

Dated

2019

Planning Agreement

Environmental Planning and Assessment Act 1979

Minister for Planning and Public Spaces (ABN 38 755 709 681)

Danias Holdings Pty Limited (ACN 127 813 781) in its capacity as trustee for
Danias Investment Trust

Dina Danias

George Danias

Michael Danias

Susie Danias

Sotwill Pty Limited (ACN 622 110 767) in its capacity as trustee for Danias
Unit Trust No 2

Angelo Angelopoulos in his capacity as trustee for Evanange Family Trust

Evan Angelopoulos in his capacity as trustee for Evanange Family Trust

Table of contents

1.	Definitions and interpretation	3
1.1	Definitions.....	3
1.2	Interpretation	7
2.	Operation and application of this deed	8
2.1	Operation.....	8
2.2	Planning agreement under the Act	8
2.3	Application.....	8
3.	Application of sections 7.11, 7.12 and 7.24 of the Act.....	8
4.	Development Contribution.....	8
4.1	Developer to provide Development Contribution.....	8
4.2	Acknowledgement.....	8
5.	Interest.....	9
5.1	Interest for late payment.....	9
6.	Enforcement	9
6.1	Developer to provide Security	9
7.	Registration	9
7.1	Registration of deed	9
7.2	Evidence of registration.....	10
7.3	Release and discharge of deed	10
7.4	Landowners' interest in Land	10
7.5	Right to lodge caveat	10
8.	Dispute Resolution.....	11
8.1	Not commence	11
8.2	Written notice of dispute	11
8.3	Attempt to resolve.....	11
8.4	Mediation	11
8.5	Court proceedings	11
8.6	Not use information	12
8.7	No prejudice	12
9.	GST.....	12
9.1	Definitions.....	12
9.2	Intention of the parties.....	12
9.3	Reimbursement	12
9.4	Consideration GST exclusive	12
9.5	Additional Amounts for GST	12
9.6	Non monetary consideration.....	13
9.7	Clause 9.5 applies to non-monetary consideration. Assumptions	13
9.8	No merger.....	13
10.	Assignment and transfer	13
10.1	Right to assign or novate	13
10.2	Right to transfer Land	13

10.3	Replacement Security	14
10.4	Transfer of Land between a Landowner and Danias Holdings	14
11.	Capacity.....	14
11.1	General warranties	14
11.2	Power of attorney.....	14
11.3	Trustee Entities.....	14
12.	Reporting requirement.....	16
13.	General Provisions	17
13.1	Entire deed	17
13.2	Variation	17
13.3	Waiver.....	17
13.4	Further assurances	17
13.5	Time for doing acts	17
13.6	Governing law and jurisdiction	17
13.7	Severance.....	18
13.8	Preservation of existing rights	18
13.9	No merger.....	18
13.10	Counterparts.....	18
13.11	Relationship of parties.....	18
13.12	Good faith	18
13.13	No fetter	18
13.14	Explanatory note.....	18
13.15	Expenses and stamp duty	19
13.16	Notices	19
	Schedule 1.....	20
	Schedule 2 Address for Service.....	22
	Schedule 3.....	23
	Schedule 5 Security terms.....	32
	Schedule 6 Landowners	35
	Execution page	36

This Planning Agreement is dated

2019

Parties:

Minister for Planning and Public Spaces (ABN 38 755 709 681)
of Level 15, 52 Martin Place, Sydney NSW 2000 (**Minister**)

Danias Holdings Pty Limited (ACN 127 813 781) in its capacity as trustee for **Danias Investment Trust** of
173 Victoria Road Marrickville NSW 2204 (**Danias Holdings**)

All of the parties listed in **Schedule 6** to this deed (**Landowners**)

Introduction:

- A** The Landowners and Danias Holdings own the Land. The Land is located in the local government area of the Inner West Council.
- B** Danias Holdings proposes to carry out the Development on the Development Land.
- C** In December 2017, the *Marrickville Local Environmental Plan 2011 (Amendment No 14)* was gazetted amending the planning controls as they apply to the Victoria Road, Marrickville precinct.
- D** Clause 6.18 of the LEP provides that the Consent Authority (as defined in the Act) must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of designated State infrastructure referred to in clause 6.18 of the LEP.
- E** Danias Holdings and the Landowners have offered to enter into a planning agreement and make Development Contributions in connection with the change to the environmental planning instrument and the carrying out of the Development, in accordance with the terms and conditions of this Deed, to enable the Secretary to provide the certification required by the LEP.

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).

Acquisition Land means those parts of the Road Works Land that are not owned by Danias Holdings or any of the Landowners as at the Commencement Date.

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.

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

Bank Guarantee means an irrevocable and unconditional undertaking or a performance bond:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and
- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2018.

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

Caveat Land means those parcels of Land that are indicated as comprising the caveat land in the relevant column in Part A of Schedule 3.

Commencement Date means the date this deed commences in accordance with clause 2.1 of this deed.

Construction Certificate has the same meaning as in the Act.

Construction Contract means each contract between the Developer and a third party, meeting the requirements of clause 3.2 of Schedule 4, for the carrying out of the Road Works by that third party.

Contamination has the same meaning as in the *Contaminated Land Management Act 1997* (NSW) and includes asbestos and lead.

CoRD Holder Consent means the electronic document lodged through an ELNO that provides consent to the registration of instruments and plans.

Costs means any loss, cost, fee, charge, expense, Tax, rate, fine, penalty or debts including those in connection with advisors and any compensation payable to any person in accordance with the law.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.


CPI Adjustment Date means 1 July 2019 and each anniversary of 1 July 2019 thereafter.

Current CPI means the CPI number for the quarter ending 31 March in the relevant adjustment year.

Dealing means in relation to the Land means, without limitation, selling, transferring, assigning, mortgaging, charging, disposing, encumbering, subdividing (including without limitation by registering a strata plan under the *Strata Schemes Development Act 2015*), consolidating or otherwise dealing with the Land.

Department means the Department of Planning and Environment.

Development means the Phase 1 Development, the Phase 2 Development and the additional mixed-use development of the Development Land in accordance with DA 201700558 lodged with Inner West Council comprising a total of approximately but not more than:



- (a) 9,600 square metres of gross floor area of commercial space; and
 - (b) 880 residential housing lots (which, for the avoidance of doubt, includes strata lots),
- in each case which has been made permissible by the making of the *Marrickville Local Environmental Plan 2011 (Amendment No 14)*.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contributions which are provided by the Developer in accordance with Schedule 4.

Development Land means the Land excluding those parts of the Land that comprise the Road Works Land.

Developer means Danias Holdings and the Landowners, unless otherwise specified in this deed.

ELNO has the same meaning as in the *Electronic Conveyancing National Law (NSW)*.

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.

Final Lot means a lot created in the Development and which is not:

- (a) intended to be further subdivided (including any further subdivision to create a strata or community lot);
- (b) a Service Lot; or
- (c) to be dedicated or otherwise transferred to the Minister or the Minister's nominee.

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 Part A of Schedule 3 including, unless the context otherwise requires, the Acquisition Land as soon as any of the Landowners or Danias Holdings becomes the owner(s) of the Acquisition Land.

LEP means the *Marrickville Local Environmental Plan 2011*.

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.

Minister means the Minister for Planning and Public Spaces and includes the Secretary and the Secretary's nominee.

Monetary Contribution means that part of the Development Contribution which is to be paid by the Developer to the Minister (or his/her nominee) in cash in accordance with Schedule 4.

Nominated Officer means an officer of the Department for the time being holding a position nominated by the Secretary for the purposes of this deed.

Occupation Certificate has the meaning given to that term in the Act.

Planning Application means:

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

Phase 1 Development means that phase of the Development of the Land into approximately 270 residential Final Lots in accordance with DA 201900096 lodged with Inner West Council.

Phase 2 Development means that phase of the Development of the Land which is intended to follow the Phase 1 Development, being the development of the Caveat Land.

Phase 1 Date has the meaning given to it in clause 2(d) of Schedule 4.

Phase 1 Debt has the meaning given to it in clause 2(d) of Schedule 4.

Plan of Subdivision means a registered plan of subdivision within the meaning of section 195 of the *Conveyancing Act 1919* (NSW).

Practical Completion means the practical completion of the Road Works in accordance with the WAD.

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).

Remediation has the meaning given to it in *State Environmental Planning Policy No. 55 – Remediation of Land* and **remediate** has a corresponding meaning.

RMS means Roads and Maritime Services ABN 76 236 371 088, a NSW Government agency and corporation constituted under section 46 of the *Transport Administration Act 1988* (NSW).

Road Works means the works to create a left-turn slip lane from Sydenham Road (west) to Victoria Road (north) and a 90m right-turn bay along Victoria Road (north), generally in accordance with the plan attached as Annexure A to this Deed.

Road Works Land means the land identified in Part B of Schedule 3 and indicated in hatching in the plan attached as Annexure A to this Deed.

Secretary means the Secretary of the Department.

Security means the Bank Guarantees to be provided in accordance with Schedule 5.

Service Lot means a registered lot that is created for one or more of the following purposes:

- (a) to be dedicated or otherwise transferred to an Authority;
- (b) for any public utility undertaking (within the meaning of the *Standard Instrument (Local Environmental Plans) Order 2006* as at the date of this deed;
- (c) for roads, open space, recreation, environmental conservation, water cycle management or riparian land management;

for avoidance of doubt — association property within the meaning of the *Community Land Development Act 1989* that is to be used for any one or more of the purposes set out in (c)

above.

Subdivision Certificate has the same meaning as in the Act.

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.

WAD means a works authorisation deed or other legally binding agreement between the Developer and RMS which governs the delivery of road infrastructure.

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**, a **schedule** or an **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** and **annexures** 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.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 7.4 of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

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

3. Application of sections 7.11, 7.12 and 7.24 of the Act

The application of sections 7.11, 7.12 and 7.24 of the Act are excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide, or procure the provision of the Development Contribution to the Minister or the Minister's nominee in accordance with this clause 4.1 and the provisions of Schedule 4 to this deed.

4.2 Acknowledgement

The Developer acknowledges and agrees that, subject to section 7.3 of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose despite any provision of this deed to the contrary and has no obligation to repay the Development Contribution; 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. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a Monetary Contribution due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. Enforcement

6.1 Developer to provide Security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

- (a) Within 20 Business Days of receiving a copy of this deed executed by the Minister, the Developer, at its own expense is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,
 to the registration of this deed on the title to the Land; and
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title or electronic lodgement of the relevant CoRD Holder Consents through an ELNO; and
 - (iv) the lodgement of this deed in a registrable form at the NSW Land Registry Services for registration by the Registrar-General in the relevant folios of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything reasonably required to procure the registration of this deed within three months of the date of this deed in the relevant folios of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 20 Business Days of such lodgement at the NSW Land Registry Services.
- (b) The Developer will provide the Minister with a copy of the relevant folios of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of receipt of notice of registration of this deed.

7.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land, upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

7.4 Landowners' interest in Land

- (a) Each Landowner and Danias Holdings represents and warrants that it is individually and separately:
 - (i) the owner of that part of the Land where it is identified as "Landowner" in Part A of Schedule 3; and
 - (ii) legally and beneficially entitled to obtain all consents and approvals for the respective part of the Land and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Landowner and Danias Holdings (as applicable) to comply with its respective obligations under clause 7.
- (b) The Developer's obligation to register this deed in the relevant folios of the Register for the Acquisition Land in accordance with clauses 7.1 and 7.2 above and the Minister's right to lodge a caveat over the Acquisition Land in accordance with clause 7.5 below will immediately enliven once Danias Holdings or any of the Landowners becomes the owner(s) of the Acquisition Land (or part thereof).

7.5 Right to lodge caveat

- (a) Subject to clause 7.5(b), the Developer acknowledges and agrees that:
 - (i) this deed confers on the Minister an interest in the Land;
 - (ii) this deed entitles the Minister to lodge and maintain a caveat on the titles to the Land to prevent any Dealing in respect of the Land;
 - (iii) it will not object to the Minister lodging a caveat in the relevant folios of the Register for the Land; and
 - (iv) it will not seek to remove any caveat lodged by the Minister unless the Minister fails to remove the caveat(s) when required to do so under this deed, in which case the Developer may seek to remove the applicable caveat(s).
- (b) If the Minister lodges a caveat in accordance with clause 7.5(a), then the Minister will do all things reasonably necessary to:
 - (i) ensure that the caveat does not prevent or delay the registration of this deed;

- (ii) without prejudice to the Minister's right to maintain caveat(s) over the Caveat Land in accordance with sub-clause 7.5(b)(iii) below, remove the caveat from the titles to those parts of the Land that are **not** part of the Caveat Land promptly following registration of this deed in accordance with clause 7.1; and
- (iii) remove the caveat from the titles to those parts of the Land that **are** part of the Caveat Land promptly when the Enhanced Security must be released in accordance with clause 1(a) of Schedule 5.
- (c) The Developer must pay the Minister's reasonable costs and expenses, including legal costs, of exercising the Minister's rights under clause 7.5(a) to lodge and withdraw a caveat(s) (as applicable).
- (d) On reasonable request by the Minister, the Developer must liaise with each person who has an estate or interest in the Land registered under the Real Property Act to ensure that such persons are aware of the caveat and understand the reasons for the caveat being registered and to attempt to procure their general agreement to the caveat.

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 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.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (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 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.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 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 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 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.

9. GST

9.1 Definitions

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

9.2 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 under clause 9.5 and no tax invoices will be exchanged between the parties.

9.3 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 must 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.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are exclusive of GST. 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 9.4.

9.5 Additional Amounts for GST

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

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

9.6 Non monetary consideration

9.7 Clause 9.5 applies to non-monetary consideration. Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

9.8 No merger

This clause does not merge on completion of this deed.

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, a party seeking to assign its rights or novate its obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required to perform the Assigning Party's obligations under this deed insofar as those obligations are to be novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party were the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) None of the Landowners or Danias Holdings (a **Disposing Party**) may transfer to another person (**Transferee**) the whole or part of any part of the Land:
 - (i) on which this deed remains registered under section 7.6 of the Act; or
 - (ii) for which the Development Contribution required under this deed that is due at the time of transfer remains outstanding.
- (b) Notwithstanding clause 10.2(a), a Disposing Party may transfer the whole or any part of the Land to a Transferee if prior to the proposed transfer the Disposing Party:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required to perform any of the remaining obligations of the Disposing Party under this deed or satisfies the Minister, acting reasonably, that the Disposing Party will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee

agrees to comply with the terms and conditions of this deed as though the Transferee were the Disposing Party; and

- (iii) satisfies the Minister, acting reasonably, that none of the Developer parties are in material breach of their obligations under this deed.
- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

10.3 Replacement Security

Provided that:

- (a) the Developer has complied with clauses 10.1 and 10.2; and
- (b) the Transferee or Incoming Party (as the case may be) has provided the Minister with a replacement Security in accordance with the requirements of Schedule 5 and on terms acceptable to the Minister,

the Minister will promptly return the Security to the Developer.

10.4 Transfer of Land between a Landowner and Danias Holdings

The provisions of clauses 10.1 to 10.3 do not apply where a Landowner transfers any part of the Land it owns to Danias Holdings or another Landowner.

11. Capacity

11.1 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.

11.2 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.

11.3 Trustee Entities

- (a) Danias Holdings Pty Limited (ACN 127 813 781) enters into this deed in its capacity as trustee for the Danias Investment Trust constituted by a trust deed.
- (b) Evan Angelopoulos and Angelo Angelopoulos each enter into this deed in their respective capacities as trustees for the Evanange Family Trust constituted by a trust deed.
- (c) Sotwill Pty Limited (ACN 622 110 767) enters into this deed in its capacity as trustee for the Danias Unit Trust No 2 constituted by a trust deed.
- (d) For the purposes of this clause 11.3:
 - (i) **Trustee** means each and every person named in clauses 11.3(a) – (c) above that is entering into this deed in its capacity as a trustee;

- (ii) **Trust** means the relevant trust for which a Trustee acts as trustee; and
 - (iii) **Trust Deed** means, in respect of each Trust, the deed which constitutes that trust.
- (e) Each Trustee warrants that:
- (i) all trustees of the Trust are party to this Deed and no action has been taken to remove or replace it as trustee of the Trust;
 - (ii) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) 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;
 - (v) 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
 - (vi) 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
- (f) Each Trustee 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 11.3(e).
- (g) 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 11.3(g) and the costs and expenses of registering any new deed on the title to the Land.

- (h) Subject to clause 11.3(j), liability arising under or in connection with this deed (except under or in connection with clause 11.3(a) above) is limited and can be enforced against a 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 each 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.
- (i) 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 a 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 a Trustee, or prove in any liquidation, administration or arrangement of or affecting a 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 a Trustee in any capacity other than as trustee of the Trust,
 except under or in connection with clause 11.3(f) above.
- (j) Notwithstanding any other provision of this deed, clauses 11.3(h) and 11.3(i) do not apply to any obligation or liability of a 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 the Trustee's failure to properly perform its duties as trustee of the Trust.
- (k) Nothing in clause 11.3(j) will make a 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.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report (in a format acceptable to the Secretary) for the period 1 July to 30 June of the preceding financial year which must include the following matters, as applicable:
 - (i) details of all Development Consents, Construction Certificates, Occupation Certificates and Subdivision Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) details of any and all strata plans (as defined in the *Strata Schemes Development Act 2015*) prepared or lodged in relation to the Development;
 - (iv) a forecast in relation to the anticipated progression and completion of the Development and the Road Works;

- (v) a compliance schedule showing the details of all Development Contributions provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (vi) when the Developer expects to lodge the next Planning Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 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.

13.2 Variation

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

13.3 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.

13.4 Further assurances

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

13.5 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.

13.6 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.

13.7 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.

13.8 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.

13.9 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, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

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

13.11 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.

13.12 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.

13.13 No fetter

Nothing in this deed is to 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.

13.14 Explanatory note

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

13.15 Expenses and stamp duty

- (a) The Developer 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 Developer must pay for all reasonable costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.
- (c) The Developer 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 stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
 - (i) where the Minister has provided the Developer 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 Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 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 prepaid ordinary mail within Australia; or
 - (iii) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting; or
 - (iii) sent by email:
 - (A) before 5pm on a Business Day, on that Day;
 - (B) after 5pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that it is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice.

Schedule 1

Table 1 - Requirements under section 7.4 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
Planning instrument and/or development application – (section 7.4(2)) The Developer has: <ul style="list-style-type: none"> (a) sought a change to an environmental planning instrument. (b) made, or proposes to make, a Development Application. (c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies. 	<ul style="list-style-type: none"> (a) Yes (b) Yes (c) No
Description of land to which this deed applies – (section 7.4(3)(a))	See Part A of Schedule 3
Description of development to which this deed applies – (section 7.4(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 7.4(3)(b))	Making of the <i>Marrickville Local Environmental Plan 2011 (Amendment No 14)</i>
The scope, timing and manner of delivery of contributions required by this deed – (section 7.4(3)(c))	See Schedule 4
Applicability of sections 7.11 and 7.12 of the Act – (section 7.4(3)(d))	The application of sections 7.11 and 7.12 of the Act are not excluded in respect of the Development.
Applicability of section 7.24 of the Act – (section 7.4(3)(d))	The application of section 7.24 of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 7.11 applies – (section 93F(3)(e))	No
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this deed – (section 7.4(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 7.4(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 7.6 of the Act)	Yes (see clause 7)
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)	Yes (see Schedule 4)
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: The Secretary
Address: Department of Planning and Environment
320 Pitt Street
SYDNEY NSW 2000
Email: planningagreements@planning.nsw.gov.au

Landowners

Contact: Angelo Angelopoulos
Address: 173 Victoria Road Marrickville NSW 2204
Email: angelo@dantias.com.au

Developer Danias Holdings Pty Limited in its capacity as trustee for Danias Investment Trust

Contact: Angelo Angelopoulos
Address: 173 Victoria Road
Marrickville NSW 2204
Email: angelo@dantias.com.au

Schedule 3

(clause 1.1)

Part A – Land

Lot	Deposited Plan	Landowner	Caveat Land
5	63446	Dina Danias, George Danias, Michael Danias and Susie Danias	No
A	178259	Dina Danias, George Danias, Michael Danias and Susie Danias	No
53	868710	Dina Danias, George Danias, Michael Danias and Susie Danias	No
152 - 156	761	Dina Danias	No
4	226899	Dina Danias	No
6	226899	Danias Holdings Pty Limited as trustee for Danias Investment Trust	No
100	1239681	Danias Holdings Pty Limited as trustee for Danias Investment Trust	No
1	74200	Danias Holdings Pty Limited as trustee for Danias Investment Trust	No
10	701368	Danias Holdings Pty Limited as trustee for Danias Investment Trust	No
Sections 14 - 16, Lot 1	4590	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
B	343286	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
A	304426	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
1	78883	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
1 – 9	252507	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes

1	583801	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
1	572829	Sotwill Pty Limited as trustee for Danias	Yes
Sections 1 and 2, Lot 1	4590	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
A	301985	Susie Danias	Yes
B – E	301985	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
A	166330	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
1	315293	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
20	667441	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
345	587262	Susie Danias	Yes
1	972534	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
1	724487	Dina Danias, George Danias, Michael Danias and Susie Danias	Yes
1	700223	Angelo & Evan Angelopoulos as trustees for Evanange Family Trust	Yes

Part B – Road Works Land

The Road Works Land is those parts of the following lots that are shown in blue on the plan in Annexure A of this deed:

- Lot 345 DP 587262;
- Lot 1 DP 315293;
- Lot 20 DP 667441;
- Lots B – D DP 301985;
- Section 2, Lot 2 DP 4590;
- Lot 101 DP 808619; and
- Lot B DP 176842.

Schedule 4 Development Contributions

1. Development Contributions

- (a) The Developer undertakes to provide the Development Contribution to the Minister or the Minister's nominee in the manner set out in the table below:

Development Contribution	Value	Timing
Monetary Contribution	\$2,100,000 subject to indexation in accordance with clause 2 of this Schedule 4	Pursuant to clause 2 of this Schedule 4
Provision of the Road Works	N/A	Pursuant to clause 3 of this Schedule 4
Dedication of the Road Works Land	N/A	Pursuant to clause 5 of this Schedule 4

2. Payment of Monetary Contribution and Phase 1 Debt

- (a) The Developer must pay the Monetary Contribution to the Minister or as the Minister directs in instalments as follows:
- (i) \$700,000 on execution of this deed;
 - (ii) \$700,000 on the date that is 20 Business Days after the issue of an Occupation Certificate in respect of the 300th Final Lot in the Development (and for the avoidance of doubt, the relevant Occupation Certificate may also refer to other lots); and
 - (iii) \$700,000 on the date that is 20 Business Days after the issue of an Occupation Certificate in respect of the 450th Final Lot in the Development (and for the avoidance of doubt, the relevant Occupation Certificate may also refer to other lots).
- (b) On each CPI Adjustment Date, the Monetary Contribution amounts above shall be adjusted by multiplying the amount payable by an amount equal to the Current CPI divided by the Base CPI.
- (c) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for the relevant Occupation Certificate in each case.
- (d) The Developer agrees that on the date that is 90 days after the date on which the last Occupation Certificate is issued relating to Final Lots in the Phase 1 Development (the **Phase 1 Date**), it will owe the Minister an accrued debt equalling N in the following formula:

$$\$N = \$14,205 \times Y$$

where Y is the number of residential Final Lots created in the Phase 1 Development.

(the **Phase 1 Debt**)

- (e) The Developer may discharge the Phase 1 Debt by complying with all of its obligations under this deed that are due to be performed on and after the Phase 1 Date, including making the Development Contribution in full.
- (f) The Developer acknowledges and agrees that the Minister may recover the Phase 1 Debt (in whole or in part, as the case may be) as a debt immediately due and payable if the Developer fails to perform its obligations that are due to be performed on or after the Phase 1 Date in accordance with this deed.

3. Design, Construction and handover of the Road Works

3.1 Conditions to Commencement of the Road Works

- (a) Prior to commencement of the Road Works, the Developer must:
 - (i) if Development Consent is required — provide evidence to the Minister that it has obtained Development Consent for the Road Works;
 - (ii) enter into a WAD with RMS on such terms and conditions as are:
 - (A) consistent with the requirements of this deed, including this **Error! Reference source not found.**; and
 - (B) acceptable to RMS and the Minister; and
 - (iii) provide a copy to the Minister of the executed WAD to carry out the Road Works.
- (b) The Developer must enter into the WAD before the issue of a Construction Certificate in respect of the 300th Final Lot in the Development (and for the avoidance of doubt, the relevant Construction Certificate may also refer to other lots).
- (c) The Developer must provide the Minister with not less than 10 Business Days' written notice of its intention to lodge an application for the 300th Construction Certificate.

3.2 Construction Contract for the Road Works

- (a) The Developer must provide written notice to the Minister which confirms that it intends to commence the Road Works (**the Notice**).
- (b) The Developer must undergo a competitive tender process in awarding each Construction Contract for the Road Works and provide evidence of such tender process upon request from the Minister. Each Construction Contractor must meet all criteria for contractors that are appointed to work on the construction of roads by or under sub-contract with RMS.
- (c) The Notice must be accompanied by a copy of each Construction Contract in place for the Road Works.
- (d) If further Construction Contract(s) are entered into after the Notice has been issued the Developer must provide a written notice to the Minister of that fact as soon as is practicable (after each Construction Contract has been entered into) and that notice must be accompanied by a copy of the Construction Contract(s).
- (e) Each Construction Contract must:
 - (i) identify a superintendent for the Road Works;

- (ii) provide a reasonable itemisation of works comprising the Road Works, which, in relation to construction works, may be by a bill of quantities;
- (iii) identify the contract value for each item of the Road Works; and
- (iv) identify the terms and conditions applicable to the carrying out of the Road Works, including that the Road Works must be undertaken in a proper and workmanlike manner, in accordance with best practice and all necessary approvals.

3.3 Timing of Road Works

The Developer must achieve Practical Completion of the Road Works in accordance with the WAD and before the issue of an Occupation Certificate in respect of the 300th Final Lot in the Development (and for the avoidance of doubt, the relevant Occupation Certificate may also refer to other lots). The Developer must give the Minister written notice when Practical Completion of the Road Works is achieved.

4. Acquisition Land

- 4.1 Subject to clause 4.2, the Developer must acquire the Acquisition Land and procure the surrender of any tenancies of the Acquisition Land prior to the issue of a Construction Certificate for the 300th Final Lot (and for the avoidance of doubt, the relevant Construction Certificate may also refer to other lots).
- 4.2 Despite having used best endeavours to comply with the Developer's obligations under clause 4.1 of Schedule 4, if the Developer is unable to acquire all of the Acquisition Land and procure the surrender of the relevant tenancies by the time the Developer wishes to receive a Construction Certificate in relation to the 300th Final Lot, the Developer may provide the Minister written notice that it has been unable to acquire all of the Acquisition Land.
- 4.3 Following receipt of the Developer's notice, if the Minister or a nominee of the Minister acquires the Acquisition Land, then:
 - (a) the Minister will notify the Developer of its (or its nominee's) **Acquisition Cost**, being the total cost incurred by the Minister or the Minister's nominee (as the case may be) in connection with the acquisition of the Acquisition Land not acquired by the Developer which may include (without limitation):
 - (i) any compensation or other amount paid by the Minister or the Minister's nominee to any owner of an interest in the Acquisition Land pursuant to the *Land Acquisition (Just Terms Compensation) Act 1991* ('owner' having the same meaning as given to it in that act for the purposes of this sub-clause); and
 - (ii) all legal and administrative costs and fees incurred by the Minister or the Minister's nominee in connection with the acquisition of the Acquisition Land;
 - (b) the Minister will keep the Developer informed of the approximate likely Acquisition Cost during the acquisition process;
 - (c) the Developer must provide the Minister (or the Minister's nominee) a bank cheque for an amount equal to the Acquisition Cost within seven (7) days of receiving notice of the Acquisition Cost under clause 4.3(a) of this Schedule 4;

- (d) the Developer must provide the Minister a signed transfer form (which provides for consideration of \$1.00) and the certificates of title in respect of those part(s) of the Roads Work Land owned by the Developer at that time; and
- (e) the Developer and the Minister (or the Minister's nominee) must enter into a deed on terms satisfactory to both parties to permit the Developer to undertake the Road Works on the Road Works Land. To the extent that the Minister will be party to that deed, the Minister undertakes to act reasonably in negotiating the terms of the deed. To the extent that the Minister's nominee will be party to that deed, the Minister will use reasonable endeavours to procure that its nominee acts reasonably in negotiating the terms of the deed.

4.4 Once the parties have fulfilled and satisfied all of the obligations in clause 4.3 of Schedule 4:

- (a) the Developer will be released from the Developer's obligations to acquire the Acquisition Land; and
- (b) provided that the Developer has entered into the WAD in accordance with clause 3.1(b) of this Schedule 4, the restriction on the issue of the Construction Certificate for the 300th Final Lot will be deemed satisfied and there will be no restriction on the issue of a Construction Certificate in respect of the 300th Final Lot or any Final Lot thereafter.

4.5 For the avoidance of doubt, in any event (i.e. whether the Developer or the Minister/Minister's nominee acquires the Acquisition Land) the Developer must undertake the Road Works in accordance with the requirements of this deed (in particular clause 3 of Schedule 4).

4.6 If the Developer owns all of the Road Works Land prior to the issue of the Construction Certificate in respect of the 300th Final Lot, the Developer must transfer the Road Works Land to the Minister (or its nominee):

- (a) upon Practical Completion of the Road Works. The Developer must give the Minister written notice when Practical Completion of the Road Works is achieved; and
- (b) otherwise in accordance with the requirements of this deed (in particular clause 5 of Schedule 4).

5. Dedication of the Road Works Land

5.1 Transfer of the Road Works Land

- (a) The Developer must transfer or procure the transfer of the Road Works Land in accordance with clauses 5.2 and 5.3 of this Schedule 4.
- (b) If the Developer transfers land to the Minister (or his/her nominee) pursuant to clause 4.3(c) of Schedule 4, the provisions of clauses 5.2 to 5.4 below shall apply except that references to the 'Road Works Land' shall be deemed to exclude any parts of the Acquisition Land that are not owned by the Developer at the relevant time.

5.2 Subdivision of Road Works Land

- (a) Before transferring the Road Works Land in accordance with clause 5.3 of this Schedule 4, the Developer must (at its cost):
 - (i) obtain Development Consent (if any is required) and any other approvals necessary to create a separate lot for the Road Works Land; and

- (ii) in accordance with the applicable Development Consent (if any) and any other necessary approvals, prepare and register a Plan of Subdivision to create a separate lot for the Road Works Land (**Road Work Land Subdivision**).

5.3 Transfer of the Road Works Land

- (a) Not used.
- (b) In procuring the transfer of the Road Works Land to the Minister or the Minister's nominee in accordance with this deed, the Developer must deliver to the Minister or his/her nominee:
 - (i) a form of transfer in respect of the land comprising the Road Works Land in favour of the Minister or his/her nominee free of cost, executed by the Developer and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - (ii) the certificate of title for the Road Works Land;
 - (iii) promptly comply, or procure compliance with, any requisitions raised by the Registrar-General in relation to the transfer of the Road Works Land; and
 - (iv) take any other necessary action to give effect to the transfer of the title of the Road Works Land to the Minister or Minister's nominee free of all encumbrances (including any mortgages, easements, covenants and Planning Agreements) and affectations (including any charge or liability for rates, Taxes and charges) other than service easements or such other encumbrances as agreed by the Minister or nominee in writing.
- (c) For avoidance of doubt, clause 5.3(b)(iv) of this Schedule 4 does not apply in relation encumbrances or affectations being statutory rights that exist or arise under legislation which are of a type which the Developer or owner of the Road Works Land could not prevent from affecting the Road Works Land and in respect of which no action can be taken by the Developer or owner of the Road Works Land.
- (d) Despite clause 5.3(b)(iv) of this Schedule 4, if, despite having used its best endeavours, the Developer cannot ensure that the land to be dedicated is free from any relevant encumbrance and affectation which would otherwise be the subject of clause 5.3(b)(iv), then:
 - (i) the Developer may request that the Minister or the Minister's nominee agrees to accept the land subject to those encumbrances and affectations; and
 - (ii) if the encumbrance or affectation:
 - (A) does not prevent the future use of the land for the public purpose for which it is to be dedicated under this deed; or
 - (B) is not a charge arising as a result of unpaid taxes or charges,
 the Minister or nominee may agree to accept the land subject to those encumbrances; and
 - (iii) in other circumstances, the Minister or Minister's nominee may withhold their agreement at their absolute discretion.

- (e) The Developer indemnifies and agrees to keep indemnified the Minister and the Minister's nominee against all Claims made against the Minister or Minister's nominee as a result of any Contamination that is required to be Remediated by an Authority over the whole or any part of the Road Works Land, but only in relation to contamination that existed and before the date the Road Works Land is transferred to or acquired by the Minister (or his nominee).
- (f) The Developer will pay all rates and Taxes owing in respect of the Road Works Land up to and including the date that the Developer delivers the form of transfer and certificates of title for the Road Works Land pursuant to clause 5.3 of this Schedule 4 or the date of acquisition (as applicable), after which time the Minister or the Minister's nominee will be responsible for any rates and Taxes in relation to the Road Works Land.
- (g) The parties agree that this deed operates as a deed poll in favour of the Minister's nominee (where applicable).

5.4 Compulsory Acquisition

- (a) If the Developer does not transfer the Road Works Land as required by this Schedule 4, the Minister may elect to, and the Developer consents to, the Minister or the Minister's nominee compulsorily acquiring the whole or any part of the Road Works Land in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW), for the amount of \$1.00.
- (b) The Developer agrees that:
 - (i) this clause 5.4 is an agreement between the Developer and the Minister (or the Minister's nominee, if relevant) for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW); and
 - (ii) in this clause 5.4, all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition have been agreed upon.
- (c) The Developer must ensure that the Road Works Land is free of all encumbrances and affectations (including any charge or liability for rates, Taxes and charges), on the date that the Minister or the Minister's nominee compulsorily acquires the Road Works Land in accordance with this clause 5.4.
- (d) The Developer indemnifies and keeps indemnified the Minister against all Claims made against the Minister and the Minister's nominee as a result of any acquisition by the Minister or the Minister's nominee of the whole or any part of the Road Works Land under this clause 5.4.
- (e) The Developer must pay the Minister or the Minister's nominee, promptly on demand, an amount equivalent to all Costs incurred by the Minister or his/her nominee in acquiring the whole or any part of the Road Works Land as contemplated by this clause 5.4.

6. Restriction on the issue of Construction Certificates and Occupation Certificates

- 6.1 The parties agree that this Schedule 4 imposes restrictions on the issue of Construction Certificates and Occupation Certificates as follows:

Restriction	Obligations to be fulfilled by the Developer
-------------	--

Construction Certificate in respect of the 300 th Final Lot in the Development	<ul style="list-style-type: none"> • Acquisition of the Acquisition Land by the Developer or the fulfillment of all obligations in clause 4.3 of this Schedule 4 in lieu; and • Entry into the WAD by the Developer.
Occupation Certificate in respect of the 300 th Final Lot in the Development	<ul style="list-style-type: none"> • Developer achieving Practical Completion of the Road Works; and • Dedication of the Road Works Land by the Developer to the Minister or the Minister's nominee.

Schedule 5 Security terms

(clause 6.1)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the obligations of the Developer under this deed, the Developer must provide the Security in the form of Bank Guarantees and the Minister will release the Security as set out in the table below.

Security	Bank Guarantee Amount	Time for provision of Security	Time for release of Security
Base Security	\$100,000	On execution	After satisfaction of all of the Developer's obligations under this deed
Additional Base Security	\$600,000	On execution	After receipt by the Minister of the Enhanced Security
Enhanced Security	An amount equal to the Phase 1 Debt	On or before the Phase 1 Date	When the Developer has: <ul style="list-style-type: none"> acquired the Acquisition Land or performed all of its obligations in clause 4.3 of Schedule 4 in lieu; and provided RMS Bank Guarantees under the WAD to the satisfaction of the Minister.

- (b) Each Bank Guarantee must:

- (i) name the "Minister for Planning and Public Spaces" and the "Department of Planning and Environment ABN 38 755 709 681" (or such other titles as the Minister may direct from time to time having regard to machinery of government changes) as the relevant beneficiaries;
- (ii) be in the amount as set out in the table above; and
- (iii) not have an expiry date.

- (c) If the Developer provides Security to RMS under the WAD that is unsatisfactory to the Minister, then:

- (i) the Developer must provide an additional Bank Guarantee for an amount satisfactory to the Minister (as determined in his/her discretion);
- (ii) upon receipt of the Bank Guarantee by the Minister under clause 1(c)(i) of this Schedule 5, the Minister will accept that Bank Guarantee and the security provided under the WAD (if any) as securing the performance of the Developer's obligation under Schedule 4 of this deed to carry out the Road Works;

- (iii) subject to the performance of other obligations that need to be performed before the Enhanced Security is released pursuant to clause 1(a) of this Schedule 5, the Minister will return the Enhanced Security provided under clause 1(a) of this Schedule 5 to the Developer within 20 Business Days of receiving the Bank Guarantee under clause 1(c)(i) of this Schedule 5; and
- (iv) the Minister shall be entitled to hold any Bank Guarantee(s) provided under clause 1(c) of this Schedule 5 until the Developer achieves Practical Completion of the Road Works.

2. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon any Security provided in accordance with this deed where the Developer has failed to perform its obligations or pay any amounts due in accordance with this deed;
 - (ii) if and to the extent that the Phase 1 Debt remains outstanding and without prejudice to sub-clause 2(a)(i) above, call upon the Security held by the Minister at the relevant time if a Construction Certificate relating to the Phase 2 Development is not issued within two (2) years of the date of Phase 1 Date; and
 - (iii) retain and apply such monies towards the designated State infrastructure and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security, the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Minister calls upon a Security; and
 - (ii) applies all or part of such monies towards designated State infrastructure and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 2(b) of this Schedule 5,

then the Developer must provide the Minister with a replacement Security to ensure that, at all times, until the date the Security is released in accordance with clause 1(a) of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the relevant Security required to be provided in accordance with clause 1 of this Schedule 5.

3. Release of Security

Notwithstanding clause 1(a) of this Schedule 5, the Minister is not required to release any Security if the whole of the relevant Security has been expended. Where the Minister is required to

release Security pursuant to this Schedule 5, the Minister will promptly return the Security (less any costs, charges, duties and taxes payable) to the Developer.

4. Grant of charge

- (a) To support the caveat referred to in clause 7.5 of this deed, the Developer charges its rights, titles and interests in the Caveat Land in favour of the Minister to secure:
 - (i) the proper and timely performance of the Developer's obligations under this deed; and
 - (ii) any damages that may be payable to the Minister in the event of any breach of this deed by the Developer.
- (b) At any time after the Commencement Date, the Minister may lodge a caveat on the titles to the Caveat Land securing the charge granted to the Minister under clause 4(a).

Schedule 6 Landowners

The following persons are party to this agreement and jointly and severally comprise the Landowners for the purposes of this deed:

Dina Danias of 173 Victoria Road, Marrickville NSW 2204

George Danias of 173 Victoria Road, Marrickville NSW 2204

Michael Danias of 173 Victoria Road, Marrickville NSW 2204

Susie Danias of 173 Victoria Road, Marrickville NSW 2204

Sotwill Pty Limited (ACN 622 110 767) in its capacity as trustee for Danias Unit Trust No 2 of 173 Victoria Road Marrickville NSW 2204

Angelo Angelopoulos in his capacity as trustee for Evanange Family Trust of 173 Victoria Road, Marrickville NSW 2204

Evan Angelopoulos in his capacity as trustee for Evanange Family Trust of 173 Victoria Road, Marrickville NSW 2204

Execution page

Executed as a deed

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

.....
Signature of witness

.....
Signature of the Minister for Planning and Public
Spaces
or delegate

.....
Name of witness in full

.....
Name of Minister for Planning and Public Spaces
or delegate

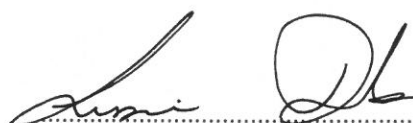
.....
Address of witness

Signed, sealed and delivered by Danias
Holdings Pty Limited (ACN 127 813 781) in its
capacity as trustee for **Danias Investment Trust**
in accordance with section 127 of the
Corporations Act:



.....
Signature of Director

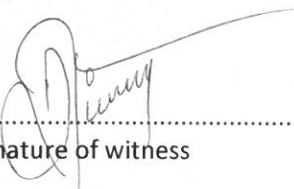
EVAN ANGELOPOULOS
.....
Name of Director



.....
Signature of Director/Secretary

SUSIE DANIAS
.....
Name of Director/Secretary

Signed, sealed and delivered by Dina Danias, in
the presence of:

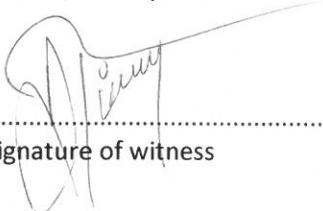

Signature of witness


Signature of Dina Danias

DAVID TIERNEY
Name of witness in full

61 EUROBIN AVE, MANLY 2095
Address of witness

Signed, sealed and delivered by George
Danias, in the presence of:

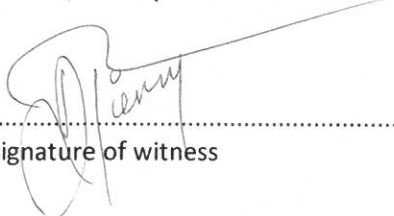

Signature of witness


Signature of George Danias

DAVID TIERNEY
Name of witness in full

61 EUROBIN AVE, MANLY 2095
Address of witness

Signed, sealed and delivered by Michael
Danias, in the presence of:

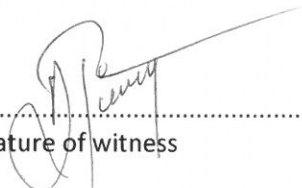

Signature of witness


Signature of Michael Danias

DAVID TIERNEY
Name of witness in full

61 EUROBIN AVE, MANLY 2095
Address of witness

Signed, sealed and delivered by Susie Danias,
in the presence of:


.....
Signature of witness


.....
Signature of Susie Danias

DAVID TIERNEY
.....
Name of witness in full

61 EUROBIN AVE, MANLY 2095
.....
Address of witness

Signed, sealed and delivered by Sotwill Pty Ltd
(ACN 622 110 767) in its capacity as trustee for
Danias Unit Trust No 2 in accordance with
section 127 of the Corporations Act:

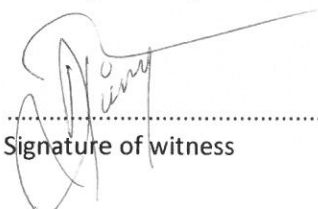

.....
Signature of Director


.....
Signature of Director/Secretary

ANGELO ANGELOPOULOS
.....
Name of Director

ANGELO ANGELOPOULOS
.....
Name of Director/Secretary

Signed, sealed and delivered by Angelo
Angelopoulos in his capacity as trustee for
Evanange Family Trust, in the presence of:



.....
Signature of witness



.....
Signature of Angelo Angelopoulos

DAVID TIERNEY
.....
Name of witness in full

61 EUROBIN AVE, MANLY 2095
.....
Address of witness

Signed, sealed and delivered by Evan
Angelopoulos in his capacity as trustee for
Evanange Family Trust, in the presence of:


.....
Signature of witness


.....
Signature of Evan Angelopoulos

DAVID TIERNEY
.....
Name of witness in full

61 EUROBIN AVE MANLY 2095
.....
Address of witness

Annexure A – Road Works Land and Road Works plan

