Maddocks

Lawyers
Level 27, Angel Place
123 Pitt Street
Sydney New South Wales 2000 Australia

GPO Box 1692
Sydney New South Wales 2001

Telephone 61 2 9291 6100
Facsimile 61 2 9221 0872

info@maddocks.com.au
www.maddocks.com.au

DX 10284 Sydney Stock Exchange

Date / /2019

Planning Agreement Under Section 7.4 of the *Environmental Planning & Assessment Act 1979*

Subject Land: 25 George Street, North Strathfield NSW 2137

City of Canada Bay Council
ABN 79 130 029 350
(Council)
and

North Strathfield One Pty Ltd ACN 165 499 589
(Developer)

Interstate offices
Canberra Melbourne

Affiliated offices around the world through the Advoc network - www.advoc.com

Copyright: Maddocks

Contents

1. Definitions ... 3

1.1 In this Agreement unless expressed or implied to the contrary: ... 3
1.2 In this Agreement: ... 3

2. Application and operation of Agreement ... 6

2.1 Application ... 6
2.2 Operation ... 6
2.3 No Fettering of Council's Powers ... 6

3. Provision of Affordable Housing ... 6

3.1 Affordable Housing ... 6
3.2 Identification of Affordable Housing ... 6
3.3 Completion ... 7
3.4 Final Inspection by Council ... 7
3.5 Notice of Completion prior to Strata Certificate ... 7
3.6 Notice of Completion prior to Occupation Certificate ... 7
3.7 Non-completion of Works ... 8
3.8 Transfer of Affordable Housing ... 8
3.9 Indemnity by the Developer ... 9

4. Defects Liability Period ... 9

4.1 Defects in the Works ... 9
4.2 Security for Defects Liability Period ... 9
4.3 Application of Security ... 9

5. Expenditure by Council ... 10

5.1 Expenditure by Council ... 10
5.2 Debt due and owing to Council ... 10

6. Specific Obligations Of Council ... 10

6.1 Council Agrees to use the Affordable Housing ... 10

7. Security ... 10

7.1 Provision of Guarantee ... 10
7.2 Rights and remedies of Council ... 11
7.3 Release of Guarantee ... 11

8. Registration ... 11

8.1 Acknowledgement ... 11
8.2 Consents to Registration ... 11
8.3 Developer's Obligations ... 11
8.4 Release from Registration ... 12
8.5 Registration Expenses ... 12
8.6 Sale of Land ... 12

9. Caveatable Interest ... 12

9.1 Lodgement of Caveat ... 12
9.2 Withdrawal of Caveat ... 12

10. Section 7.11, 7.12 and 7.24 of the Act ... 13

10.1 Application of Section 7.11 Section 7.12 and section 7.24 of the Act ... 13
10.2 Benefits Obtained Under This Agreement ... 13

11. Warranties ... 13

11.1 Developer's Warranties ... 13

12. Default **13**

12.1 Costs on Default 13
12.2 Interest on Overdue Payments 14

13. Dispute Resolution **14**

13.1 Disputes 14
13.2 Notice of Dispute 14
13.3 Reply to Notice 14
13.4 Designated Representative 14
13.5 Submission to mediation 14
13.6 Mediation 14
13.7 Termination of Mediation 15
13.8 Subsequent proceedings 15
13.9 Continuing obligations 15
13.10 Urgent relief 15

14. General **16**

14.1 Amendment 16
14.2 Entire Understanding 16
14.3 Further Assurance 16
14.4 Legal Costs and Expenses 16
14.5 Waiver and Exercise of Rights 16
14.6 Rule of Construction 16

15. Assignment, Novation and Dealings **16**

15.1 Assignment, Novation and Dealings 16

16. Notices **17**

16.1 Service of Notice 17
16.2 Particulars for Service 17
16.3 Time of Service 18

17. Interpretation **18**

17.1 Governing Law and Jurisdiction 18
17.2 Persons 18
17.3 Joint and Several 18
17.4 Legislation 18
17.5 This Document, Clauses and Headings 18
17.6 Severance 19
17.7 Counterparts 19
17.8 Business Day 19
17.9 Number and Gender 19

18. GST **19**

18.1 Definitions 19
18.2 GST exclusive 20
18.3 Division 81 and 82 of GST Law 20
18.4 Increase in consideration 20
18.5 Tax invoice 20
18.6 Reimbursements 20
18.7 Adjustment events 20

Signing Page **21**

25 George Street, North Strathfield NSW 2137 - Planning Agreement

Dated / /2019

Parties

Name	**City of Canada Bay Council, ABN 79 130 029 350**
Address	Civic Centre, 1A Marlborough Street, Drummoyne NSW 2047
Email	council@canadabay.nsw.gov.au
Contact	General Manager
Short name	**Council**

AND

Name	**North Strathfield One Pty Ltd, ACN 165 499 589**
Address	127 Fairford Road, Padstow NSW 2211
Email	assoum@pietythp.com.au
Contact	Alain Assoum
Short name	**Developer**

Background

A. The Developer is the registered proprietor of the Land.

B. Council has resolved that individual planning proposals for identified sites would be prepared consistent with the Concord West Precinct Master Plan and Parramatta Road Corridor Urban Transformation Strategy.

C. Additionally, section 9.1 Direction 7.3 Parramatta Road Corridor Urban Transformation Strategy requires any planning proposals within the Parramatta Road Corridor to facilitate development that is consistent with the Parramatta Road Corridor Urban Transformation Strategy.

D. On 10 June 2016, the Planning Proposal was lodged with Council for the Instrument Change to the Canada Bay LEP in relation to the Land.

E. If the Instrument Change comes into force, the Developer proposes to lodge a Development Application for Development Consent to undertake Development on the Land.

F. In connection with the Instrument Change, and in respect of any such Development Application, the Developer has offered to provide Council with Affordable Housing for public benefit on the terms of this Agreement, if Development Consent is granted.

G. For the avoidance of doubt, the obligation to provide the Affordable Housing only arises if Development Consent is granted for Development on the Land.

The Parties Agree

1. Definitions

1.1 In this Agreement unless expressed or implied to the contrary:

1.1.1 except as provided in clause 1.2 defined terms have the same meaning as is in the Act at the date of this Agreement; and

1.1.2 words defined in clause 1.2 have the meaning assigned to them.

1.2 In this Agreement:

Act means the *Environmental Planning and Assessment Act 1979*.

Agreement means this document and all schedules.

Affordable Housing means the provision in the Development of a minimum of 5% of the uplift of the Gross Floor Area, or 2 three-bedroom units, whichever is greater, as affordable housing as defined in the Act.

Affordable Housing Works means the fixtures, fittings, finishes and service and utility connections, each to be delivered in a similar manner and quality to the other apartments in the Development without any errors or omissions, and each being necessary for:

(a) the Affordable Housing to be suitable for occupation; and

(b) the apartments to be delivered as Affordable Housing in satisfaction of the requirements of the Development Consent.

Authority includes:

(a) any government in any jurisdiction, whether federal, state, territorial or local;

(b) any provider of public utility services having statutory rights in relation to the Land; and

(c) any other person, authority, instrumentality or body having statutory jurisdiction, rights, powers, duties or responsibilities over the Land or any part of it.

Authorisation means:

(a) an authorisation, consent, declaration, exemption, notarisation or waiver, however it is described; and

(b) in relation to anything that could be prohibited or restricted by law if a government agency acts in any way within a specified period, the expiry of that period without that action being taken,

including any renewal or amendment.

Business Day means Monday to Friday excluding public holidays in New South Wales.

Canada Bay LEP means the *Canada Bay Local Environmental Plan 2013*.

Claims means all or any claims, proceedings, actions, rights of action, liabilities, damages, losses, remedies, expenses, fines and penalties (including associated expenses and legal costs on a full indemnity basis.

Completion means the stage in the construction of the Affordable Housing when the Affordable Housing is complete except for minor omissions and minor defects which are non-essential and:

(a) which do not prevent the Affordable Housing from being reasonably occupied;

(b) which Council determines that the Developer has reasonable grounds for not promptly rectifying; and

(c) the rectification of which will not prejudice the suitability of the Affordable Housing for occupation.

Concord West Precinct Master Plan means the master plan prepared by JBA on behalf of Council in relation to land on the western side of the Northern Rail Line at Concord West and published on 27 May 2014.

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

Construction Certificate has the same meaning as in the Act.

Council means the City of Canada Bay Council.

Council's Representative means the person specified in clause 16.2.1 who is duly authorised to give approval under this Agreement or such other person as notified by Council.

Defect means any error, omission, shrinkage, blemish in appearance or other fault in the provision of the Affordable Housing, including that the Affordable Housing is unsuitable for occupation, caused by the Developer, its employees, agents or contractors (but excludes any damage caused to the Affordable Housing by a third party).

Defects Liability Period means the period of 12 months from the date on which the Affordable Housing Notice of Completion is issued by the Council pursuant to clause 3.4.1.

Developer's Representative means the person specified in clause 16.2.2 who is duly authorised to give approval under this Agreement or such other person as notified in writing to Council by the Developer.

Development means any development, within the meaning of the Act, of or on the Land, which would breach the zoning, height or floor space ratio controls in the Unamended Canada Bay LEP.

Development Application means any development application, within the meaning of the Act, in respect of the Development of the Land, and includes all plans, reports, models, photomontages, material boards (as amended or supplemented), submitted to the consent authority which forms part of the development application.

Development Consent means any development consent within the meaning of the Act granted to a Development Application, and includes:

(a) any conditions of consent to which the Development Consent is subject; and

(b) any modifications of the Development Consent made under section 4.55 of the Act.

Gross Floor Area has the same meaning given to the term "gross floor area" in the Unamended Canada Bay LEP.

Guarantee means a written bank guarantee, without time limit, acceptable to Council, issued by an Australian bank as security for the due, prompt and proper observance and performance by the Developer of the obligations set out in this Agreement, provided in accordance with clause 7.1.

Instrument Change means an amendment to the Canada Bay LEP generally in accordance with the Planning Proposal, pursuant to the process set out in Part 3, Division 3.4, of the Act.

Land means 25 George Street, North Strathfield, NSW 2137 being Lots 1 to 10 and the Common Property in Strata Plan 22302 and includes any lots created following any consolidation or subdivision of the Land as part of the Development Application.

Notice of Determination means the notification of the determination of the Development Application, pursuant to section 4.18 of the Act.

Occupation Certificate means a certificate issued pursuant to section 6.4(c) of the Act.

Parramatta Road Corridor has the same meaning as used in the Parramatta Road Corridor Urban Transformation Strategy.

Parramatta Road Corridor Urban Transformation Strategy means the NSW Government's 30-year plan regarding the Parramatta Road Corridor, prepared in November 2016, and given statutory force by a Ministerial Direction under section 9.1 of the Act on 9 December 2016.

Party means a party to this Agreement, including their successors and assigns.

Planning Proposal means the planning proposal (within the meaning of the Act) which seeks to:

(a) rezone the Land from IN1 General Industrial to R3 Medium Density Residential;

(b) increase the maximum building height on the Land from 12m to 16m for the western quarter and to 22 metres for the eastern portion; and

(c) increase the floor space ratio (**FSR**) for the Land from 1:1 to 1.6:1.

Prescribed Rate means the rate prescribed from time to time under the Uniform Civil Procedure Rules 2005 (NSW) as the rate of interest on judgment debts calculated daily and compounded on the last day of each month.

Real Property Act means the *Real Property Act 1900*.

Regulation means the *Environmental Planning and Assessment Regulation 2000*.

Strata Certificate means a certificate issued pursuant to section 54 of the *Strata Schemes Development Act 2015*.

Unamended Canada Bay LEP means the Canada Bay LEP as in force as at the date of this Agreement and prior to the coming into effect of any amendments consistent with the Planning Proposal.

2. Application and operation of Agreement

2.1 Application

2.1.1 This document is a Planning Agreement within the meaning of section 7.4 of the Act and applies to:

(a) the Land;

(b) the Development; and

(c) the Canada Bay LEP.

2.1.2 It is acknowledged and agreed that this Agreement is in the terms of an offer made by the Developer and the then owners of the Land in connection with an Instrument Change and Development Application.

2.2 Operation

2.2.1 This Agreement operates on and from the date it is executed by the Parties.

2.2.2 Until this Agreement operates, this Agreement constitutes an irrevocable offer by the Developer to enter into this Agreement in connection with the Instrument Change and Development Application.

2.3 No Fettering of Council's Powers

It is acknowledged and agreed that this Agreement does not fetter or restrict the power or discretion of Council or the Consent Authority to make any decision or impose any requirements or conditions in connection with the granting of any development consent or certification of any development consent or certification of any strata plans applicable to the Land relating to any use or development of the Land.

3. Provision of Affordable Housing

3.1 Affordable Housing

3.1.1 If the Development Consent is granted, the Developer agrees to deliver the Affordable Housing in accordance with this Agreement.

3.1.2 Each apartment to be delivered as Affordable Housing must:

(a) be finished in a similar manner and quality to the other apartments in the Development; and

(b) be completed with all services connected and operational to the extent services are connected and operational in the other apartments in the Development on completion of those apartments.

3.2 Identification of Affordable Housing

The Development Application must include clear identification of the location and size of the Affordable Housing on the architectural plans and draft strata plan of subdivision.

3.3 Completion

When, in the opinion of the Developer, the Affordable Housing has reached Completion, the Developer must notify Council in writing, and must include in that notice:

3.3.1 a statement from the person with direct responsibility, carriage and supervision of that work that in their opinion the Affordable Housing:

(a) has reached Completion and meets the requirements of the Affordable Housing in the Development Consent; and

(b) has been finished in a similar manner and quality to the other apartments in the Development; and

(c) is completed with all services connected and operational in a similar manner and quality to the other apartments in the Development; and

3.3.2 copies of any certification, warranties, guarantees, maintenance information or other material reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the Affordable Housing; and

3.3.3 at least three (3) sets of the "as built" drawings or plans of the Affordable Housing, including one set in pdf. electronic format.

3.4 Final Inspection by Council

3.4.1 The Council's Representative must inspect the Affordable Housing within 7 Business Days of receipt of the notification set out in clause 3.3 and must by written notice to the Developer:

(a) state that Completion has been achieved (**Affordable Housing Notice of Completion**); or

(b) state that Completion has not been achieved and if so, identify the errors or omissions which in the opinion of Council's Representative impedes Completion.

3.4.2 Nothing in this clause, or in any notice issued under this clause will be construed to reduce or waive in any manner the Developer's responsibility to correct minor Defects or minor omissions, whether or not these are identified by Council.

3.5 Notice of Completion prior to Strata Certificate

3.5.1 The Developer must obtain an Affordable Housing Notice of Completion pursuant to clause 3.4 before the Developer applies for a Strata Certificate in respect of the Development.

3.5.2 The Developer must submit a copy of the Affordable Housing Notice of Completion together with any application for a Strata Certificate in respect of the Development.

3.6 Notice of Completion prior to Occupation Certificate

3.6.1 The Developer must obtain an Affordable Housing Notice of Completion pursuant to clause 3.4 before the Developer applies for an Occupation Certificate in respect of the Development.

3.6.2 The Developer must submit a copy of the Affordable Housing Notice of Completion together with any application for an Occupation Certificate in respect of the Development.

3.7 Non-completion of Works

3.7.1 If the Developer does not complete the Affordable Housing Works within 2 months of Council's notice provided under clause 3.4.1(b), the Developer acknowledges that Council may make appropriation from the Guarantee to fund and undertake the performance of such works to ensure:

(a) the apartments to be delivered as Affordable Housing satisfy the requirements in the Development Consent;

(b) the apartments to be delivered as Affordable Housing are finished in a similar manner and quality to the other apartments in the Development; and

(c) the apartments to be delivered as Affordable Housing have services connected and operable in a similar manner and quality to the other apartments in the Development.

(d) the apartments to be delivered as Affordable Housing do not contain any errors or omissions.

3.7.2 If Council requires access to the Land to complete the Affordable Housing Works under this clause 3.7, the Developer grants Council and its contractors a licence for such period as is necessary for Council and its contractors to access the Land to carry out, or procure the carrying out and completion of those works.

3.7.3 Upon Completion of the Affordable Housing Works by Council under this clause 3.7, an Affordable Housing Notice of Completion will be issued to the Developer.

3.8 Transfer of Affordable Housing

3.8.1 The Developer must transfer the Affordable Housing to Council for nominal consideration of $1.00 within 21 days after registration of the strata plan of subdivision for the Development.

3.8.2 The Developer must pay stamp duty (if any) on the transfer, registration fees and Council's reasonable expenses, legal costs and disbursements associated with the transfer of the Affordable Housing.

3.8.3 If the Developer does not transfer the Affordable Housing to Council in accordance with clause 3.8.1, Council may give written notice to the Developer of its intention to make appropriation from the Guarantee for the purpose of taking any action deemed necessary by the Council to acquire affordable housing of a similar size and specification as the Affordable Housing within Council's local government area.

3.8.4 If the Affordable Housing has not been transferred to Council 15 Business Days after the date of the notice in clause 3.8.3, Council may make appropriation from the Guarantee for the purpose disclosed in that notice.

3.8.5 If Council makes an appropriation under clause 3.8.4, the Developer will have no further obligation to dedicate Affordable Housing under this Deed.

3.9 Indemnity by the Developer

3.9.1 The Developer indemnifies and releases Council from and against all Claims brought against, suffered or incurred by Council arising from any act or omission by the Developer (or any person engaged by it, including the contractor) in connection with the provision of the Affordable Housing, except to the extent caused or contributed to by Council.

3.9.2 The Developer releases and indemnifies Council from and against all Claims brought against, suffered or incurred by Council arising from any act or omission by Council (or any person engaged by it) in connection with Council performing the works under clause 3.7. The liability of the Developer to indemnify Council shall be reduced to the extent that the Developer demonstrates that the circumstances from which the loss, damage, cost, expense, claim, proceedings, order, regulatory action or liability arose were attributable to a wilful or negligent act or omission of the Council (or any person engaged by the Council other than the Developer).

---

4. Defects Liability Period

4.1 Defects in the Works

If Council notifies the Developer of a Defect in the Affordable Housing Works in writing within the Defects Liability Period (**Defect Notice**), then the Developer must remedy that Defect to the reasonable satisfaction of Council, within the period specified within the Defect Notice, such period being reasonable having regard to the nature of the Defect notified in the Defect Notice.

4.2 Security for Defects Liability Period

Until the expiration of the relevant Defects Liability Period, Council may retain from the Guarantee an amount equal to 10% of the Guarantee as security for the performance by the Developer of its obligations under this clause 4 and the Developer must make any necessary arrangements to allow that to occur.

4.3 Application of Security

4.3.1 If the Developer does not rectify any Defect in the Affordable Housing Works notified under clause 4.1 within the period specified in the Defect Notice served on the Developer, Council may:

(a) rectify the Defect in the Affordable Housing Works; and

(b) make an appropriation from the amount retained from the Guarantee in accordance with clause 4.2 for the costs of and arising from the rectification.

4.3.2 If Council requires access to the Land to rectify any Defect in the Affordable Housing Works under this clause 4.3, the Developer grants Council and its contractors a licence for such period as is necessary for Council and its contractors to access the Land to carry out, or procure the carrying out and completion of those rectification works.

4.3.3 The Developer indemnifies and releases Council from and against all Claims arising from any act or omission by Council (or any person engaged by it) in connection with Council's rectification of any Defect in the Affordable Housing in accordance with clause 4.2. The liability of the Developer to indemnify Council shall be reduced to the extent that the Developer demonstrates that the circumstances from which the loss, damage, cost, expense, claim, proceedings, order, regulatory

action or liability arose were attributable to a wilful or negligent act or omission of the Council (or any person engaged by the Council other than the Developer).

5. Expenditure by Council

5.1 Expenditure by Council

5.1.1 If Council is required to carry out Affordable Housing Works under clause 3.7 or rectify any Defect under clause 4.3.1, then Council:

(a) is not required to expend more money than is secured by the Guarantee or the 10% retained from the Guarantee under clause 4.2; or

(b) acting reasonably, may expend more money than is secured by the Guarantee in order to deliver the Affordable Housing in accordance with this Agreement and the Development Consent.

5.1.2 The Parties acknowledge that Council may in its discretion elect not to finish the Affordable Housing in a similar manner and quality to the other units in the Development, to ensure that the Affordable Housing can be achieved for an amount equal to, or less than, the amount secured by the Guarantee.

5.2 Debt due and owing to Council

If Council expends more money than is secured by the Guarantee in either carrying out or in rectifying any works under clause 3.7 or 4.3.1, then the amount in excess of the Guarantee will be deemed to be a debt immediately due and owing to Council by the Developer, provided that the Developer is not required to reimburse Council in respect of any expenditure in connection with finishing the Affordable Housing in a manner which is unnecessarily superior to that required under the Development Consent and this Agreement.

6. Specific Obligations Of Council

6.1 Council Agrees to use the Affordable Housing

Council agrees to accept the Affordable Housing transferred to it in accordance with clause 3.8.1, and to do all things that are necessary to enable the apartments comprising the Affordable Housing to be used as affordable housing as defined in section 1.4 of the Act.

7. Security

7.1 Provision of Guarantee

7.1.1 The Developer must provide to Council, before the issue of the first Construction Certificate for the Development, one or more Guarantees as security for the due, prompt and proper observance and performance by the Developer of its obligations under clauses 3.1 to 3.8.

7.1.2 The Guarantee provided under this Agreement will be in the amount of $2,000,000.00.

7.1.3 Within 28 days after each anniversary of the date the Guarantee was provided under clause 7.1.1, the Developer must provide a replacement Guarantee to Council which has been indexed in accordance with the Consumer Price Index.

7.1.4 The Parties agree that the provision of the Guarantee constitutes the security for the purposes of this Agreement as required by s7.4(3)(g) of the Act.

7.2 Rights and remedies of Council

The Developer expressly acknowledges and agrees that Council may make an appropriation from the Guarantee in such amount as Council (acting reasonably) thinks appropriate for reasons including:

7.2.1 to carry out and complete the Affordable Housing in accordance with clause 3.7;

7.2.2 to enforce the transfer of Affordable Housing to Council if the Developer fails to comply with clause 3.8.1;

7.2.3 to take action deemed necessary by Council to acquire other affordable housing in accordance with clauses 3.8.4 and 3.8.5 if the Developer does not transfer the Affordable Housing in accordance with clause 3.8.1; or

7.2.4 to cover any expense or liability incurred by Council as a consequence of a breach by the Developer of their obligations under this Agreement.

7.3 Release of Guarantee

7.3.1 Subject to clause 4.2, if the monies secured by the Guarantee have not been expended under clauses 3.7, 3.8.5 or 7.2, then Council will return the Guarantee to the Developer within 15 Business Days after the Affordable Housing is transferred to Council in accordance with clause 3.8.

7.3.2 Where the Guarantee is able to be partially released, Council will return the Guarantee to the Developer on receipt of a replacement Guarantee from the Developer for the relevant reduced guarantee amount.

---

8. Registration

8.1 Acknowledgement

The Developer acknowledges that Council intends to register this Agreement under section 7.6 of the Act on the Land and on registration by the Registrar-General the Agreement will be binding on and enforceable against the owner of the Land from time to time as if each owner for the time being had entered into this Agreement.

8.2 Consents to Registration

The Developer warrants that it has obtained all consents to the registration of this Agreement on the title to the Land.

8.3 Developer's Obligations

8.3.1 The Developer must within 10 Business Days of a written request by Council, sign any Real Property Act dealing, acknowledgement or document, and provide all relevant consents (including the consent of any mortgagee or caveator) and arrange for the production of the Certificates of Title for the Land and do all other

things reasonably necessary to enable this Agreement to be registered pursuant to section 7.6 of the Act.

8.3.2 Upon registration of the strata plan of subdivision, in respect of the completed Development, the Developer must arrange for the registration of this Agreement on the lots comprising the Affordable Housing.

8.4 Release from Registration

Council will, within 10 Business Days of a written request by the Developer, execute the relevant forms to remove the registration of this Agreement from the Certificates of Title for the Land on completion of the Developer's obligations under this Agreement.

8.5 Registration Expenses

The Developer must pay for Council's expenses including reasonable registration fees, legal costs and disbursements on an indemnity basis, for the registration of this Agreement and the subsequent removal of registration.

8.6 Sale of Land

The Developer must not sell the Land or part of it, without the prior written consent of Council. This consent will not be withheld where the purchaser enters into a Deed with Council confirming that the purchaser will comply with the obligations of the Developer under this Agreement, including the construction and transfer of the Affordable Housing in accordance with this Agreement.

9. Caveatable Interest

9.1 Lodgement of Caveat

9.1.1 The Developer acknowledges that the rights under this Agreement give Council a caveatable interest in the Land. Until such time as this Agreement is registered on the relevant folios of the Register held by the Land Registry Services (**LRS**) pertaining to the Land, the Developer agrees that Council may lodge a caveat on the relevant folios of the Register held by the LRS pertaining to the Land.

9.1.2 A caveat lodged by Council in accordance with this clause 9 must not prevent or prohibit the lodgement of any instrument dealing or matter required for the registration of any subdivision plan, easement, covenant, right of way, deposited plan or strata plan relating to the Development, or the registration of any mortgage. The Developer must not lodge a lapsing notice or take any action to obtain or seek a withdrawal or removal of the caveat, unless:

(a) the Developer's obligations under this Agreement have been satisfied; or

(b) this Agreement has otherwise come to an end.

9.2 Withdrawal of Caveat

If Council lodges a caveat in accordance with clause 9, Council must do all things reasonably required to:

9.2.1 consent to the registration of this Agreement; and

9.2.2 remove the registration of any caveat lodged by Council in respect of the Land once this Agreement has been registered on the Land in accordance with clause 8.

10. Section 7.11, 7.12 and 7.24 of the Act

10.1 Application of Section 7.11 Section 7.12 and section 7.24 of the Act

This Agreement does not exclude the application of section 7.11, section 7.12 and section 7.24 of the Act from the Development, except to the extent that those provisions would enable a condition to be imposed on any Development Consent requiring a contribution to be made for the purpose of or towards affordable housing. The Parties acknowledge that either section 7.11, section 7.12 or section 7.24 will apply to the Development, except to that extent.

10.2 Benefits Obtained Under This Agreement

Benefits obtained by Council under this Agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act with respect to the Development.

11. Warranties

11.1 Developer's Warranties

The Developer warrants and undertakes to Council that:

11.1.1 it has full legal capacity to enter into this Agreement and carry out the obligations contemplated by this Agreement;

11.1.2 it has taken all corporate action that is necessary or desirable to authorise its entry into this Agreement and to carry out the obligations it contemplates;

11.1.3 it holds each Authorisation that is necessary or desirable to:

(a) enable it to properly execute this Agreement and to carry out the obligations contemplated by this Agreement;

(b) ensure that this Agreement is legal, valid, binding and admissible in evidence,

and is complying with any conditions to which these Authorisations are subject.

11.1.4 each person referred to in clause 16.2.2 has the necessary authorisation to accept service of notices under this Agreement, and to act as the Developer's Representative.

12. Default

12.1 Costs on Default

The Developer must pay Council's reasonable expenses including internal management costs and legal fees and disbursements in connection with any breach of a provision of this Agreement by the Developer.

12.2 Interest on Overdue Payments

The Developer must pay interest on any money due to Council but not paid on the due date from the date payment was due at the Prescribed Rate.

---

13. Dispute Resolution

13.1 Disputes

Any dispute between the Parties which arises out of or in connection with this Agreement (**Dispute**) must be resolved under this clause 13.

13.2 Notice of Dispute

If any Dispute arises, a Party to the Dispute may deliver by hand or send by certified mail to the other Parties a notice of dispute (**Notice of Dispute**) which must:

13.2.1 identify and provide adequate details of the dispute so as to enable the other Party to fully understand the nature of the dispute; and

13.2.2 designate as a Party's representative in negotiations a person with authority to settle the dispute.

13.3 Reply to Notice

Within 5 Business Days after a Party receives a Notice of Dispute under this clause (**Recipient Party**) it must give a notice to the other Party designating the Recipient Party's representative who will have authority to settle the dispute.

13.4 Designated Representative

13.4.1 The designated representatives under clauses 13.2.2 and 13.3 will have 20 Business Days from the date of the Notice of Dispute within which to negotiate a resolution of the dispute.

13.4.2 The Parties will ensure that the designated representatives use their best endeavours to settle the dispute by negotiation within that period.

13.5 Submission to mediation

In the event that the persons negotiating pursuant to clause 13.4 cannot resolve the dispute within the 20 Business Days from the date of the Notice of Dispute, either Party may give a written notice to the other Party to refer the Dispute for mediation (**Mediation Notice**).

13.6 Mediation

13.6.1 The Parties must, within 5 Business Days after service of the Mediation Notice, use their best endeavours to agree on a mediator for the purposes of this clause.

13.6.2 If the Parties cannot agree on a mediator within 5 Business Days after service of the Mediation Notice, the mediator must be nominated by the President of the Institute of Arbitrators and Mediators Australia, or any other person authorised by the President to make the appointment, on the application of either party.

13.6.3 Within 15 Business Days (or such other period agreed in writing between the parties) after the agreement or nomination of the mediator under clause 13.6.1 or 13.6.2 the Parties must:

(a) arrange for the appointment of the mediator (on terms satisfactory to the mediator) for the purposes of this clause; and

(b) attend in person a preliminary conference before the mediator.

13.6.4 The Parties acknowledge and agree that:

(a) the mediator must conduct a mediation in relation to the Dispute in accordance with The Institute of Arbitrators & Mediators Australia Mediation Rules (**Rules**);

(b) they must abide by the Rules;

(c) they may be represented by legal counsel at the mediation; and

(d) they must use their reasonable endeavours to achieve the resolution of the Dispute at the mediation.

13.6.5 Each Party must:

(a) bear its own costs in respect of the mediation; and

(b) share equally the costs of the mediator (including the cost of any expert assistance retained by the mediator).

13.6.6 Any mediation under this clause 13.6 will be conducted on a without prejudice basis.

13.7 Termination of Mediation

A Party may terminate a mediation under clause 13.6, by giving written notice to the other Parties and to the Mediator, if the Dispute has not been resolved within 30 Business Days after the date a mediator is appointed.

13.8 Subsequent proceedings

Each Party must not appoint the Mediator as its arbitrator, advocate or adviser in any arbitral or judicial proceedings relating to the Dispute or any part of it, except with the other Party's written consent.

13.9 Continuing obligations

Despite the existence of a Dispute under this clause 13 each Party must continue to perform its obligations under this Agreement.

13.10 Urgent relief

Nothing in clause 13 prejudices the right of a Party to seek urgent injunctive or declaratory relief for any matter in connection with this Agreement.

14. General

14.1 Amendment

This document may only be varied or replaced by a document duly executed by the Parties.

14.2 Entire Understanding

This document contains the entire understanding between the Parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this document and have no effect.

14.3 Further Assurance

Each Party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this document.

14.4 Legal Costs and Expenses

The Parties must each pay their own legal costs and expenses in relation to the negotiation, preparation and execution of this document and other documents referred to in it, unless expressly stated otherwise.

14.5 Waiver and Exercise of Rights

14.5.1 A single or partial exercise or waiver of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.

14.5.2 No Party will be liable for any loss or expenses incurred by another Party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

14.6 Rule of Construction

In the interpretation of this document, no rule of construction applies to the disadvantage of the Party preparing the document on the basis that it put forward this document or any part of it.

15. Assignment, Novation and Dealings

15.1 Assignment, Novation and Dealings

15.1.1 A Party must not assign, novate or deal with any right or obligation under this document without the prior written consent of the other Party.

15.1.2 A Party must not unreasonably withhold consent under this clause provided that the granting of consent is subject to the other Party complying with its statutory obligations and obligations under clause 8.6 and clause 15.1.3 and 15.1.4.

15.1.3 The Developer must not:

(a) sell, transfer, delegate, assign, licence; or

(b) mortgage, charge or otherwise encumber

any right or obligation under this document to any person (**Proposed Transferee**), or permit a Proposed Transferee to assume any obligation under this document without the prior written consent of Council. The Developer must pay all reasonable fees and expenses (including legal fees) incurred by Council in connection with the proposed assignment, novation or dealing and the investigation of the Proposed Transferee, whether or not consent is granted.

15.1.4 The Developer must deliver to Council:

(a) the name, address and occupation of the Proposed Transferee; and

(b) if required by Council, acting reasonably, a Deed in a form approved by Council executed by persons approved by Council, guaranteeing the performance of the Proposed Transferee's obligations.

15.1.5 Any purported assignment, novation or dealing in breach of this clause is of no effect.

16. Notices

16.1 Service of Notice

A notice or other communication required or permitted, under this document, to be served on a person must be in writing and may be served:

16.1.1 personally on the person;

16.1.2 by leaving it at the person's current address for service;

16.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or

16.1.4 by email to the person's current email address.

16.2 Particulars for Service

16.2.1 The particulars for service of Council are:

Contact The General Manager

Address: Civic Centre, 1A Marlborough Street, Drummoyne, NSW, 2047

Email: council@canadabay.nsw.gov.au

16.2.2 The particulars for service of the Developer are:

Contact: Alain Assoum

Address: Suite 802 Level 8, 117 York Street, Sydney NSW 2000

Email: assoum@pietythp.com.au

16.2.3 Any Party may change the address or email address for service by giving written notice to the other Parties.

16.2.4 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

16.3 Time of Service

A notice or other communication is deemed served:

16.3.1 if served personally or left at the person's address, upon service;

16.3.2 if posted within Australia to an Australian address, six Business Days after posting and in any other case, seven Business Days after posting;

16.3.3 if served by email, at the time the email containing the notice left the sender's email system, unless the sender receives notification that the email containing the notice was not received by the recipient; and

16.3.4 if received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

---

17. Interpretation

17.1 Governing Law and Jurisdiction

This document is governed by and is to be construed in accordance with the laws of New South Wales. Each Party irrevocably and unconditionally submits to the exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

17.2 Persons

In this document, a reference to:

17.2.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

17.2.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and

17.2.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

17.3 Joint and Several

If a Party consists of more than one person, this document binds them jointly and each of them severally.

17.4 Legislation

In this document, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

17.5 This Document, Clauses and Headings

In this document:

17.5.1 a reference to this or other document includes the document as varied or replaced regardless of any change in the identity of the Parties;

17.5.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this document all of which are deemed part of this document;

17.5.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;

17.5.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this document;

17.5.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and

17.5.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation'.

17.6 Severance

17.6.1 If a provision in this document is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

17.6.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this document.

17.7 Counterparts

This document may be executed in any number of counterparts all of which taken together constitute one instrument.

17.8 Business Day

If a payment or other act is required by this document to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

17.9 Number and Gender

In this document, a reference to:

17.9.1 the singular includes the plural and vice versa; and

17.9.2 a gender includes the other genders.

---

18. GST

18.1 Definitions

In this clause:

18.1.1 words and expressions that are not defined in this Agreement but which have a defined meaning in the GST Law have the same meaning as in the GST Law;

18.1.2 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

18.2 GST exclusive

Except as otherwise provided in this Agreement, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

18.3 Division 81 and 82 of GST Law

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

18.3.1 no additional amount will be payable by a Party on account of GST; and

18.3.2 no tax invoices will be exchanged between the Parties.

18.4 Increase in consideration

Subject to clause 18.3, if GST is payable in respect of any supply made by a supplier under this Agreement (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. Subject to clause 18.5, the recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

18.5 Tax invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 18.3.

18.6 Reimbursements

If this Agreement requires a Party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another Party, the amount which the first Party must pay, reimburse or contribute is the sum of:

18.6.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other Party is entitled; and

18.6.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

18.7 Adjustment events

If an adjustment event occurs in relation to a taxable supply under this Agreement:

18.7.1 the supplier must issue an adjustment note to the recipient within 7 days after becoming aware of the adjustment; and

18.7.2 any payment necessary to give effect to that adjustment must be made within 7 days after the date of receipt of the adjustment note.

Signing Page

Executed as a Deed on this day of 20

Council

SIGNED SEALED AND DELIVERED for and on)
behalf of **CITY OF CANADA BAY COUNCIL**)
ABN 79 130 029 350)
by....., but not so as
to incur any personal liability in the presence of:

.....
Witness

Developer

Executed by **North Strathfield One Pty Ltd ACN 165**)
499 589 in accordance with s 127(1) of the)
Corporations Act 2001:

.....	.....
Signature of Director	Signature of Director/Company Secretary
Bilal El-Cheikh	SAJAH HAMMOUD
Print full name	Print full name