

## **Deed of Novation of Planning Agreement**

**Thrumster Street, Thrumster, New South Wales**

**Lot 2 in DP1224314 (formerly Lot 1 in DP1172154 and part  
Lot 6 in DP809161)**

**Minister for Planning (ABN 38 755 709 681)**

**Gary Raymond Murcott and Margaret Patricia Murcott**

**Hometown Australia Thrumster Property Pty Ltd (ACN 617 542 506) in its  
capacity as trustee of Hometown Australia Thrumster Property Trust**

THIS DEED OF NOVATION IS MADE ON THE 14<sup>TH</sup> day of AUGUST, 2018

**BETWEEN**

The Minister for Planning (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales 2000 ("Minister")

**AND**

Gary Raymond Murcott and Margaret Patricia Murcott both of 82B The Anchorage, Port Macquarie New South Wales 2444 ("Existing Developer")

**AND**

Hometown Australia Thrumster Property Pty Limited (ACN 617 542 506) in its capacity as trustee of Hometown Australia Thrumster Property Trust of c/o Level 12, 145 Eagle Street, Brisbane Queensland 4000 ("New Developer")

**BACKGROUND**

- A The Existing Developer and the Minister are parties to the Planning Agreement dated 14 October 2015 relating to Lot 1 in DP1172154 and part Lot 6 in DP809161, both known as Thrumster Street, Thrumster, New South Wales (the "Planning Agreement").
- B On 13 October 2016, Lot 1 in DP1172154 and part Lot 6 in DP809161 became Lot 2 in DP1224314 (the "Land").
- C The Existing Developer has entered into an agreement to transfer the Land to the New Developer.
- D The Existing Developer and New Developer have agreed to enter into this deed with the Minister on terms satisfactory to the Minister, under which the New Developer agrees to comply with the terms and conditions of the Planning Agreement as though the New Developer were the Developer.

## OPERATIVE PROVISIONS

### 1. Definitions

Unless the context otherwise requires, any capitalised term which is defined in the Planning Agreement and which is not defined in this deed, has the same meaning as defined in the Planning Agreement. In this deed:

**Effective Time** means the date that the Land is transferred to the New Developer.

### 2. Interpretation

In this deed, headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (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 jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and 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.

### **3. Novation**

On and from the Effective Time, the Planning Agreement is novated from the Existing Developer to the New Developer, with the effect that:

- (a) the New Developer replaces the Existing Developer under the Planning Agreement and becomes a party to the Planning Agreement;
- (b) a reference in the Planning Agreement to the Existing Developer is to be read as a reference to the New Developer;
- (c) the New Developer is entitled to all rights and benefits under the Planning Agreement to which, but for this deed, the Existing Developer would have been entitled to at and after the Effective Time; and
- (d) the New Developer must perform all obligations and discharge all liabilities under the Planning Agreement which, but for this deed, the Existing Developer would have been required to perform or discharge at and after the Effective Time.

### **4. Release by Minister**

With effect from the Effective Time, the Minister releases the Existing Developer from all obligations and liabilities under the Planning Agreement to be performed or discharged at or after the Effective Time.

### **5. Release by Existing Developer**

With effect from the Effective Time, the Existing Developer releases the Minister from all obligations and liabilities under the Planning Agreement to be performed or discharged at or after the Effective Time.

### **6. Obligations and liabilities arising before the Effective Time**

Nothing in this deed releases the Existing Developer from any obligation or liability under the Planning Agreement arising before the Effective Time.

### **7. Confirmation of deed**

The Minister, Existing Developer and the New Developer confirm the terms of the Planning Agreement as varied by this deed.

### **8. Security**

The Minister will release to the Existing Developer any Bank Guarantee provided by the Existing Developer under the Planning Agreement on the condition that the New Developer has first provided

the Minister with a replacement Bank Guarantee satisfactory to the Minister such that the Minister holds the Security Amount the Minister is entitled to hold under the Planning Agreement.

#### **9. Trust Developer**

- (a) Hometown Australia Thrumster Property Pty Limited (ACN 617 542 506) (**Trustee**) enters into this deed in its capacity as trustee of Hometown Australia Thrumster Property Trust (**Trust**) constituted by Trust Deed for Hometown Australia Durack Property Trust dated 22 February 2017 (**Trust Deed**). The Trustee:
  - (i) warrants that:
    - (A) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
    - (B) entry into this deed is for the benefit of the beneficiaries of the Trust;
    - (C) it is not in breach of the Trust Deed;
    - (D) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
    - (E) it is not aware of any reason why the assets of the Trust might be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
    - (F) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed; and
  - (ii) indemnifies the Minister, and agrees to keep the Minister indemnified, in respect of any loss or liability in any way connected with a breach of a warranty in clause 9(a)(i).
- (b) Prior to the Trustee being replaced as the trustee of the Trust in accordance with the Trust Deed:
  - (i) the Trustee must procure that the replacement trustee enters into a new deed with the Minister on the same terms as this deed;
  - (ii) the Trustee (as outgoing trustee) must procure an agreement from the Minister, under which the Minister releases the Trustee from the requirement to observe and perform any future obligation under this deed;
  - (iii) the Trustee (as outgoing trustee) must release the Minister, from the requirement to observe and perform any future obligation under this deed; and
  - (iv) the Trustee (as the outgoing trustee) must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause 9(b) and the costs and expenses of registering any new deed on the title to the Land.
- (c) Subject to clause 9(e), liability arising under or in connection with this deed (except under or in connection with clause 9(a) above) is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability extends to all liabilities and obligations of the

Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.

- (d) No party to this deed or any person claiming through or on behalf of them will be entitled to:
- (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
  - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
  - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust,
- except under or in connection with clause 9(a) above.
- (e) Notwithstanding any other provision of this deed, clauses 9(c) and 9(d) do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (f) Nothing in clause 9(e) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.

## **10. Notices**

Any Notice to or by a party to this deed or the Planning Agreement must be:

- (a) sent to the Minister or to the Existing Developer in the manner required by clause 13.16 of the Planning Agreement;
- (b) sent to the New Developer in the manner set out in clause 13.16 of the Planning Agreement, except that the Address for Service of Notices to the Existing Developer specified in Schedule 2 of the Planning Agreement, is substituted with:

"Contact: Hometown Australia Thrumster Property Pty Limited

Address: c/o Level 12 145 Eagle Street, Brisbane QLD 4000

Email: " "

## **11. Counterparts**

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

## **12. Costs**

The Existing Developer shall reimburse the Minister for the costs and disbursements of the Minister in connection with:

- (a) the preparation, negotiation, execution of this deed; and
- (b) the placing of any document on notification relating to this deed.

## **13. Stamp duty etc.**

The Existing Developer must pay any stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this deed or any payment or receipt or other transaction contemplated by this instrument of novation.

## **14. Entire agreement**

This deed contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this instrument of novation was executed.

## **15. Governing law and jurisdiction**

This deed is governed by and must be construed according to the law applying in New South Wales.

**Execution pages**

**Executed as a deed**

**Signed, sealed and delivered** for and on behalf  
of the **Minister for Planning** (ABN 38 755 709  
681), in the presence of:

.....  
Signature of witness

ELEANOR ROBERTSON

.....  
Name of witness in full

320 PITT ST, SYDNEY

.....  
Address of witness

SIGNED by BRENDAN NELSON as delegate  
for the Minister for Planning  
administering the  
Environmental Planning and Assessment Act, 1979

.....  
Signature of the Minister for Planning or  
delegate

.....  
Name of the Minister for Planning or delegate

**Signed, sealed and delivered by Gary  
Raymond Murrcott, in the presence of:**

.....  
Signature of witness

GARY RAYMOND MURCOTT

.....  
Name of witness in full

33 WYNDHAM ST, BRISBANE

.....  
Address of witness

.....  
Signature of Gary Raymond MURCOTT

**Signed, sealed and delivered by Margaret  
Patricia Murrcott, in the presence of:**

.....  
Signature of witness

GARY RAYMOND MURCOTT

.....  
Name of witness in full

33 WYNDHAM ST, BRISBANE

.....  
Address of witness

.....  
Signature of Margaret Patricia MURCOTT



Signed, sealed and delivered by  
Hometown Australia Thrumster  
Property Pty Ltd (ACN 617 542  
506) in its capacity as trustee of  
Hometown Australia Thrumster  
Property Trust in accordance  
with section 127 of the  
*Corporations Act 2001*(Cth) by:



Signature of director

KEVIN TUCKER

Name of director in full



Signature of director/secretary

STUART STRONG

Name of director/secretary in  
full