 - 2:01:44 AM GMT- IP address: 104.47.71.254
-  Document e-signed by Brett Newman (bnewman@cityofparramatta.nsw.gov.au)
Signature Date: 2021-09-14 - 2:03:07 AM GMT - Time Source: server- IP address: 203.38.105.161
-  Agreement completed.
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