



HOLDING REDLICH

Minister for Planning and Infrastructure
ABN 38 755 709 681

and

KGS (Victoria) Pty Limited
ACN 000 038 719

Planning Agreement

Environmental Planning and Assessment Act 1979

Sydney . Melbourne . Brisbane

Level 65 MLC Centre 19 Martin Place Sydney NSW 2000 DX 529 Sydney
GPO Box 4118 Sydney NSW 2001 T +61 2 8083 0388 www.holdingredlich.com

ABN 15 364 527 724

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THIS deed is dated

15 February

2019

PARTIES:

MINISTER FOR PLANNING AND INFRASTRUCTURE (ABN 38 755 709 681) of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 (**Minister**)

KGS (VICTORIA) PTY LIMITED (ACN 000 038 719) of Level 9 South, 161 Collins Street, Melbourne, Victoria, 3000 (**Land Owner**)

INTRODUCTION:

- A** The Land Owner owns the Land.
- B** The Land Owner wants the Land to be available for the Development to be carried out on the Land.
- C** The Land Owner has sought a change to the zoning of the Land by means of the Planning Instrument.
- D** The Land Owner has offered to enter into this deed with the Minister to secure the Development Contribution in relation to the proposed the Planning Instrument.

IT IS AGREED:

1 DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

Act means the *Environmental Planning and Assessment Act 1979* (NSW).

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Affordable Housing has the same meaning as in the Act.

Affordable Housing Lots means seven strata lots in the Building configured as one bedroom units to be used for Affordable Housing purposes of such sizes as:

- (a) agreed with the Director-General, acting reasonably; or
- (b) acceptable to the Minister or his nominee.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Building means one or more mixed use or residential flat buildings to be constructed on the Land.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Development means the demolition of existing structures and construction of the Building.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the obligation to enter into the Sale of Land Contract in accordance with Schedule 4.

Director-General means the Director-General of the Department of Planning and Infrastructure from time to time.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

GST Legislation means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Land means the land described in Schedule 3 of this deed.

LEP means the *Leichhardt Local Environmental Plan 2000*.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Notified means the commencement of the Planning Instrument in accordance with section 34(5) of the Act.

Novation Deed means a deed in substantially the same form as contained in Schedule 5.

Occupation Certificate has the same meaning as in the Act and includes an interim Occupation Certificate.

Planning Application means:

- (a) a Development Application; or
- (b) any other application required under the Act,

which seeks approval for the Development of the Land.

Planning Instrument means any environmental planning instrument within the meaning of the Act that gives effect to the Planning Proposal.

Planning Proposal means a proposal, in respect of the Land, to amend the LEP to allow for a maximum floor space ratio of 2.15:1.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Sale of Land Contract means one or more contracts for the transfer of the Affordable Housing Lots from the Land Owner to the Minister or his nominee with a completion date no later than 60 Business Days (or such later date as may be agreed by the Land Owner and the Minister or his nominee as applicable) after the later of:

- (a) a Strata Plan being registered for the relevant Building; or
- (b) the issuing of the first Occupation Certificate for that part of the Building that comprises the relevant Affordable Housing Lots.

Strata Plan means a strata plan or strata plan of subdivision within the meaning of the Strata Schemes Act.

Strata Schemes Act means the *Strata Schemes (Freehold Development) Act 1973* (NSW).

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.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;

- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, the **introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them severally and an obligation or warranty in favour of 2 or more persons benefits them severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;

- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2 OPERATION AND APPLICATION OF THIS DEED

2.1 Operation

- (a) This deed, other than clause 9, will commence from the date that is the later of the date that:
 - (i) this deed is signed by all the parties; and
 - (ii) the Planning Instrument is Notified.
- (b) Clause 9 commences when this deed is signed by all of the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3 APPLICATION OF SECTIONS 94, 94A AND 94EF OF THE ACT

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4 DEVELOPMENT CONTRIBUTION

4.1 Land Owner to provide Development Contribution

The Land Owner undertakes to provide to the Minister or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

4.2 Acknowledgement

The Land Owner acknowledges and agrees that the Minister:

- (a) must comply with section 93E of the Act but has no obligation to repay the Development Contribution to the Land Owner; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5 ENFORCEMENT

5.1 Land Owner to provide security

The parties agree that:

- (a) the registration of this deed on the title to the Land; and
- (b) clause 1.3 of Schedule 4,

constitute the security for the purposes of this deed.

6 REGISTRATION

6.1 Registration of deed

Within 15 Business Days of receiving a copy of this deed executed by the Minister, the Land Owner at its own expense will take all practical steps and otherwise do anything to procure, in relation to the Land:

- (a) the consent of each person who:
 - (i) has an estate or interest in the Land registered under the Real Property Act; or
 - (ii) is seized or possessed of an estate or interest in the Land; and
- (b) the execution of any necessary documents; and
- (c) the production of the relevant certificates of title; and
- (d) the lodgement and registration of this deed, by the Registrar-General in the relevant folio of the Register, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.

6.2 Evidence of registration

The Land Owner will provide the Minister with a copy of the relevant folio of the Register and a copy of the registered dealing within 10 Business Days of registration of this deed.

6.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Land Owner to:

- (a) execute the relevant forms to remove the registration of this deed from any or all folios of the Register in relation to the relevant Land; and
- (b) release and discharge this deed with respect to any part of the Land,

upon the Land Owner satisfying all of its obligations under this deed in respect of that part of the Land, including without limitation, providing the Land Owner with any deed of release executed by the Minister.

6.4 Land Owner's interest in Land

The Land Owner represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 6.1 of this deed; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 6.1(a) to assist, cooperate and to otherwise do all things necessary for the Land Owner to comply with its obligations under clause 6.

7 DISPUTE RESOLUTION

7.1 Not commence

A party must not commence any court proceedings relating to a dispute under or in relation to this deed unless it complies with this clause 7.

7.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

7.3 Attempt to resolve

On receipt of notice under clause 7.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or other techniques agreed by them.

7.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 7.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such dispute resolution technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

7.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 7.2 then any party which has complied with the provisions of this clause 7 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

7.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 7 must be kept confidential and may not be used except to attempt to settle the dispute.

7.7 No prejudice

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 deed.

8 GST

8.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

8.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties in relation to the Development Contribution.

8.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred will be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

8.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 8.

8.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (**GST Amount**), the Recipient will pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Land Owner will ensure that:

- (a) the Land Owner makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Land Owner provides a Tax Invoice to the Minister.

8.6 Non-monetary consideration

Clause 8.5 applies to non-monetary consideration.

8.7 Assumptions

The Land Owner acknowledges and agrees that in calculating any amounts payable under clause 8.5 the Land Owner will assume the Minister is not entitled to any input tax credit.

8.8 No merger

This clause will not merge on completion or termination of this deed.

9 ASSIGNMENT

9.1 Land Owner's right to assign or novate

- (a) The Minister is to consent to a proposed assignment or novation of the Land Owner's rights or obligations under this deed, if the Land Owner:
 - (i) satisfies the Minister (acting reasonably) that the person to whom the Land Owner's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Land Owner's obligations under this deed insofar as those obligations have been novated to the Incoming Party; and
 - (ii) procures the execution of the Novation Deed,

within 15 Business Days of the Minister being satisfied under clause 9.1(a)(i).
- (b) The Land Owner will pay the Minister's reasonable legal costs and expenses incurred under this clause 9.1.

9.2 Land Owner's right to transfer Land

- (a) Subject to clause 9.2(b), the Land Owner must not sell or transfer the whole or part of any part of the Land for which a Development Contribution has not been paid or performed and a release and discharge has not been given under clause 6.3.
- (b) The Minister is to consent to a proposed sale or transfer of the whole or any part of the Land if the Land Owner:
 - (i) satisfies the Minister (acting reasonably) that the person to whom that Land is to be transferred (**Transferee**) has sufficient assets, resources and expertise required in order to perform the Land Owner's obligations under this deed insofar as those obligations apply to the part of the Land the subject of the sale or transfer; and
 - (ii) procures the execution of the Novation Deed,

within 15 Business Days of the Minister being satisfied under clause 9.2(b)(i).

- (c) The Land Owner will pay the Minister's reasonable legal costs and expenses incurred under this clause 9.2.

10 CAPACITY

10.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

10.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11 REPORTING REQUIREMENT

- (a) On each anniversary of the date of this deed where there has been any change in status of the matters specified in clauses 11(b) and 11(c), up to and including the first anniversary after the completion of the Development or as otherwise agreed with the Director-General, the Land Owner must deliver to the Director-General a report which must include those matters set out in clauses (b) and (c), as applicable.
- (b) Where there has been a change in the status of the matters specified in clauses 11(b) and 11(c), if the Land Owner has not provided a Development Contribution in the 12 month period immediately preceding the relevant anniversary of this deed, the report must include:
 - (i) a description of the status of the Development;
 - (ii) a forecast in relation to the anticipated progression and completion of the Development; and
 - (iii) an estimated date for when the Land Owner expects to lodge the first or next Planning Application.
- (c) If the Land Owner has provided one or more Development Contributions under this deed, the report must include:
 - (i) details of all Development Consents granted in relation to the Development;

- (ii) a schedule that details all Development Contributions provided under this deed as at the date of the report; and
 - (iii) an estimated date for when the Land Owner expects to lodge the next Planning Application.
- (d) Within 10 Business Days after receiving the Director-General's written request, the Land Owner must deliver to the Director-General all documents and other information which, in the reasonable opinion of the Director-General are necessary for the Director-General to assess the status of the Development.

12 GENERAL PROVISIONS

12.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

12.2 Variation

This deed must not be varied except by a later written document executed by all parties.

12.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will 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.

12.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

12.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,

expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.

- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

12.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) 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.

12.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

12.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

12.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

12.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

12.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

12.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

12.13 No fetter

Nothing in this deed shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

12.14 Explanatory Note

The Explanatory Note must not be used to assist in construing this deed.

12.15 Expenses and stamp duty

- (a) The Land Owner must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Land Owner must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Land Owner must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including any registration fees and fees payable for stamping any documents as a result of the application of section 308 of the *Duties Act 1997* (NSW)).
- (d) The Land Owner must provide the Minister with bank cheques or transfer of cleared funds by electronic funds transfer to the Minister to a bank account of which notice has been given by the Minister to the Land Owner in respect of the Minister's costs pursuant to clauses 12.15(a) and (b).
 - (i) where the Minister has provided the Land Owner with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Land Owner with prior written notice of the sum of such costs prior to execution, within 30 Business Days of receiving a written demand by the Minister for payment.

- (e) The Land Owner must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation and execution of any documentation required in relation a release of this deed for the purpose of clause 6.3.

12.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by facsimile transmission; or
 - (iii) sent by prepaid ordinary mail within Australia.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery;
 - (ii) sent by facsimile transmission during any Business Day, on the date that the sending party's facsimile machine records that the facsimile has been successfully transmitted; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

SCHEDULE 1

Table 1 – Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

REQUIREMENT UNDER THE ACT	THIS DEED
<p>Planning instrument and/or development application – (section 93F(1))</p> <p>The Land Owner has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) Yes</p> <p>(b) No</p> <p>(c) No</p>
<p>Description of land to which this deed applies – (section 93F(3)(a))</p>	See Schedule 3
<p>Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))</p>	The Development as defined in clause 1.1
<p>The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))</p>	See Schedule 4
<p>Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))</p>	<p>The application of sections 94 and 94A of the Act is not excluded in respect of the Development with the following qualifications:</p> <p>(a) the Affordable Housing Lots are to be disregarded when calculating any payment required under sections 94 and 94A of the Act; and</p> <p>(b) the maximum monetary contribution (including any indexation) per lot under section 94 or 94A will be \$20,000.</p>
<p>Applicability of section 94EF of the Act – (section 93F(3)(d))</p>	The application of section 94EF of the Act is not excluded in respect of the Development.
<p>Consideration of benefits under this deed if section 94 applies – (section 93F(5))</p>	No

REQUIREMENT UNDER THE ACT	THIS DEED
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 7
Enforcement of this deed – (section 93F(3)(g))	See clause 5
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 12.13

Table 2 – Other matters

REQUIREMENT UNDER THE ACT OR REGULATION	THIS DEED
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 6)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

SCHEDULE 2

Address for Service (clause 1.1)

Minister

Contact: Director-General

Address: Department of Planning and Infrastructure
23-33 Bridge Street
SYDNEY NSW 2000

Facsimile No: (02) 9228 6191

Land Owner

Contact: Paul Abrahams

Address: Level 9 South, 161 Collins Street, Melbourne, Victoria 3000

Facsimile No: (03) 9650 3550

SCHEDULE 3
Land (clause 1.1)

1 Lots proposed for development

Lot	Deposited Plan	Folio Identifier
5	1080665	Auto Consol 10931-85
6-9	79950	Auto Consol 10931-85
10-13	83665	Auto Consol 10931-86
1	102461	1/102461
2	102461	2/102461
1	104359	1/104359
B	327352	B/327352
1	1108695	1/1108695
15	1081840	15/1081840

SCHEDULE 4

Development Contributions (clause 4)

1 Development Contribution

1.1 Obligation to enter into the Sale of Land Contract

- (a) The Land Owner undertakes to make the Development Contribution in accordance with this clause 1.
- (b) The Land Owner must enter into one or more Sale of Land Contracts, each for a consideration of \$1.
- (c) At least 25 Business Days prior to the issue of the first Occupation Certificate in respect of the Building, the Land Owner must provide a copy of the Sale of Land Contract(s) to the Director-General.
- (d) Where the Minister's nominee is a party to the Sale of Land Contract(s), the Land Owner must give to the Director-General a copy of a title search in relation to each Affordable Housing Lot showing the Minister's nominee as the registered proprietor of the relevant lot within 10 Business Days after receipt by the Land Owner of notice from the Minister's nominee of registration of the relevant transfer. The Sale of Land Contract must require the Minister's nominee to give notice to the Land Owner of the registration.

1.2 Compulsory acquisition

- (a) If the Land Owner does not comply with clause 1.1(c) of this Schedule, the Land Owner consents to the Minister or his nominee, at the appropriate time, compulsorily acquiring the Affordable Housing Lots in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW) each for the amount of \$1.
- (a) The Land Owner agrees that in relation to the acquisition of the Affordable Housing Lots:
 - (i) clause 1.2(a) of this Schedule is taken to be an agreement between the Land Owner and the Minister or his nominee for the purpose of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in clause 1.2(a) of this Schedule, the Land Owner acknowledges that it has agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition.
- (b) The Land Owner indemnifies and agrees to keep indemnified the Minister or his nominee against all claims made against the Minister or his nominee if the Minister or his nominee must pay compensation under Part 3 of the

Land Acquisition (Just Terms Compensation) Act 1991 (NSW) to any person, other than the Land Owner.

1.3 Reimbursement of the Minister or nominee's costs

The Land Owner agrees that it will reimburse the Minister or his nominee, promptly on demand, an amount equivalent to all reasonable legal costs incurred by the Minister or his nominee in acquiring the Affordable Housing Lots pursuant to clause 1.2 of this Schedule.

SCHEDULE 5

Land Owner's right to assign, novate and/or transfer (clause 9)

This **Deed** is made on the _____ day of _____ 201_____

BETWEEN

KGS (VICTORIA) PTY LIMITED ACN 000 038 719 of Level 9 South, 161 Collins Street, Melbourne, Victoria, 3000 ("**Land Owner**")

MINISTER FOR PLANNING AND INFRASTRUCTURE ABN 38 755 709 681 of Level 33,
Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales, 2000 ("**Minister**")

and

("Incoming Party")

BACKGROUND

- A. The Land Owner and the Minister are parties to a planning agreement dated the day of _____ 2013 (the “Planning Agreement”) under which the Land Owner secured the Development Contribution for the Minister.
- B. Clauses 9.1(a)(ii) and 9.2(b)(ii) of the Planning Agreement require the Land Owner to procure the execution of the Novation Deed from a person to whom the Land Owner’s rights or obligations under the Planning Agreement are to be assigned or novated or to whom the Land is to be sold or transferred, in favour of the Minister.
- C. This Deed is entered into in accordance with the terms of clause 9.1(a)(ii) and/or 9.2(b)(ii).

CONDITIONS

1. The Incoming Party must comply with the Land Owner's obligations under the Planning Agreement.
2. The Land Owner must pay the Minister's legal costs and disbursements relating to the perusal and execution of this Deed and any stamp duty assessed on this Deed.
3. The Minister acknowledges that he is bound by the terms of the Planning Agreement as if the Incoming Party was the Land Owner named in the Planning Agreement.
4. The Land Owner and the Minister release each other in relation to their respective obligations pursuant to the Planning Agreement, except in relation to any breaches prior to the date of the Incoming Party completing the assignment or novation of the

Land Owner's rights and obligations under Planning Agreement or the purchase or transfer of the Land to the Incoming Party.

5. In this Deed, unless the context otherwise requires, any capitalised term which is defined in the Planning Agreement and is not defined in this Deed, has the same meaning as defined in the Planning Agreement.

EXECUTED AS A DEED

Signed sealed and delivered for and on behalf of the **Minister for Planning and Infrastructure** in the presence of:

.....
Signature of Witness

.....
Signature of the Minister for Planning and Infrastructure

.....
Name of Witness in full

.....
Minister for Planning and Infrastructure

Signed sealed and delivered by KGS)
(VICTORIA) PTY LIMITED (ACN 000 038)
719) in accordance with section 127 of the)
Corporations Act:

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Name of Director


.....
Name of Director/Secretary

EXECUTED as a deed

Signed sealed and delivered for and on behalf of the **Minister for Planning and Infrastructure** in the presence of:

x 

Signature of Witness

x 

Signature of the Minister for Planning and Infrastructure


15/2/2014.



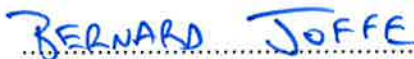
Name of Witness in full

Minister for Planning and Infrastructure

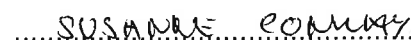
Signed sealed and delivered by KGS (VICTORIA) PTY LIMITED (ACN 000 038 719) in accordance with section 127 of the Corporations Act:


Signature of Director


Signature of Director/Secretary



Name of Director



Name of Director/Secretary