

## Deed of Guarantee

**Harrington Custodian Pty Ltd**

and

**Harrington Property Funds Management Pty Ltd**

and

**Penrith City Council**

Ref **DLB:LM:1176474**

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## Deed of Guarantee

Date

Parties

**Harrington Custodian Pty Ltd**

ACN 156 505 538 of 3A Macquarie Street, Sydney, New South Wales

**(Harrington Custodian)**

**Harrington Property Funds Management Pty Ltd**

ACN 156 505 707 of 3A Macquarie Street, Sydney, New South Wales

**(Harrington PFM)**

**Penrith City Council**

ABN 43 794 422 563 of 601 High Street, Penrith, New South Wales

**(Council)**

Recitals

- A. Harrington Penrith Pty Ltd (**Harrington Penrith**), as trustee for the Penrith Unit Trust (**Trust**), has entered into a contract to purchase land (**Contract**) at 61-79 Henry Street, Penrith, being Lot 1 DP 771927 (**Land**).
- B. Upon completion of the Contract, Harrington Penrith and the Trust will be bound by the terms of the VPA in respect of the Land.
- C. Harrington Custodian and Harrington PFM (together, the **Guarantors**) have agreed to grant this guarantee to secure the obligations of Harrington Penrith and the Trust under the VPA.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

## 1. Definitions and interpretation

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### 1.1 Definitions

In this Deed:

<b>Contract</b>	means the contract for sale of land dated 21 December 2023 between The Australian Foundation for Disability (AFFORD) (as vendor) and Harrington Penrith as trustee for the Trust (as purchaser) for the sale of the Land, as may be varied by the written agreement of those parties from time to time.
<b>Effective Date</b>	means the date when the Contract is completed by AFFORD and Harrington Penrith as trustee for the Trust.
<b>Land</b>	means Lot 1 DP 771927, known as 61-79 Henry Street, Penrith.
<b>VPA</b>	means the Voluntary Planning Agreement dated 23 October 2023 between Council and AFFORD at Annexure A to this deed which has been novated to Harrington Penrith as trustee for the Trust pursuant to the terms of the Deed of Novation for Voluntary Planning Agreement at Annexure B to this deed.

### 1.2 Interpretation

- (a) Headings and italicised, highlighted or bold type do not affect the interpretation of this Deed.

In this deed unless a contrary intention is expressed:

- (a) References to legislation or provisions of legislation include changes or re-enactments of the legislation and statutory instruments and regulations issued under the legislation;
- (b) Words denoting the singular include the plural and vice versa, words denoting individuals or persons include bodies corporate and vice versa, words denoting one gender include all genders, and references to documents or agreements also mean those documents or agreements as changed;
- (c) Grammatical forms of defined words or phrases have corresponding meanings;
- (d) Parties must perform their obligations on the dates and times fixed by reference to the capital city of New South Wales;
- (e) Reference to an amount of money is a reference to the amount in the lawful currency of the Commonwealth of Australia;
- (f) If the day on or by which anything is to be done is a Saturday, a Sunday or a public holiday in the place in which it is to be done, then it must be done on the next business day;

- (g) References to a party are intended to bind their executors and administrators; and
- (h) Obligations under this deed affecting more than one party bind them jointly and each of them severally.

## 2. Guarantee

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### 2.1 Guarantee

The Guarantors jointly and severally, and unconditionally and irrevocably, guarantee to Council:

- (a) the performance of the obligations of Harrington Penrith under the VPA; and
- (b) if Harrington Penrith fails to comply with its obligations under the VPA, the Guarantors will assume all of the obligations of Harrington Penrith under the VPA.

### 2.2 Continuing guarantee

This Deed is a continuing obligation of each Guarantor, despite any settlement of account or the occurrence of any other thing, and remains in full force and effect until Harrington Penrith's obligations under the VPA have been finally discharged, novated or released.

### 2.3 Release of guarantee

The guarantee given by the Guarantors pursuant to this deed applies only while and for so long as Harrington Penrith is the owner of the Land. If Harrington Penrith sells, transfers or otherwise disposes of the Land in accordance with the VPA, the Guarantors are released from their obligations pursuant to this deed and Council must sign all documents to give effect to that release.

## 3. Warranties and representations

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Each party to this deed represents and warrants that, at the time of execution, and at the Effective Date:

- (a) it has capacity unconditionally to execute, deliver and comply with its obligations under this deed;
- (b) it has taken all necessary action to authorise the unconditional execution and delivery of, and the compliance with, its obligations under this deed; and
- (c) this deed is a valid and legally binding obligation and is enforceable against it by each other party in accordance with its terms.

#### 4. Amendment

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An amendment or variation to this deed is not effective unless it is in writing and signed by all the parties.

#### 5. Waiver

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Any waiver by any party to a breach of this deed shall not be deemed to be a waiver of a subsequent breach of the same or of a different kind.

#### 6. Severance

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If anything in this deed is unenforceable, illegal or void, it is severed and the rest of the deed remains in force.

#### 7. Counterparts

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This deed may be executed in any number of counterparts each of which will be an original but such counterparts together will constitute one and the same instrument and the date of the deed will be the date on which it is executed by the last party.

#### 8. Costs

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The Guarantors must pay Council's reasonable legal and other costs and disbursements incurred in connection the preparation, negotiation, and execution of this deed within 14 days of an invoice issued to the Guarantors.

Signing page

Executed as a deed

**Executed by Penrith City Council** by its  
authorised delegate in accordance with the  
resolution of Council dated  
2024:

\_\_\_\_\_  
Signature of Authorised Officer

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Full name and Position of Authorised Officer  
(print)

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Guarantors**

**Executed by Harrington Custodian Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**Executed by Harrington Property Funds Management Pty Ltd** in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

\_\_\_\_\_  
Signature of Director

\_\_\_\_\_  
Signature of Director/Company Secretary

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Full name (print)

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date