

CABEZZ PTY LTD
Cabezz

ASTINA GROUP PTY LTD
Astina

ESQ1818 STAGE 2A PTY LTD
ESQ

**INFRASTRUCTURE CONTRIBUTION
AGREEMENT**

The logo for Peter Short, a lawyer, features a blue rectangular background. On the left, the text "PETER SHORT" is written in a white, serif font, with "Lawyer" in a smaller, white, sans-serif font below it. On the right side of the rectangle, there is a stylized, light blue graphic of a fingerprint or a series of concentric, wavy lines.

PETER SHORT
Lawyer

Box 2227 P.O. Bowral, NSW 2576
Mobile 0437 920 820
Fax 02 4204 1688
peter@petershortlawyer.com.au

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THIS AGREEMENT is made the day of 2023.

BETWEEN: **CABEZZ PTY LTD ACN 600 106 796** ABN 67 600 106 796 of Suite 502, 2-8 Brookhollow Avenue, Baulkham Hills NSW 2153
 "Cabezz"

AND: **ASTINA GROUP PTY LTD ACN 609 767 320** ABN 75 609 767 320 of 5/488 High St, Penrith NSW 2750 **"Astina"**

AND: **ESQ1818 STAGE 2A PTY LTD ACN 627 862 355** of Suite 502, Level 5, 2-8 Brookhollow Avenue Baulkham Hills NSW 20153 **"ESQ"**

ON THE BASIS THAT:

- A. The Development Consent has issued in regard to the Development Stages.
- B. The Development Consent contains conditions relating to the Infrastructure Work.
- C. Cabezz and Astina have agreed that the cost of construction of the Infrastructure Work is to be shared in the manner set out in this Agreement.
- D. ESQ agrees to guarantee the obligations of Cabezz under this Agreement.

THE PARTIES AGREE THAT:

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement unless the context otherwise requires:

"Contribution Amount" means the sum referred to in clause 3.1.

"Development Consent" means the DA 2018/0999 issued by Penrith City Council.

"Development Stages" mean the stages to be developed as indicated on the plan attached to this Agreement.

"ESQ Development" means the development of Stages 1, 2A, 2B, 3A, 3B, 4 and 5 as shown on the plan annexed.

"GST" means any goods and services tax imposed by A New Tax System (Goods and Services) Act 1999 or any related legislation or regulations.

"GST Act" means a New Tax System (Goods and Services Tax) Act 1999, as amended. Expressions defined in the GST Act have the meaning given them in the GST Act unless otherwise provided in this Agreement.

"Infrastructure Work" means the work (including construction, authority fees, costs related to construction and construction bonds) for sewer diversion, roadworks and essential infrastructure services and drainage, water, sewer, electrical, lighting, gas,

communications (Opticomm nominated), CCTV/security (Exact Security nominated), landscape (including irrigation and all other as detailed in the Development Consent and contained within the areas shown as Stage 2A, Stage 2B, Section 1, together with the temporary diversion swale and temporary sediment basin, as shown in the infrastructure works plan at **Annexure A**.

1.2 Interpretation

In the interpretation of this Agreement, unless the contrary intention appears:

- (a) A reference to this Agreement or to any other Agreement, agreement or document includes, respectively, this Agreement or that other Agreement, agreement or document as amended, notated, supplemented, varied or replaced.
- (b) A reference to a party includes its executors, administrators, successors and permitted assigns, substitutes and persons taking by way of novation.
- (c) Where a party is comprised of more than one person, the obligations and covenants of that party bind any two or more of those persons jointly and each of them severally.
- (d) Words and expressions importing natural persons include partnerships, bodies corporate, associations, governments and governmental and local
- (e) authorities and agencies, and vice versa.
- (f) A reference to any legislation or statutory instrument or regulation is construed in accordance with the Acts Interpretation Act 1901 (Cth) or the equivalent State or Territory legislation, as applicable.
- (g) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislative provision substituted for, and any subordinate legislation issued under, that legislation or subordinate legislation.
- (h) A reference to a specific time for the performance of an obligation is a reference to that time in the place where that obligation is to be performed.
- (i) No provision of this Agreement shall be construed against a party by reason of that provision having been drafted by or on behalf of that party.

2. PERFORMANCE OF WORK

2.1 Astina to carry out work

Astina must obtain any necessary construction certificate and service authority approvals and perform and carry out all work necessary to construct and finalise the Infrastructure Work in a proper and workmanlike manner and to the satisfaction of Penrith City Council and appropriate service authorities.

2.2 Certification

When each item of work is completed, Astina must obtain all appropriate certificates or approvals of completion and where applicable, any handover process (including any occupation certificate that may be required for the use of the item of work) and provide a copy of all issued certificates to Cabezz.

2.3 Cost of Work

Astina must keep accurate records of the cost of carrying out the work for each item in the Infrastructure Work and must provide a copy of those records and a certificate from a quantity surveyor certifying those costs to Cabezz.

2.4 Design

Cabezz must undertake (and bear the cost of) the design of the Infrastructure Work (including authority fees and costs related to design). The parties acknowledge that Infrastructure Work is to be designed to accommodate the whole of the ESQ Development consisting of no less than 1,000 apartments and 3,500 sq metres of retail. All Consultants are to be agreed by all parties (acting reasonably).

3. CONTRIBUTION BY CABEZZ

3.1 Contribution by Cabezz

Cabezz agrees to contribute \$950,000 (including GST) towards the Infrastructure Work.

3.2 Payment of contribution

Cabezz must pay the Contribution Amount progressively upon receipt from Astina of tax invoice, together with supporting certification from a quantity surveyor.

3.3 Time for payment

Cabezz must pay or arrange payment to Astina of the instalment of the Contribution Amount within 10 Business Days after receiving all of the items specified in the preceding clause.

4. GUARANTEE AND INDEMNITY

4.1 In consideration of Astina agreeing to enter into this Agreement with Cabezz, ESQ hereby unconditionally guarantees to Astina the obligations of Cabezz under this Agreement and the due performance of Cabezz's obligations under this Agreement and the due and punctual payment by Cabezz of all monies due to be paid by Cabezz under this Agreement (**Guaranteed Money**).

4.2 In the event that Cabezz has not paid the Guaranteed Money to Astina when required to under this Agreement, then ESQ agrees to pay the Guaranteed Money to Astina on demand from Astina whether or not demand has previously been made to Cabezz.

4.3 ESQ hereby indemnifies Astina against all liabilities, losses, damages and expenses arising from and in connection with the Guaranteed Money not being recoverable from Cabezz or ESQ or in connection with the obligations of Cabezz under this Agreement not being duly or punctually performed.

4.4 This guarantee and indemnity is a continuing guarantee and indemnity and ESQ expressly waives any right to require Astina to proceed against or enforce any rights against Cabezz before claiming from ESQ under this guarantee and indemnity.

4.5 The liabilities of ESQ under this guarantee and indemnity are as principal debtor or indemnifier and are not affected by anything which might otherwise affect them at law and in equity including:

- (a) acquiescence, delay, acts or omissions on the part of Astina;
- (b) any variation or alteration to this Agreement;
- (c) the termination of this Agreement by Astina;
- (d) Astina granting time or other indulgence to Cabezz.

4.6 ESQ represents and warrants to Astina that:

- (a) the obligations of ESQ under this guarantee and indemnity are valid and binding and ESQ has full capacity to enter into this guarantee and indemnity and does so in its own right;
- (b) It has sought and obtained independent legal advice in regards to its obligations under this guarantee and indemnity or has formed the view that it did not need to obtain that advice;
- (c) being a company, it is in the interests of ESQ to give this guarantee and indemnity.

5. VARIATION OF AGREEMENT

This Agreement can only be varied by the parties in writing.

6. COUNTERPARTS

This Agreement may be executed in any number of counterparts, all of which taken together constitute one and the same document.

7. COSTS & STAMP DUTY

1.2 Parties to Pay Own Costs

Except as otherwise provided in this Agreement, each of the parties shall pay its own costs and expenses (including legal fees) of and incidental to the negotiation, execution

and (where applicable) the stamping of this Agreement and any document or transaction contemplated by this Agreement.

8. NOTICES

8.1 Methods of Giving Notices

All notices given under this Agreement shall be in writing and may be validly given by anyone of the following means:

- (a) by sending it by prepaid post or by document exchange to the address of the party to be served;
- (b) as provided for in s. 170 of the Conveyancing Act 1919; or
- (c) by delivering it to the party to be served.

8.2 Service of Notices

A notice shall be deemed to be given and received:

- (d) if sent by pre-paid post, 2 Business Days after it has been posted; and
- (e) if delivered during Business Hours, on the day of delivery; and if delivered outside Business Hours, on the first Business Day after the day of delivery.

8.3 Address for Service

The address and facsimile number of each of the parties for service is as set out in this Agreement.

8.4 Notices Given By Representatives

A notice given or a document signed or served on behalf of any party by any director or company secretary or solicitor of that party shall be deemed to have been given, signed or served by that party personally.

8.5 Proof of Service

Any activity report or transmission advice slip issued by a facsimile machine to any party seeking to serve any other party by facsimile shall constitute sufficient and good proof of service for the purposes of this Agreement.

9. GOVERNING LAW

This Agreement is to be governed by the laws of the State of New South Wales. The parties submit to the jurisdiction of the Courts of the State of New South Wales and any Courts that have jurisdiction to hear any appeals from those Courts.

IN WITNESS WHEREOF the parties have executed this Agreement on the date first hereinbefore written.

EXECUTED by CABEZZ Pty Ltd, ACN 600 106 796 ABN 67 600 106 796, in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



.....
Signature of Sole Director/Secretary

.....
Lou Zivanovic
Name
[BLOCK LETTERS]

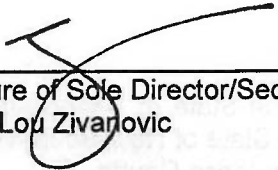
EXECUTED by ASTINA GROUP PTY LTD, ACN 609 767 320 ABN 75 609 767 320 in accordance with section 127 of the *Corporations Act 2001* (Cth) by:



.....
Signature of Sole Director/Secretary

.....
Thomas Howard Schrumpf
Name of Director/Secretary
[BLOCK LETTERS]

Executed by **ESQ1818 STAGE 2A PTY LTD ACN 627 862 355** in accordance with section 127 of the *Corporations Act 2001*:)
)
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)



.....
Signature of Sole Director/Secretary
Name: Lou Zivanovic

Annexure A

Infrastructure Works Plan

