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J. Peter Loh

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Colebee Release Area
State Development Agreement

The Minister Assisting the Minister for Infrastructure and
Planning (Planning Administration)

Roads and Traffic Authority of New South Wales

Medallist Golf Holdings Pty Limited

Allens Arthur Robinson
The Chilley Tower
2 Chilley Square
Sydney NSW 2000
Tel 61 2 9230 4000
Fax 61 2 9230 5333
www.aar.com.au

Colebee Release Area State Development Agreement

Allens Arthur Robinson 

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Date	3 May 2005
Parties	
1.	<i>The Minister Assisting the Minister for Infrastructure and Planning (Planning Infrastructure)</i> of Level 33, Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales (<i>Minister</i>)
2.	<i>Roads and Traffic Authority of New South Wales</i> , a statutory corporation constituted by the Transport Administration Act 1988 of Centennial Plaza, 260 Elizabeth Street, Surry Hills, New South Wales (<i>RTA</i>)
3.	<i>Medallist Golf Holdings Pty Limited</i> (ABN 14 091 026 818) as trustee for the Medallist Schofields Trust of Level 16, 1 Martin Place, Sydney, New South Wales (<i>Medallist</i>)
Recitals	
A	Medallist is the proponent of the Development.
B	The Land is within Blacktown Council's Local Government Area.
C	Medallist is developing the Land.
D	The Land is subject to the REP which was published in the Government Gazette on 1 September 1989.
E	The Land will be subject to the LEP.
F	The REP, the LEP, the Bill (if enacted) and the relevant provisions of the Act (without limiting any other Law) provide the structure to deal with the environmental planning issues and in particular the infrastructure (and other public amenities and services that would need to be provided) associated with the development of the Land.
G	On 22 October 2002, the Colebee Release Area was declared to be a Release Area within the meaning of clause 6 of the REP.
H	The Land is also subject to the LES which was prepared by Blacktown Council to consider the conditions applied to the Minister's declaration of the Release Area and to respond to the comments of public authorities, bodies, adjoining councils or other persons which Blacktown Council has consulted in accordance with section 62 of the Act.

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I In recognition of:

- (a) the special circumstances relating to the provision of infrastructure and other public services and amenities required for a development of the magnitude proposed for the Land under the REP and the LEP;
- (b) the flexibility which may be required in the provision of infrastructure and other public services and amenities required for the Development and the method of delivery of those services;
- (c) the unique features of the proposed Development;
- (d) the dedications, contributions and works which the Developer would be expected, as at the date of this deed, by Law (including the Act) to make to carry out the Development;
- (e) the wish to co-ordinate the infrastructure and other services to be provided by the State and the Developer; and
- (f) the Parties' intention to describe the obligations which the Developer will undertake to satisfy the requirements of the Minister arising by virtue of announcements made by the Premier and the Minister for Infrastructure and Planning with respect to the Release Area Levy on 9 December 2004,

the Parties have agreed to enter into this deed.

It is agreed as follows.

PART 1 – General Provisions

1. Definitions and interpretation

1.1 Dictionary

The following words have these meanings in this deed unless the contrary intention appears:


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

Additional Transport Works Bank Guarantee has the meaning given to it in clause 14.5(a).

Affected Land means that part of Lot 9 in DP 976148 and Lot 86 in DP 752030 zoned 5(b) under the LEP.

Authority means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body with relevant power or authority.

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Bank Guarantee means an irrevocable and unconditional undertaking by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited;
- (b) Commonwealth Bank of Australia;
- (c) Macquarie Bank;
- (d) National Australia Bank Limited;
- (e) St George Bank Limited; or
- (f) Westpac Banking Corporation,

or other financial institution approved in their absolute discretion by the Minister (in relation to a Release Area Levy Bank Guarantee and an Additional Transport Works Bank Guarantee) or the RTA (in relation to a Transport Works Bank Guarantee) to pay an amount or amounts of money to the Minister or the RTA (as the case may be) on demand and containing terms and conditions reasonably acceptable to the Minister (in relation to a Release Area Levy Bank Guarantee and an Additional Transport Works Bank Guarantee) or the RTA (in relation to a Transport Works Bank Guarantee) and which will be:

- (g) a Release Area Levy Bank Guarantee;
- (h) a Transport Works Bank Guarantee; or
- (i) an Additional Transport Works Bank Guarantee.

BBSW Rate means the average mid rate for bills which have a tenor of 90 days which average rate is displayed on the page of the Reuters Monitor System designated "BBSW" on the day on which interest is payable under this deed or, if there is a manifest error in the calculation of that average rate or that average rate is not displayed by 10.30am (Sydney time) on that date, the rate specified in good faith by the Commonwealth Bank of Australia at or around that time on that date having regard, to the extent possible, to the rates otherwise bid and offered for bills of that tenor at or around that time (including, without limitation, the sets of bid and offer rates for bills of that tenor displayed on that page "BBSW" at that time on that date) and if such rate does not exist then the prescribed rate of interest set by the *Supreme Court Act 1970* and any applicable rules with respect to interest on debts due under a judgment or order.

Bill means the *Environmental Planning and Assessment Amendment (Development Contributions) Bill 2004*.

Blacktown Council means The Council of the City of Blacktown of 62 Flushcombe Road, Blacktown, New South Wales.

Business Day means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

Colebee Release Area means that land at Colebee declared by the Minister to be a Release Area on 22 October 2002.

Commencement Date means the date on which the LEP, as proposed by the LES, is published in the Government Gazette.

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Commission means such commission, corporation or other entity which is established by or on behalf of the State Government to administer the Release Area Levy.

Completion of the Development means the later of:

- (a) practical completion, as that expression is defined in the Works Authorisation Deed, of each item of the Transport Works; and
- (b) the date on which the Developer pays the Interim Release Area Levy in relation to the Release of Subdivision Plan for the last part of the Land which is capable of being used for residential purposes as contemplated by the LRP,

and the Developer has satisfied its obligations under this deed.

Confidential Information means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

CPI means Consumer Price Index (Sydney - All Groups)

Crown means the Crown in right of New South Wales.

Default Notice has the meaning given in clause 7.1.

Default Release Area Levy means \$25,000 per Residential Allotment.

Department means the Department of Infrastructure Planning and Natural Resources.

Developer means Medallist and, if assignment is undertaken in accordance with clause 9.3, the relevant successor or assignee.

Development means the development of the Land in accordance with the REP and the LEP.

Development Application means an application for Development Consent relating to the Development or any part of the Land.


Development Consent means a development consent granted under the Act by Blacktown Council relating to the Development or any part of the Land on terms acceptable to the Developer.

Director-General means the Director-General from time to time of the Department.

Discretion has the meaning given in clause 1.2.

Draft Subdivision Plan means the draft plan of subdivision lodged by or on behalf of the Developer with Blacktown Council for the subdivision of the Land as contemplated by or otherwise consistent with any Development Application as amended from time to time.

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Future Obligations means any obligations under or by virtue of this deed or any Works Authorisation Deed which at the time of any proposed assignment or novation contemplated by clause 9.3 are required to be performed or satisfied by the Developer at any time from or after that assignment or novation.

Index means the CPI, but if that index ceases to be published, such other index as the Minister and the Developer may agree or, failing agreement, as determined under clause 8.

Interim Release Area Levy means \$45,000 per Residential Allotment.

Land means the Land to which the LEP applies as described in the table forming Annexure A, the boundaries of which are shown on the Map.

Law means the relevant requirements of all statutes, rules, ordinances, codes, policies, regulations, proclamations, by-laws or consents issued by an Authority, present or future.

LEADR means the body known as LEADR being Lawyers Engaged in Alternative Dispute Resolution or any body which substantially replaces it.

LEP means Blacktown Local Environmental Plan (Amendment No. 193) proposed for the Land which amends Blacktown Local Environmental Plan 1988, as proposed by the LES.

LES means the Local Environmental Study prepared by Blacktown Council and dated October 2003.

Local Government Area means an area proclaimed under section 204(1) of the *Local Government Act 1993*.

LPI means the Office of Land and Property Information, New South Wales.

Map means the plan forming Annexure B which shows the boundaries of the parcels comprising the Land and the zoning of the Land under the LEP.

Medallist Schofields Trust means the trust established by the trust deed dated 9 March 2001.

Minister means the Minister for the time being administering (or jointly administering) the Act.

North West Sector means the area described as such in the "NSW Government's Plan for Land Releases in North West and South West Sydney" announced on 9 December 2004 by the Minister for Infrastructure, Planning & Natural Resources.

Part means a Part of this deed.

Party means a party to this deed. Parties has a corresponding meaning.

Past Obligations means, in respect of any proposed assignment or novation contemplated by clause 9.3, any obligations of the Developer under or by virtue of this deed or any Works Authorisation Deed which, in respect of such assignment or novation, are not Future Obligations.

Planning Agreement has the meaning given to it in clause 9.1(a).

Premier means the Premier for the time being of the State.

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Project Procurement Rights means the rights of the Minister to enforce the obligations of the Developer created and referred to in clause 13.2.

Quantity Surveyor means a person who:

- (a) is a corporate member of the Australian Institute of Quantity Surveyors or a Chartered Professional Engineer and has been for the last 5 years;
- (b) practises as a quantity surveyor for the kind of works undertaken under the Works Authorisation Deeds;
- (c) is active as a quantity surveyor at the time of his appointment;
- (d) has at least 3 years experience in valuing the kind of works undertaken under the Works Authorisation Deeds; and
- (e) undertakes to act fairly and promptly in accordance with the requirements of this deed.

Release Area means land declared to be a release area by the Minister under the REP. For the purposes of this deed, the Release Area means the Colebee Release Area released on 22 October 2002.

Release Area Levy means any contributions which may be required in respect of the Release Area as determined by or on behalf of the State Government as contemplated by the announcement by the Minister for Infrastructure, Planning & Natural Resources on 9 December 2004 which, as at the date of this deed, are yet to be determined by or on behalf of the State Government.

Release Area Levy Bank Guarantee means a Bank Guarantee for the applicable amount referred to in clause 14.3 and includes a Bank Guarantee provided to the Minister under clause 14.7.

Release of Subdivision Plan means, for any part of the Land, the day on which Blacktown Council approves and issues to the Developer the Subdivision Plan relevant to that land.

Relevant Event has the meaning given to it in clause 14.5(a).

REP means *Sydney Regional Environmental Plan No 19 – Rouse Hill Development Area* made by the Minister under section 51 of the Act.

Residential Allotment means:

- (a) a lot comprising part of the Land intended to be developed by construction of a dwelling house or two dwelling houses (whether attached or detached and commonly known as a duplex, dual occupancy dwelling or dwellings) (which for the purposes of this definition shall be deemed to be two separate Residential Allotments); or

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- (b) a lot comprising part of the Land intended to be developed by construction of a building or group of buildings containing three or more dwellings (including forms of residential buildings known as apartments, building houses, cluster housing, integrated housing, residential flat buildings, row houses, terrace houses, town houses or villas) (in each case such lot for the purposes of this deed is deemed to constitute a separate Residential Allotment in respect of each such dwelling, apartment, flat, terrace, town house, villa or similar dwelling),

but does not include a Residual Allotment.

Residential Allotment Proposed Yield means 1,000 Residential Allotments.

Residual Allotment means any land referred to or contemplated in any Draft Subdivision Plan which is not intended to be developed by construction of one or two dwelling houses or by construction of a single building or groups of buildings of three or more dwellings to the intent that such land is intended to be further subdivided into separate Residential Allotments and which the Director-General determines to be a Residual Allotment when issuing her certificate pursuant to clause 14.6 in relation to land referred to or contemplated in that Draft Subdivision Plan.

Road Extension means that part of Townson Road identified on Annexure D as "Area of Interest".

State means the State of New South Wales and, where the context permits, includes a public authority as defined in section 4(1) of the Act.

State Government means the government of the State, including its elected and appointed representatives.

State Party means the relevant Party of the Minister or the RTA, as the case requires.

Subdivision Plan means the relevant plan of subdivision for an area of the Land.

TMAP means the Transport Management and Accessibility Plan prepared by Sinclair Knight Merz and dated 28 October 2003, and the addendum dated November 2003.

Transport Works means the works or services set out in Annexure C.

Transport Works Amount means the total of the amounts set out in Annexure C, as increased under clause 13.3.

Transport Works Amount per Residential Allotment means the Transport Works Amount divided by the Residential Allotment Proposed Yield.

Transport Works Bank Guarantee has the meaning given to "Approved Security" in each Works Authorisation Deed.

Transport Works Credit Amount means:

- (a) the Transport Works Amount per Residential Allotment, for so long as the Developer is complying with its obligations under each Works Authorisation Deed;
- (b) subject to paragraph (c) and also subject to clause 14.5, nil for so long as any of the events or circumstances referred to in subclauses 15.1(a) to (j) (both inclusive) of the Works Authorisation Deed relating to Item 1 of the TMAP subsists;

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- (c) nil, if the RTA has exercised any of its rights under any of subclauses 15.1(k), (l) or (m) of the Works Authorisation Deed relating to Item 1 of the TMAP; and
- (d) nil, if the Developer elects not to carry out the Transport Works and terminates the Works Authorisation Deeds pursuant to clause 15.1A of the Works Authorisation Deed relating to Item 1 of the TMAP.

Trust Deed has the meaning given to it in clause 16(b).

Works Authorisation Deed means each of the deeds set out in Annexure E to be entered into by the RTA and the Developer on or about the date of this deed for each item of Transport Works.

1.2 Deed does not fetter government

- (a) This deed is not intended to operate to fetter, in any unlawful manner:
 - (i) the sovereignty of the Parliament of the State to make any Law;
 - (ii) the power of the Executive Government of the State to make any statutory rule; or
 - (iii) the exercise of any statutory power or discretion of any minister of the State or any Authority,(all referred to in this deed as a **Discretion**).
- (b) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the Parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 1.2 is substantially satisfied; and
 - (ii) in the event that clause 1.2(b)(i) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect; and
 - (iii) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this deed which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgement.
- (c) Where a Law permits a relevant Authority or a minister of the State to contract out of a provision of that Law or gives the Authority or the minister of the State power to exercise a Discretion, then if a relevant Authority or the minister of the State has in this deed contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with that Law.

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1.3 Interpretation Act 1987

Subject to clause 1.2 of this deed, section 3, Part 2, and sections 36, 38 and 76 of the *Interpretation Act 1987* govern the interpretation of this deed to the extent to which they are applicable as if a reference in that Act to an Act or *instrument* is a reference to this deed and with such other modifications or adaptations as may be necessary for that governing purpose.

1.4 Annexures, headings and textual notes

- (a) The Annexures form part of this deed.
- (b) The headings and any textual notes in this deed do not form part of the operative provisions of this deed but are provided merely for the assistance of the reader.

1.5 Subject to applicable laws

- (a) This deed is to be read and performed subject to:
 - (i) any Law or statutory rule; and
 - (ii) any lawful decision, direction, requirement or the like of any instrumentality of the State,

which relates to the subject matter of this deed, and any act, matter or thing which is required or forbidden to be done by such a Law, statutory rule, decision, direction, or requirement does not constitute a breach of this deed even if it is contrary to this deed.

- (b) The Minister acknowledges that obligations of the Developer under this deed may include the contribution to or provision of public amenities and public services which must be taken into account by any consent Authority in determining any condition to be imposed under section 94A of the Act or the Bill (if enacted);

1.6 Compliance with New Laws

Without limiting clause 11.1(c), if a Law is changed or a new Law comes into force (both referred to as *New Law*) and the Developer is obliged by the New Law to do something or pay an amount which it is already contractually obliged to do or pay under this deed then, to the extent only that the relevant obligation is required under both the New Law and this deed, compliance with the New Law will constitute compliance with the relevant obligation under this deed.

1.7 Conflicting interpretations

If a provision of this deed is genuinely capable of different interpretations, the interpretation which:

- (a) is consistent with clause 1.2;
 - (b) best meets the purposes of this deed; and
 - (c) promotes the aims of the Bill (if enacted), the REP and the LEP,
- is to be preferred.

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1.8 Severance of Invalid provisions

Subject to clause 1.2, if a provision of this deed is declared to be invalid by a court, the remainder of this deed will, to the fullest extent possible, be read and performed as if the invalid provision did not form part of this deed.

1.9 Approvals and consents

Where this deeds calls for a Party to give its consent or approval, that consent or approval may be given or withheld, or given subject to conditions, in the absolute discretion of the Party, except where otherwise provided in this deed.

1.10 Indexation of amounts payable by the Parties

- (a) All monetary contributions payable by the Developer in relation to any part of the Release Area Levy, the Interim Release Area Levy or the Default Release Area Levy pursuant to clause 11 (in each case after deducting the Transport Works Credit Amount) are to be increased in accordance with increases in the Index in accordance with the following formula:


$$A = B \times \frac{C}{D}$$

where:

- A = the indexed amount to be paid by the Party at the time the relevant payment is to be made;
- B = the relevant amount to be paid by the Party;
- C = the Index most recently published before the date that the relevant payment is to be made; and
- D = the Index most recently published before:
- (i) the date, as announced by the State Government, from which the Release Area Levy is to apply from, in respect of the Release Area Levy; or
 - (ii) the Commencement Date, in respect of the Interim Release Area Levy and the Default Release Area Levy.

- (b) For the avoidance of doubt, if A is less than B, then the relevant amount will not change.

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- (c) The following examples indicate how indexation of the monetary contributions is to apply:

(i) Table 1

Assuming this deed is entered into before the Release Area Levy is determined		
1.	Interim Release Area Levy per Residential Allotment	\$45,000
2.	Transport Works Amount per Residential Allotment	\$24,460
Value of B for the equation in clause 1.10(a) = 1. LESS 2.		\$20,540

(ii) Table 2

Once the Release Area Levy is determined		
1.	Release Area Levy per Residential Allotment	\$55,000 (Note 1)
2.	Transport Works Amount per Residential Allotment	\$24,460
Value of B for the equation in clause 1.10(a) = 1. LESS 2.		\$30,540

Table 2 Notes:

Note 1: Table 2 assumes that the Release Area Levy will be \$55,000.

(iii) Table 3

Assuming this deed is entered into before the Release Area Levy is determined and payments have been made and an adjustment is required under clause 11.2(b)			
Example dates	Values of A. determined by Table 1 (Column A.)	Values of A. determined by Table 2. (Column B.)	Column A. LESS Column B.
09/2005	\$20,540	\$30,540 (Note 3)	\$10,000 (Note 5)
09/2006	\$21,140 (Note 1)	\$30,540 (Note 3)	\$9,400 (Note 5)
09/2007 (Note 2)	\$21,540 (Note 1)	\$30,540 (Note 2)	\$9,000 (Note 5)
09/2008	Not applicable	\$31,140 (Note 4)	Not applicable
10/2009	Not applicable	\$31,540 (Note 4)	Not applicable



Table 3 Notes:

Note 1: The actual amounts will depend upon the indexation arising under Table 1.

Note 2: Table 3 (consistent with Table 2), assumes that the Release Area Levy will be \$55,000. September 2007 is an arbitrary date assumed to be the date from which the Release Area Levy will be taken to apply.

Note 3: On the assumption that the date in Note 2 is the date from which the Release Area Levy is to apply, then any indexation of the Release Area Levy applies from that date.

Note 4: The actual amounts will depend upon the indexation arising under Table 2.

Note 5: These amounts are the amounts to which clause 11.2(b) applies.

1.11 Interest for late payment

In addition to any other remedy available to a Party for late payment, a Party must pay interest on any amount payable by it under this deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times notified by the person to whom the payment is due, calculated on daily balances. The rate to be applied to each daily balance is the rate equal to 4% per annum above the BBSW Rate. The person to whom the payment is due may notify a different rate for each day during the period. Interest which is not paid when due for payment may be capitalised by the person to whom the payment is due on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 1.11. The Party's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by this clause 1.11.

2. Background

2.1 Developer of the Land

- (a) Medallist is the proponent for the Development of the Land.
- (b) Medallist warrants in favour of the Minister and the RTA that it is authorised by the owners of the Land to enter into this deed and to carry out the Development of the Land.

2.2 REP and LEP

The REP and LEP provide a framework for the sustainable development and management of the Land and to achieve the other aims expressed in the REP and the LEP.



2.3 Bill

The Bill (if enacted) will provide for:

- (a) the provision of public amenities and public services; and
- (b) planning agreements in the nature of this deed for the provision of public amenities and public services.

3. Structure and application of this deed

3.1 Acknowledgments as to rights and damages

The Parties agree that:

- (a) The Minister shall be entitled to bring and prosecute any demand, claim, action or suit (referred to generally as a *Claim*):

- (i) for damages, whether legal or equitable; or
- (ii) for any statutory or equitable relief, including without limitation, for a declaration, specific performance and for any injunction;

in any case with respect to any damages by reason of, or arising from, failure or anticipated failure of the Developer to comply with an obligation, which is sustained by:

- (iii) the Minister or any minister of State succeeding the responsibilities of either of those ministers;
- (iv) the Crown in the right of the State; and
- (v) any other person or Authority to whom an obligation is expressed to be owed by the Developer under Part 2 of this deed.

- (b) The Developer agrees that it shall not, in respect of any Claim, raise any claim or argument, make any submission, or otherwise contend that or to the effect that:

- (i) any Claim is improperly or inadequately constituted simply because of paragraphs (iii) or (iv) of this subclause;
- (ii) the Minister is barred from seeking equitable relief or should in the exercise of the relevant judicial body's discretion be denied such relief simply because of paragraphs (iii) or (iv) of this subclause;
- (iii) the Minister (as distinct from any other person or entity) cannot or should not recover damages or compensation, whether legal or equitable, on the basis that the Minister is not the person sustaining the damage the subject of the Claim, or that the proper plaintiff with respect to such damage is another person or entity; or
- (iv) any other person or entity should, in addition to the Minister, be joined as a party to any Claim or should be entitled to any relief or to the proceeds or part of the proceeds of any judgment.



4. Purpose of this deed

4.1 Overall purpose of deed

The overall purposes of this deed are:

- (a) to make provision for public facilities and services to meet certain demands created by the Development and to ensure existing communities which may be affected by the environmental, social and economic impacts of the Development do not bear the cost of those public facilities and services;
- (b) to establish a governing framework for the provision of those public facilities and services which reflects and implements the co-operative approach by the Parties to the provision of those facilities; and
- (c) to assist in achieving the aims expressed in the Bill (if enacted), the REP and the LEP.

4.2 Consideration

In consideration of the Developer granting to the Minister the Project Procurement Rights and otherwise complying with its obligations under and by virtue of this deed, the Minister has agreed to enter into this deed, perform her obligations under this deed and otherwise has agreed to provide valuable consideration to the Developer.

5. Commencement and term of this deed

5.1 Commencement of this deed

This deed commences on the Commencement Date.

5.2 Term of this deed

This deed will remain in force until:

- (a) it is terminated by operation of Law; or
- (b) all obligations are performed or satisfied.

6. Confidentiality and public announcements

6.1 This deed not confidential

The terms of this deed are not confidential and this deed may be treated as a public document and exhibited or reported without restriction by any Party.

6.2 Other information confidential

- (a) The Parties acknowledge that:
 - (i) Confidential Information has been supplied to some or all of the Parties in the negotiations leading up to the making of this deed; and



- (ii) the Parties may disclose to each other further Confidential Information in connection with the subject matter of this deed.
- (b) Subject to clauses 6.2(c) and (d), each Party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this deed to any person without the prior written consent of the Party who supplied the Confidential Information; and
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this deed is kept confidential and protected against unauthorised use and access.
- (c) A Party may disclose Confidential Information in the following circumstances:
 - (i) in order to comply with the Law, State Government policy or local government policy or any listing rule; or
 - (ii) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertakes to keep the information confidential.
- (d) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

7. Default

7.1 Notice of default

In the event a Party considers another Party has failed to perform and fulfil an obligation under this deed, before it takes any action (including calling on a Bank Guarantee) it must give notice in writing to that other Party (**Default Notice**) giving full particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within 10 Business Days.

7.2 Suspension of time – dispute

If a Party, as it is entitled to do, refers the Default Notice to dispute resolution, clause 8.2 will apply, but any such referral to dispute resolution will not prevent either of the State Parties making a claim under a Bank Guarantee where they believe they are entitled to make such a claim in accordance with the provisions of this deed.

8. Dispute resolution

8.1 Notice of dispute

If a dispute or lack of certainty between the Parties arises in connection with this deed or its subject matter (a dispute) then either Party must give to the other a notice of dispute in writing adequately identifying and providing details of the dispute.



8.2 Conduct pending resolution

The Parties must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter the subject of the dispute, unless the appropriate Party indemnifies the other relevant Parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

8.3 Further steps required before proceedings

Subject to clauses 8.13 and 8.14, any dispute between the Parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation or determination by an expert under clause 8.4, first be the subject of mediation by a mediator agreed by the Parties and, if the Parties cannot agree within 14 days, then by a mediator appointed by LEADR.

8.4 Disputes for expert determination

If the mediation referred to in clause 8.3 has not resulted in settlement of the dispute and has been terminated, either Party may by notice in writing require the matter to be determined by expert determination in accordance with clause 8.5.

8.5 Choice of expert

- (a) A dispute to be determined in accordance with clause 8.4 must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the Parties; or
 - (ii) in the absence of agreement within 14 days after the date of the notice under clause 8.4, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- (b) If the Parties fail to agree as to the relevant field within 14 days after the date of the notice under clause 8.4, either Party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.
- (c) The expert appointed to determine a dispute:
 - (i) must have a technical understanding of the issues in dispute;
 - (ii) must not have a significantly greater understanding of one Party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (iii) must inform the Parties before being appointed of the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (d) The Parties must promptly enter into an agreement with the expert appointed under clause 8.5 setting out the terms of the expert's determination and the fees payable to the expert.



8.6 Directions to expert

- (a) In reaching a determination in respect of a dispute under clause 8.4, the independent expert must give effect to the intent of the Parties entering into this deed and the purposes of this deed.
- (b) The expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) not accept verbal submissions unless both Parties are present;
 - (iv) on receipt of a written submission from one Party, ensure that a copy of that submission is given promptly to the other Party;
 - (v) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
 - (vi) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (vii) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each Party 14 days to make further submissions;
 - (viii) issue a final certificate stating the expert's determination (together with written reasons); and
 - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.
- (c) The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:
 - (i) a short statement of facts;
 - (ii) a description of the dispute; and
 - (iii) any other documents, records or information which the expert requests.

8.7 Expert may commission reports

The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 8.5(d) of this deed.



8.8 Expert may convene meetings

- (a) The expert must hold a meeting with all of the Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- (b) The Parties agree that a meeting under clause 8.8(a) is not a hearing and is not an arbitration.

8.9 Other courses of action

If the mediation referred to in clause 8.3 has not resulted in settlement of the dispute and has been terminated, and a Party has failed to refer the matter to expert determination in accordance with clause 8.4 within 21 days after termination of the mediation, either Party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

8.10 Confidentiality of Information provided in dispute resolution process

- (a) The Parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:
 - (i) subject to paragraph (ii), to keep confidential all documents, information and other material, disclosed to them during or in relation to the mediation or expert determination; and
 - (ii) not to disclose any confidential documents, information and other material except:
 - (A) to a Party or adviser or consultant who has signed a confidentiality undertaking; or
 - (B) if required by Law to do so or State Government policy or local government policy or any listing rule; and
 - (iii) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination, for a purpose other than the mediation or expert determination.
- (b) The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (i) views expressed or proposals or suggestions made by a Party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
 - (ii) admissions or concessions made by a Party during the mediation or expert determination in relation to the dispute; and



- (iii) information, documents or other material concerning the dispute which are disclosed by a Party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

8.11 Final determination of expert

The Parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

8.12 Costs

If any independent expert does not award costs, each Party must contribute equally to the expert's costs in making the determination.

8.13 Urgent relief

This clause 8 does not prevent a party from seeking urgent injunctive relief or declaratory relief.

9. Dealings with this deed

9.1 Planning Agreement provisions

The Parties agree that:

- (a) if the Bill is enacted, then at the request of either State Party, all Parties to this deed must enter into a replacement agreement (*Planning Agreement*) containing the same commercial terms as this deed, but which:
 - (i) complies with the requirements of the Bill as enacted for planning agreements; and
 - (ii) contains provisions which confirm that the Planning Agreement:
 - (A) does not exclude the application of section 94 of the Act to the Development and that the Interim Release Area Levy, the Release Area Levy or the Default Release Area Levy paid by the Developer under the Planning Agreement should not be taken into consideration in determining a development contribution under section 94 of the Act; and
 - (B) does exclude the application of section 94A of the Act to the Development;
- (b) they must continue to perform their obligations under this deed until the Planning Agreement is enforceable, at which time this deed will be terminated other than any default existing when this deed is terminated until such default has been waived in writing by, or remedied to the satisfaction of, each non-defaulting party; and



- (c) if the Bill (as enacted) permits the Planning Agreement to be registered on the title to the Land and if either State Party requires the Planning Agreement to be so registered, the Parties will take all practicable steps (and, in the case of the Developer, it will procure that the owners of the Land, and any person who has a registered interest in any part of the Land, takes all practicable steps), including the execution of any documents, so that the Planning Agreement can be registered by the LPI on the title to the Land, provided that the State Parties have:

- (i) formulated and implemented a protocol which deals with how approval is to be sought and given for removal of the Planning Agreement from the title of Residential Allotments in a Subdivision Plan in no more than 15 Business Days after the Developer satisfies the Developer's obligations in Part 2 of this deed with respect to the Residential Allotments in that Subdivision Plan; and
- (ii) provided satisfactory evidence to the Developer that the LPI has procedures in place to enable registration and removal from registration of planning agreements within that time.

Until the State Parties are able to demonstrate that subclauses (i) and (ii) have been complied with, the Planning Agreement is not to be registered on the title to the Land.

9.2 Notations on title

- (a) If:
- (i) a Planning Agreement is registered on the title to the Land;
 - (ii) the Developer has paid the Release Area Levy or the Interim Release Area Levy for the Residential Allotments in a Subdivision Plan less the Transport Works Credit Amount; and
 - (iii) the Developer prepares and submits to the Minister the documents necessary for the removal of the Planning Agreement from the title to the Residential Allotments in that Subdivision Plan,

then, within 10 Business Days of submission of those documents to the State Parties, the State Parties must promptly sign those documents and return them to the Developer and do all acts and things necessary to assist the Developer to remove that registration from the title to the Residential Allotments in that Subdivision Plan.

- (b) The State Parties must not lodge a caveat on the title to the Land or any title resulting from the registration of a Subdivision Plan in relation to the Land.



9.3 Assignment

- (a) The Developer cannot assign, novate, charge, encumber or otherwise deal with the whole of its rights and obligations under this deed (including any Works Authorisation Deed), or attempt or purport to do so unless the Developer:
- (i) gives the Minister no less than 10 Business Days notice in writing of the proposed assignment, charge, encumbrance or novation of its rights or obligations under this deed (including any Works Authorisation Deed);
 - (ii) satisfies the Minister (acting reasonably) that the proposed assignee or novatee will have rights to develop, and procure the sale of, the Land substantially the same as those rights which Medallist has to develop, and procure the sale of, the Land;
 - (iii) procures that the assignee or novatee provides to:
 - (A) the Minister a replacement Release Area Levy Bank Guarantee in favour of the Minister in place of any such document provided by, or required to be provided by, the Developer which has not then been released; and
 - (B) the RTA a replacement Transport Works Bank Guarantee in favour of the RTA in place of any such document provided by, or required to be provided by, the Developer which has not then been released;
 - (iv) procures that the assignee or novatee of the whole of the Developer's rights and obligations under this deed (including any Works Authorisation Deed) executes and delivers to the State Parties, prior to any such assignment or novation, a deed in favour of the State Parties whereby:
 - (A) the assignee or novatee becomes contractually bound with the State Parties to perform all of the Developer's obligations and have the benefit of all the Developer's rights under this deed (including any Works Authorisation Deed); and
 - (B) Medallist is released from its Future Obligations under this deed (including any Works Authorisation Deed); and
 - (v) in the case of a charge, encumbrance or other dealing, procures the chargee, encumbrancee or other person taking the benefit of that dealing, to enter into a deed with the State Parties in such form as the State Parties reasonably require so that:
 - (A) following enforcement action by the chargee, encumbrancee or other person, either such chargee, encumbrancee or other person is to be bound by, or agrees to procure other persons who may at any future time become entitled to exercise the Developer's rights under this deed, to be bound by this deed; and



- (B) the chargee, encumbrancee or other person is entitled to exercise the Developer's rights under this deed if a Default Notice is given to the Developer under clause 7.1.
- (b) The Parties acknowledge and agree that the Developer cannot assign, novate, charge, encumber or otherwise deal with any part or some only of its rights and obligations under this deed (including any Works Authorisation Deed), or attempt or purport to do so without the consent of the State Parties, which must not be unreasonably withheld (but which may include the execution of any documents reasonably required by the State Parties) in the circumstances of a sale of the whole or any part of the Land as contemplated by clause 9.5, but otherwise may be withheld by the State Parties in their sole and absolute discretion.
- (c) Medallist acknowledges and agrees that it remains fully responsible and liable to the State Parties, and is not released from, its Past Obligations.

9.4 Consequences of assignment

Within 10 Business Days of the Developer complying with its obligations under clause 9.3:

- (a) the State Parties must execute and return to the Developer the deed referred to in clause 9.3(a)(iv) so that Medallist is released from its Future Obligations under this deed (including any Works Authorisation Deed);
- (b) the Minister must release any Release Area Levy Bank Guarantee provided by Medallist which has not then been released, providing the Minister is satisfied that the Past Obligations secured by any such Release Area Levy Bank Guarantee have been fully satisfied and performed by Medallist; and
- (c) the RTA must release any Transport Works Bank Guarantee provided by Medallist which has not then been released, providing the RTA is satisfied that the Past Obligations secured by any such Transport Works Bank Guarantee have been fully satisfied and performed by Medallist.

9.5 Sale of Land

The Developer:

- (a) must not sell, transfer or dispose of the whole or any part of the Land (other than a Residential Allotment) and must procure any other person who owns any of the Land not to sell, transfer or dispose of any part of the Land (other than a Residential Allotment); or
- (b) must not assign, novate or release any of its rights to develop any part of the Land (other than a Residential Allotment),

unless, prior to any such sale, transfer, assignment, disposition, novation or release, it procures the transferee, assignee, novatee or releasee to enter into a deed with the Minister and the RTA in form and substance acceptable to the Minister and the RTA (acting reasonably) pursuant to which the transferee, assignee, novatee or releasee agrees to comply with such of the Developer's obligations under this deed (including obligations which may have arisen before the transfer, assignment or novation takes effect) with