

Hunter Development Corporation ("Vendor")

LEE 4 PTY LTD ACN 620 632 573 ("Purchaser")

DOMA TRUSTEE PTY LTD atf 6 NATIONAL CIRCUIT TRUST ABN 85 525
639 074 ("Guarantor")

Special Conditions

35 Honeysuckle Drive

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These are additional clauses to the Contract for the Sale of Land

BETWEEN: HUNTER DEVELOPMENT CORPORATION ABN 94 688 782 063 (as **Vendor**)

AND: LEE 4 PTY LTD ACN 620 632 573 (as **Purchaser**)

AND: DOMA TRUSTEE PTY LTD atf 6 NATIONAL CIRCUIT TRUST ABN 85 525 639 074 (as **Guarantor**)

32. DEFINITIONS AND INTERPRETATION

32.1 Definitions

In this Contract:

"Action" means make any objection, requisition, demand, claim for compensation or exercise any right to rescind or terminate this Contract or seek to delay completion of the Contract.

"Authority" means any government, statutory, public or other authority or body having jurisdiction over the Property or the Development or any matter or thing relating to the Property or the Development.

"Change in Control" means the acquisition by any person or corporation, either alone or together with any associate of that person or corporation of:

- (a) where the Purchaser is a company, a relevant interest in more than 50% of the issued voting capital in the company;
- (b) where the Purchaser is a trustee of a discretionary trust, there is a change in the trustee or the directors of the trustee so the board of directors of the trustee is controlled by a new person or persons; or
- (c) where the Purchaser is the trustee of a unit trust, there is a change in a relevant interest of more than 50% of the issued units in that Trust.

"Completion Date" means the date set out in clause 48.

"Confidential Information" means all and any information and documents relating to the Vendor, the Development and which is identified as confidential at the time it is provided or which by its nature is confidential, whether written, electronic or other form which the Vendor provides to the Purchaser or some other person acting on the Purchaser's behalf, except so much of the Confidential information which the Purchaser establishes was information in its possession before disclosure by or on behalf of the Vendor or information which is in the public domain (other than due to the Purchaser's breach of this Contract).

"**Construction Certificate**" means a construction certificate to be issued by the relevant Authority for works on the Property in accordance with all relevant laws.

"**Consent Authority**" means the NSW Department of Planning & Environment.

"**Council**" means Newcastle City Council.

"**Deposit**" means 10% of the purchase price set out on page 1 of this Contract.

"**Design Matters**" means the design matters listed in clause 44.1(a)

"**Development**" means the development of the Property in accordance with the Purchaser's Proposal (or as otherwise approved by the Vendor).

"**Development Application**" means the development application for the Development made by the Purchaser to the Consent Authority including, without limitation, the Request for the Secretary's Environmental Assessment Requirements and the Environmental Impact Statement.

"**Development Consent**" means consent to the Development Application by the Consent Authority for the Development.

"**Development Material**" means all the material brought into existence as part of or associated with the Development Works

"**Development Works**" means the excavation, design and construction works required to construct the Development on the Property in accordance with this Contract.

"**Draft Subdivision Plan**" means the plan set out in **Annexure F**.

"**Environmental Impact Statement**" means the Environmental Impact Statement to be lodged with the Development Application in compliance with the State Significant Development process under the EP&A Act.

"**Environmental Reports**" means the reports referred to in clause 41.

"**EP&A Act**" means the *Environmental Planning and Assessment Act 1979* (NSW) or any other act superseding, extending or modifying the EP&A Act.

"**Event of Default**" means an event referred to in clause 55.

"**Flood Management Plans**" means the plans referred to in clause 38.

"**Force Majeure**" means an act of war (whether declared or not) or terrorism, civil commotion or riot, earthquake or national or state wide industrial action, but only if the Purchaser:

- (d) is delayed or disrupted as a result of that event; and
- (e) could not have prevented that delay or disruption by taking steps that a prudent and competent developer carrying out similar works should take.

"Geotechnical Report" means the reports referred to in clause 39.1(a).

"Guarantor" means Doma Trustee Pty Ltd atf 6 National Circuit Trust.

"Guidelines" are those guidelines contained in the following:

- (a) Council's Newcastle Development Control Plan 2012;
- (b) Council's Newcastle Local Environmental Plan 2012;
- (c) State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development); and
- (d) State Environmental Planning Policy (State and Regional Development) 2011.

as amended from time to time and/or other development or planning controls lawfully put in place by the Council or otherwise enacted pursuant to the EP&A Act superseding, extending or modifying them.

"Heritage" means any issues relating to heritage governed under the *Aboriginal Heritage Act 1988*, *Natural Heritage Trust of Australia Act 1997*, *Heritage Act 1977* or the subject of management by the NSW Department of Planning & Environment, the Heritage Council of NSW or NSW Office of Environment & Heritage.

"Heritage and Archaeology Reports" means the following reports:

- (a) Baseline Archaeological Assessment, Cottage Creek Precinct and Wickham Urban Village, Archaeological Management & Consulting Group Pty Ltd, September 2009;
- (b) Cultural Heritage Assessment, Proposed Development at Cottage Creek Precinct and Wickham Urban Village, Newcastle, New South Wales, Streat Archaeological Services, April 2011; and
- (c) Aboriginal Archaeological Assessment, Proposed Development at Cottage Creek Precinct and Wickham Urban Village, Newcastle, New South Wales, Streat Archaeological Services, April 2011.

"Intellectual Property" means all rights in copyright, patents, registered and unregistered trademarks, registered designs, Purchaser's Proposal and all other right of intellectual property recognised in NSW and Australia.

"Interest Rate" means the bank bill swap rate plus 2%.

"Land" means Lot 1 DP 1236735 known as 35 Honeysuckle Drive.

"LPI" means the NSW Land & Property Information

"Maximum Heights and FSR" means the maximum heights and floor space ratio for buildings on the Property identified in the Height of Buildings Map Sheet HOB 004G in respect of heights and the Newcastle Local Environment Plan 2012 Floor Space

Ratio Map 004G in respect of FSR, without the addition of any bonuses permitted under clause 4.6 or any other clauses under the Council's Newcastle Local Environmental Plan 2012 or any other planning instrument.

"**Minister**" means the Minister for NSW Department of Planning & Infrastructure and his authorised delegates and representatives.

"**Notice to Comply**" means a notice issued by the Vendor to the Purchaser notifying of a default or failure to comply and requesting rectification or compliance.

"**Option Deed**" means the Option Deed granted by the Purchaser (the "**Grantor**") to the Vendor ("**HDC**") to purchase the Property, a copy of which is contained in **Annexure A**.

"**Option Deed Purchase Price**" means the Option Deed purchase price as detailed in clause 4(c) of the Option Deed.

"**Permitted Person**" means a person notified and approved by the Vendor. Approval is not required for the Purchaser's legal, financial and accounting advisers.

"**Proposed Lot**" means the new lot identified in the Draft Subdivision Plan.

"**Property**" means part of the Land to be created through the registration of the plan of subdivision referred to in clause 47.

"**Public Domain Deed**" means the deed regarding the Purchaser making a contribution to public domain works in the approximate vicinity of the Property dated on or around the date of this deed.

"**Public Domain Concept Plan**" has the same meaning as in the Public Domain Deed executed by the parties on or about the date of this Contract.

"**Purchaser's Proposal**" means the design and intent for the Development as set out in **Annexure "B"** as varied from time to time with HDC's written approval.

"**Quantity Surveyor**" means a quantity surveyor:

- (a) being a fellow of the Australian Institute of Quantity Surveyors; and
- (b) being independent of the parties and having at least 10 years' experience in quantity surveying in relation to projects similar to the Development.

"**Registration Date**" means 30 June 2018.

"**Registration Sunset Date**" means the date in Item 7 of the Schedule.

"**Related Body Corporate**" has the same meaning given to the term in the Corporations Act 2001 (Cth).

"**Reports**" means the Flood Management Plan, Geotechnical Report, Services Plan, Environmental Reports and Heritage and Archaeology Reports.

"Request for the Secretary's Environmental Assessment Requirements" means a request for the Secretary's Requirements for the preparation of an environmental impact statement required to be made as part of the state significant development assessment process under the *Environmental Planning and Assessment Act, 1979* (NSW).

"Risk Mitigation Plan" means the proposed Mine Subsidence Mitigation Plan-Honeysuckle, Hunter Development Corporation GEOTWARA20878AA-AN, 20 December 2010.

"Secretary's Environmental Assessment Requirements" means the environmental assessment requirements received from the Consent Authority in response to a Request for the Secretary's Environmental Assessment Requirements.

"Services Plan" means the plan referred to in clause 40.1.

"SRD SEPP" means the State Environmental Planning Policy (State and Regional Development) 2011

"State Significant Development" means a development that is a State Significant Development by the SRD SEPP or otherwise called-in by the Minister as a State Significant Development.

"NSW" means Subsidence NSW or any entity which replaces Subsidence NSW.

"Substantial Commencement" means:

- (a) the Purchaser can provide evidence reasonably acceptable to the Vendor that it has the finance to complete the Development in accordance with the Development Consent; and
- (b) the Purchaser can provide evidence of a binding building contract with a reputable builder for the construction of the Development to completion on usual terms, which contract is not subject to due diligence or builder finance; and
- (c) The Purchaser has completed the structure to the first two floors of the Development, being the remediation, the basement and the ground floor.

"Substantial Commencement Sunset Date" means the date set out in item 8 of the Schedule.

"Surety Bond" means an insurance bond on terms no less advantageous to the Vendor than the one attached to **Annexure E**.

"Transaction Documents" means:

- (a) this Contract;
- (b) the Option Deed; and
- (c) the Public Domain Deed

32.2 Interpretation

In this Contract unless the context requires otherwise:

- (a) the Vendor may do something means that the Vendor may, but is not obliged, to do the thing or take the action contemplated in the relevant clause;
- (b) if the Vendor has an obligation to cause something to be done, the Vendor may either:
 - (1) do that thing itself; or
 - (2) engage a third person to do that thing;
- (c) the singular includes the plural and vice versa;
- (d) words implying a gender imply any gender;
- (e) headings are used for convenience only and do not affect the interpretation of this Contract;
- (f) a reference to a document (including this Contract) includes the document as modified from time to time and any document replacing it;
- (g) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements or any of them;
- (h) law means common law, principles of equity and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements);
- (i) an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- (j) an agreement, representation or warranty on the part of 2 or more persons binds them jointly and severally;
- (k) the word "person" includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any Authority;
- (l) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including without limitation, persons taking by novation) and assigns;
- (m) a reference to any agency or body, if that agency or body ceases to exist or is constituted, renamed or replaced or has its powers or functions removed ("**defunct body**"), means the agency or body which performs most closely the functions of the defunct body;

- (n) a reference to a day is a reference to a period of time commencing at midnight and ending 24 hours later;
- (o) a reference to time is a reference to eastern standard time;
- (p) **month** means calendar month and **year** means 12 months;
- (q) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (r) **in writing** includes any communication sent by letter, facsimile transmission or email;
- (s) **including** and similar expressions are not words of limitation; and
- (t) money amounts are stated in Australian currency unless otherwise specified.

32.3 **Inconsistency**

To the extent that the provisions of these special conditions are inconsistent with the printed form Contract, these special conditions prevail.

33. **AMENDMENTS TO THE CONTRACT FOR THE SALE OF LAND 2017 EDITION**

- 33.1 clause 2.9 is amended as follows, *"If each party tells the depositholder that the Deposit is to be invested, the depositholder is to invest the Deposit (at the risk of the party who becomes entitled to it) with a bank, in an interest bearing account in NSW, payable at call, with interest to be reinvested, and pay the interest to the party entitled to the Deposit."*
- 33.2 clause 7.1.1 is amended by deleting the words "the total amount claimed exceeds 5% of the price" and instead inserting the words "the total amount claimed exceeds 1% of the price".
- 33.3 clause 7.2.4 is amended by deleting the words "and the costs of the Purchaser".
- 33.4 clause 8 is amended by deleting the words "on reasonable grounds" in the first line of clause 8.1.1 and by deleting the words "and those grounds" in the first line of clause 8.1.2.
- 33.5 clause 10.1 is amended by replacing line 1 with:
"The Purchaser cannot take any Action in respect of".
- 33.6 clause 10 is amended by inserting the following additional clause:
"10.4 For the purpose of this clause 10 the Vendor discloses all of the material appearing in the documents attached to this Contract whether specified in the table on page 2 or not and all of that material is deemed to have been disclosed in substance in this Contract".

33.7 clause 13 is amended as follows:

(a) clause 13.2 is deleted and replaced with the following

"13.2 Despite any other provision in this Contract, if this Contract nominates that this sale is a taxable supply in full then:

(a) the price and any other amount (including adjustments) made by one party to the other party does not include GST; and

(b) at the same time and in the same manner as the Purchaser is required to pay the price or any other amount (including adjustments) under the Contract (adjusted amount) the Purchaser pay an additional amount equal to the adjusted amount multiplied by the GST rate.

Despite any other provision in this Contract, if this Contract nominates that this sale is a taxable supply to an extent then

(c) the price and any other amount (including adjustments) payable by one party to the other party does not include GST; and

(d) at the same time and in the same manner as the Purchaser is required to pay the price or any other amount (including adjustments) under this Contract relating to any part of the property that is identified as being a taxable supply (adjusted amount) the Purchaser must pay an additional amount equal to the adjusted amount multiplied by the GST rate

This clause does not merge on completion."

(b) clause 13.3.1 is amended by deleting the words "added to or included in" and replacing them with "payable in respect of".

(c) clauses 13.8 and 13.9 are deleted.

33.8 clause 16.3 is amended by deleting "(being an estate in fee simple)".

33.9 clause 16.5 is amended by deleting ", plus another 20% of that fee".

33.10 clause 19.2.1 is deleted.

33.11 clause 21.4 is amended by deleting in the second line "the month" and in lieu insert "that month".

33.12 clause 23.9.1 is amended by deleting "1%" and instead inserting "5%".

33.13 clause 23.9.3 is amended by deleting the words "or before completion".

33.14 clause 23.14 is deleted.

33.15 clause 28 is deleted.

33.16 clause 29 is deleted.

34. NO REPRESENTATIONS OR WARRANTIES EXCEPT IN CONTRACT

34.1 The Purchaser represents and warrants that in entering into this Contract the Purchaser has not relied on any representation or warranty by or on behalf of the Vendor about the subject matter of the Contract except those included in this Contract or in any other document acknowledged in writing by the parties as ancillary to this Contract.

34.2 The Purchaser acknowledges that the Vendor in entering into this Contract has relied on the Purchaser's representation that the Purchaser will, subject to the other provisions of this Contract, construct the Development on the Property in accordance with this Contract.

34.3 The Purchaser may at any time provide an alternative or replacement Guarantor which is a Related Body Corporate to the Purchaser and which is of equal to or greater financial standing to the Guarantor with the consent of the Vendor, such consent not to be unreasonably withheld.

34.4 The Purchaser must pay the Vendor's costs of providing its consent to a new Guarantor under clause 34.3 including, without limitation, the cost of negotiating and preparing the legal documents for the replacement of the Guarantor.

35. ADDITIONAL RIGHTS OF RESCISSION

35.1 If a party (or if a party consists of two or more entities, any of those entities) is a body corporate and:

- (a) a successful application is made to a court for an order or an order is made that it be wound up; or
- (b) a successful application is made to a court for an order appointing a liquidator or provisional liquidator in respect of it, or one of them is appointed, whether or not under an order; or
- (c) except to reconstruct or amalgamate while solvent on terms approved by the other party, it enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement, or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) it resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party, or is otherwise wound up or dissolved; or

- (e) it is or states that it is insolvent; or
- (f) it is, or makes a statement from which it may be reasonably deduced by the other party that it is, the subject of an event described in section 459C(2)(b) of the Corporations Act; or
- (g) it takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to it; or
- (h) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;

then the other party may rescind this Contract by giving written notice to the first party's solicitor.

36. VENDOR DISCLOSURE

- 36.1 The Vendor does not warrant the accuracy or completeness of the Reports. The Vendor is not aware that the Reports are inaccurate.
- 36.2 The Purchaser represents and warrants that:
 - (a) it has inspected the Reports; and
 - (b) it has made its own enquiries in relation to the Reports.
- 36.3 Subject to the other provisions of the Contract, the Purchaser may not make a claim or requisition, delay completion, rescind or terminate or claim compensation in connection with anything referred to in the Reports.
- 36.4 The Purchaser undertakes to carry out all investigations of the Property, at its own cost, in order to properly ascertain the capacity and extent of development permissible on the Property, including, without limitation, addressing Heritage matters. The Purchaser will be solely responsible for costs of complying with this clause, including the costs of any investigative or remedial works.
- 36.5 The Purchaser agrees to carry out the Development, at its own cost and risk and is not entitled to seek any contribution from the Vendor in relation to any matters concerning the Property and Development, whether or not such matters are disclosed in the Reports.

37. MINE SUBSIDENCE

- 37.1 The Purchaser acknowledges the Vendor's disclosure of the Risk Mitigation Plan.
- 37.2 The Purchaser represents and warrants that:
 - (a) it has inspected the Risk Mitigation Plan; and
 - (b) it has made its own enquiries in relation to the Risk Mitigation Plan.

- 37.3 The Purchaser's Development must not exceed the heights described in the Maximum Heights and FSR without the Vendor's consent, not to be unreasonably withheld. If the Vendor does provide this consent and the Purchaser's Development does exceed the Maximum Heights and FSR, the Purchaser is responsible for all risks and costs associated with the Purchaser's Development exceeding the Maximum Heights and FSR including, without limitation, satisfying any requirements of SNSW. For the avoidance of doubt HDC cannot withhold consent to the Purchaser's Development if it has height and FSR consistent with the Purchaser's Proposal.
- 37.4 The Purchaser will be required to satisfy all of the requirements of the SNSW for the Purchaser's Development and undertake any required mine subsidence works in connection with the Purchaser's Development.
- 37.5 The Purchaser may not make a claim or requisition, delay completion, rescind or terminate this Contract or claim compensation in connection with anything referred to in the Mine Subsidence Reports or the requirements of the SNSW for the Development.

38. FLOOD MANAGEMENT

The Purchaser acknowledges the Vendor's disclosure of the flood plan entitled Cottage Creek Flood Management Plan dated 2 January 1999 by Lawson & Treloar and the Newcastle Floodplain Risk Study 2012 ("**the Flood Management Plans**"). The Purchaser represents and warrants that:

- (a) it has inspected the Flood Management Plans; and
- (b) it has made its own enquiries in relation to the Flood Management Plans.

The Purchaser may not make a claim or requisition, delay completion, rescind or terminate this Contract or claim compensation in connection with anything referred to in the Flood Management Plans or any flood planning levels disclosed by the Vendor. The Purchaser acknowledges that the flood planning levels may change as determined by the relevant Authority.

39. GEOTECHNICAL MATTERS

- 39.1 The Purchaser acknowledges the Vendor's disclosure of the Geotechnical Report comprising the following: Proposed Mine Subsidence Imitation Plan – Honeysuckle 20 December 2010 (ref: GEOTWARA20878AA-AN) (the **Geotechnical Report**).
- 39.2 The Purchaser represents and warrants that:
- (a) it accepts all risks in connection with geotechnical matters;
 - (b) it has inspected the Geotechnical Report; and
 - (c) it has made its own enquiries in relation to the Geotechnical Report in relation to the Property and the surrounding areas.

39.3 The Purchaser must not make a claim or requisition, delay completion, rescind or terminate this Contract or claim compensation in connection with anything referred to in the Geotechnical Report.

39.4 The Purchaser acknowledges:

- (a) prior to Completion the Vendor will modify the part of the site shown in the plans attached and marked Annexure C when it cuts and removes redundant piles close to the revetment floor and backfills that area with sandy fill with ENM or VENM classification; and
- (b) the wharf and seawall structures and anchor rods which remain as part of the Property are the Purchaser's responsibility.

The Purchaser must not make a claim or requisition, delay completion, rescind or terminate this Contract or claim compensation in connection with anything disclosed in clause 39.4.

39.5 The Vendor will provide the Purchaser documentation to confirm the extent of the redundant seawall and anchor rods that remain on the Property after the above works are completed.

40. SERVICES

40.1 The Purchaser acknowledges the Vendor's disclosure of the services for the Property in the detailed Survey and Services Plan Dewitt 2008 ("**the Services Plan**").

40.2 The Purchaser represents and warrants that:

- (a) it has inspected the Services Plan; and
- (b) it has made its own enquiries in relation to the Services Plan in relation to the Property.

The Purchaser may not make a claim or requisition, delay completion, rescind or terminate this Contract or claim compensation in connection with anything referred to in the Services Plan.

41. ENVIRONMENTAL COMPLIANCE

41.1 The Purchaser acknowledges the Vendor's disclosure of the following environmental reports in relation to the Property:

- (a) 1996 Woodward Clyde – Honeysuckle Redevelopment, Remediation Strategy, Civic/Honeysuckle Precincts
- (b) 2003 PB – Additional Groundwater Investigation, Honeysuckle
- (c) 2007 Environ – SAR, Lee 4

- (d) 2007 JBS – RAP, Lee 4
- (e) 2014 Environ – Honeysuckle Drive Sites, EMP
- (f) 2015 JBS&G – Lee 4 Extract, Honeysuckle (Preliminary Assessment) Rev B
- (g) 2017 JBS&G – Fill, Waste Classification Report, Lee 4
- (h) 2017 JBS&G – Sand, Waste Classification Report, Lee 4
- (i) 2017 JBS&G – Groundwater Review, Draft

(the “**Environmental Reports**”).

41.2 The Purchaser represents and warrants that:

- (a) it has inspected the Environmental Reports; and
- (b) it has made its own enquiries in relation to the Environmental Reports.

41.3 In this clause:

"Contaminant" means any

- (a) air pollution;
- (b) water pollution;
- (c) substance which harms or is likely to harm (whether directly or indirectly) the environment or the health or safety of any person; or
- (d) petrol contamination and the presence of residual hydrocarbons under any soil, whether a solid, liquid or gas.

"Contamination" means the presence in, on or under any land, building, structure or waters of any Contaminant, which will prevent or severely restrict the Purchaser undertaking the Development.

"Environmental Law" means a law regulating or otherwise relating to the environment including, without limitation, any law relating to land use, planning, pollution of air or water, soil or groundwater contamination, chemicals, waste, use of dangerous goods or to any other aspect of protection of the environment or person or property or the enforcement of administration of any of those laws.

41.4 The Vendor discloses the Property is subject to Contamination. The Purchaser accepts the risk of any such Contamination and will undertake any remediation works at its own cost to undertake the Development.

41.5 The Vendor has provided the Purchaser with various reports regarding Contamination of the Property. Whilst these reports have been provided to the Purchaser in good faith, they were prepared by third party consultants and the Purchaser should make its own enquiries as to any Contamination on the Property and should not rely upon the reports.

- 41.6 The Purchaser accepts the condition of the Property including without limitation the presence of any Contaminant in, on or under or emanating from the Property or groundwater or surrounding areas ("**the condition of the Property**"), and acknowledges that the Vendor makes no representation or warranty as to the compliance of the Property with any Environmental Law.
- 41.7 The Purchaser accepts the risk of all the soil and other material on the Property and acknowledges that it is responsible for removing, disposing or otherwise managing it at its own cost and risk.
- 41.8 On and from the Completion Date, the Purchaser is liable for and unconditionally and irrevocably indemnifies the Vendor against all Actions, demands, liability, loss, cost or expense incurred or suffered directly or indirectly by the Vendor in connection with any Contamination on the Property, howsoever caused. This indemnity does not merge on completion.
- 41.9 The Purchaser is not entitled to:
- (a) make a claim or requisition, delay completion, rescind or terminate because of anything in connection with any of the matters referred to in the Site Audit Report or in relation to any Contamination of the Property; or
 - (b) require the Vendor to investigate or remediate any Contamination of the Property or groundwater or surrounding areas; or
 - (c) make any claim for compensation or damages, costs or expenses against the Vendor and its servants, agents, officers, and successors in relation to the condition of the Property and releases each such person from any such action or claim whether or not such action or claim is known or foreseeable at the time of sale. However, this agreement and release will not apply in the event of fraud or gross negligence by the Vendor, its servants, agents, officers and Contractors.

42. PURCHASER'S OTHER ACKNOWLEDGEMENTS

- 42.1 The Purchaser is not, subject to the other provisions of this Contract, entitled to make any objection, claim for compensation, requisition nor delay completion of or rescind or terminate this Contract as a result of:
- (a) the position of any easement required by the Consent Authority and/or the Council;
 - (b) the supply of common services and amenities and the existence of underground cables shown on the Deposited Plan for the Property or disclosed in the Contract;
 - (c) the creation of any covenant or easement or section 88B instrument giving effect to any of the matters referred to in clauses above;

- (d) any condition or obligation imposed by a Consent Authority in relation to the Property or the Development.
- 42.2 The Property is sold and the Purchaser shall take the Property subject to all rights of way, reservations, covenants and easements noted on the certificate of title folio identifier for the Property.
- 42.3 The Purchaser represents and warrants that:
 - (a) in entering into this Contract the Purchaser has not relied on any representation or warranty which the Vendor or any person on behalf of the Vendor has made or any conduct of the Vendor or any person acting on behalf of the Vendor about its subject matter except those set out in this Contract and is relying entirely upon its own enquiries relating to the Property except as expressly specified in this Contract;
 - (b) neither the Vendor nor anyone on behalf of the Vendor has made any representation or warranty upon which the Purchaser relies as to the fitness or suitability for any particular purpose or otherwise of the Property or of any financial return or income to be derived from the Property or the use of the Property;
 - (c) it accepts the Property in its present state and condition and subject to any latent and patent defects; and
 - (d) it is satisfied about the purposes for which the Property may be used.
- 42.4 Except as expressly set out in this Contract, the Purchaser cannot make a claim, objection or requisition or rescind or terminate this Contract for any matter referred to in this clause 42.
- 42.5 The provisions of this Contract and the Transaction Documents contain the entire contract as concluded between the parties as at the date of this Contract notwithstanding:
 - (a) any negotiations or discussions held; or
 - (b) documents signed or brochures produced, prior to the date of this Contract.
- 42.6 The parties are not bound by any warranty, representation, collateral agreements or implied terms under the general law or imposed by, legislation unless:
 - (a) such warranty, representation, agreement or term is contained in an express term of this Contract; and
 - (b) it is an implied term or warranty imposed by statute which is mandatory and cannot be excluded by the parties to this Contract.
- 42.7 The Vendor notes that there is a public positive covenant affecting part of Lot 2000 in Deposited Plan 1145678. The Vendor agrees to remove this public positive

covenant from the Property as part of subdividing the Property from the balance of the Land.

42.8 The Purchaser:

- (a) must include in all its future sales contracts relating to the Property a condition that all owners accept the adjacent open space shown on the plan attached and marked **Annexure D** will be embellished to be generally consistent with the Public Domain Concept Plan to include public domain elements which include, without limitation, mature trees, light poles, and other features which may adversely impact on owners of the Property with respect to matters such as views, noise and other impacts associated with the public use of the public open space; and
- (b) acknowledges that on or before Completion the Vendor may register a positive covenant over the Property on terms reasonably acceptable to the Purchaser to ensure the disclosure outlined in clause 42.8(a) is made for all future transactions involving the Property. The Purchaser must not make a claim or requisition, delay completion, rescind or terminate this Contract or claim compensation in connection with the matters in this clause 42.

43. FENCES

43.1 The Purchaser may not make a claim or raise any objection or requisition or delay completion:

- (a) if any of the fences on or surrounding the Property are not on the correct boundary; or
- (b) as to the nature or state of repair of any fence; or
- (c) if there are no fences or if any fence is a give and take fence

43.2 The Purchaser agrees not to call on the Vendor to contribute to any fence the Purchaser proposes to or is obligated to erect on a boundary of the Property with adjoining land of the Vendor.

44. PURCHASER'S DEVELOPMENT OBLIGATIONS

44.1 **Design Matters to be resolved**

- (a) The Purchaser acknowledges that the Purchaser's Proposal has not yet addressed the following matters to the Vendor's satisfaction which must be resolved to the Vendor's absolute satisfaction, acting reasonably within the time set out in item 9 of the Schedule:
 - (1) refinement to the Northern façade treatment;
 - (2) location of the standalone restaurant;

- (3) landscaping including, without limitation, deep soil planting on the structure; and
 - (4) the interface between the flood ways and podium to minimise the number of ramps and stairs needed to access the podium level including but not limited to lowering the podium at the northwest corner of the site to the level of the proposed promenade which will allow public access across that portion of the site.
- (b) For the avoidance of doubt the resolution of the Design Matters should not result in an outcome that is any less beneficial from a design perspective than as set out in the Purchaser's Proposal.
 - (c) The Purchaser must cooperate with the Vendor through a design review process to address the Design Matters and must update the Purchaser's Proposal as reasonably requested by the Vendor to address the Design Matters. On resolution of the Design Matters the amended Purchaser's Proposal, as agreed, will be incorporated into this Contract.
 - (d) The Vendor may regularly require briefings and presentations from the Purchaser at its discretion and as part of the design review process in respect of the Design Matters.
 - (e) If the Vendor and the Purchaser are not able to reach agreement in relation to the Design Matters by the date set out in item 9 of the Schedule or such further period as may be agreed between the parties acting reasonably then the Vendor may:
 - (1) rescind this Contract by service of a written notice on the Purchaser; or
 - (2) keep the Contract on foot and proceed on the basis of the Purchaser's Proposal without any modification for the Design Matters.
 - (f) If the Vendor rescinds the Contract under clause 44.1(e)(1) the Deposit must be returned to the Purchaser together with any interest which has accrued on the Deposit to the date of rescission.
 - (g) For the avoidance of doubt, once the parties have agreed on the Design Matters the right of rescission in clause 44.1(e)(1) is extinguished.

44.2 **Approval process acknowledgements**

- (a) The Purchaser acknowledges the Development is a major project and will be assessed as a State Significant Development. The Purchaser warrants that it understands, and will abide by, the steps in the State Significant Development assessment process and as required by the Consent Authority.

- (b) Unless otherwise agreed with the Vendor, the Purchaser's Development Application must include the Development.
- (c) The Purchaser must, at its own cost and in the proper form comply with the development approval process for the Project required for State Significant Development.
- (d) The Purchaser must:
 - (1) keep the Vendor fully and properly informed of the progress of the development approval process; and
 - (2) Provide the Vendor with copies of the:
 - (A) Secretary's Environmental Assessment Requirements; and
 - (B) Development Application; and
 - (C) Environmental Impact Statement; and
 - (D) copies of any other documents related to the development approval process as requested by the Vendor.

44.3 Secretary's Environmental Assessment Requirements

- (a) The Purchaser must promptly after the date of this Contract, submit to the Vendor a Request for the Secretary's Environmental Assessment Requirements to issue the required environmental assessment requirements for the Project.
- (b) The Purchaser must ensure the Request for the Secretary's Environmental Assessment Requirements is:
 - (1) consistent with the Purchaser's Proposal (or as otherwise agreed between the parties); and
 - (2) consistent with the Guidelines and Maximum Heights and FSR (or as otherwise agreed between the parties).
- (c) If the Request for the Secretary's Environmental Assessment Requirements does not comply with clause 44.3(b), the Vendor may refuse consent to lodgement of the Request for the Secretary's Environmental Assessment Requirements with the Consent Authority.
- (d) The Vendor must act reasonably in determining whether the Request for the Secretary's Environmental Assessment Requirements complies with clause 44.3(b).

- (e) The Vendor must provide to the Purchaser, within 7 days of the Vendor's receipt of the Request for the Secretary's Environmental Assessment Requirements, either:
 - (1) written consent to lodgement of the Request for the Secretary's Environmental Assessment Requirements; or
 - (2) written notice of alterations reasonably required by the Vendor to the Request for the Secretary's Environmental Assessment Requirements prior to lodgement with the Consent Authority.
- (f) If the Vendor fails to provide the Purchaser with the documents referred to in the above clause within the time specified, then the Vendor is deemed to have accepted the Request for the Secretary's Environmental Assessment Requirements in the form provided to the Vendor by the Purchaser.
- (g) The Purchaser and the Vendor must act promptly, reasonably and honestly and use their reasonable endeavours to meet and consult with a view to resolving any problems or disagreements concerning the Request for the Secretary's Environmental Assessment Requirements.
- (h) Each time the Vendor requires the Purchaser to make alterations to the Request for the Secretary's Environmental Assessment Requirement pursuant to clause 44.3(e)(2) then after having made such alterations the Purchaser must resubmit the Request for the Secretary's Environmental Assessment Requirements for the Vendor's review and consent pursuant to clauses 44.3(b) to 44.3(g).
- (i) The Purchaser must, on or before the date in Item 1 of the Schedule, lodge the Request for the Secretary's Environmental Assessment Requirements in the form approved by the Vendor with the Consent Authority.
- (j) The Purchaser acknowledges that it is the Purchaser's responsibility to ensure that there is sufficient time prior to the time by which the Request for the Secretary's Environmental Assessment Requirements is required to be lodged with the Consent Authority for the Vendor review and consultation process as to the Request for the Secretary's Environmental Assessment Requirements to be completed.
- (k) The Purchaser must ensure the Development Application complies with the Secretary's Environmental Assessment Requirements.

44.4 Lodgement of Development Application

- (a) Promptly after receiving the Secretary's Environmental Assessment Requirements, the Purchaser must prepare and submit a draft of the Development Application to the Vendor for review and approval in the form it is proposed to be submitted to the Consent Authority.

- (b) The Purchaser must ensure the Development Application is:
 - (1) consistent with the Purchaser's Proposal (or as otherwise agreed between the parties);
 - (2) consistent with the Secretary's Environmental Assessment Requirements; and
 - (3) consistent with the Guidelines.
- (c) If the Development Application does not comply with clause 44.4(b) the Vendor may refuse consent to lodgement of the Development Application with the Consent Authority.
- (d) The Vendor must provide to the Purchaser, within 14 days of the Vendor's receipt of the Development Application, either:
 - (1) written consent to lodgement of the Development Application; or
 - (2) written notice of alterations reasonably required by the Vendor to the Development Application prior to lodgement with the Consent Authority.
- (e) If the Vendor fails to provide the Purchaser with the documents referred to in the above clause within the time specified, then the Vendor is deemed to have accepted the Development Application in the form provided to the Vendor by the Purchaser.
- (f) The Purchaser and the Vendor must act promptly, reasonably and honestly and use their reasonable endeavours to meet and consult with a view to resolving any problems or disagreements concerning the Development Application.
- (g) Each time the Vendor requires the Purchaser to make alterations to the Development Application pursuant to clause 44.4(d)(2) then after having made such alterations the Purchaser must resubmit the Development Application for the Vendor's review and consent pursuant to clauses 44.4(b) to 44.4(f).
- (h) If the Vendor and the Purchaser are not able to reach agreement in relation to the terms of the Development Application before the date on which the Development Application is required to be submitted with the Consent Authority, then the Vendor is entitled to rescind this Contract by service of written notice on the Purchaser.
- (i) The Purchaser must, on or before the date in Item 2 of the Schedule submit the Development Application approved by the Vendor to the Consent Authority in the form approved by the Vendor.
- (j) The Purchaser acknowledges that it is the Purchaser's responsibility to ensure that there is sufficient time prior to the time by which the

Development Application is required to be lodged with the Consent Authority for the Vendor review and consultation process as to the Development Application to be completed.

- (k) If, the Consent Authority requires any alteration to the Development Application once lodged, the Purchaser must immediately notify the Vendor of the alterations required and seek the Vendor's consent to those alterations. If the alterations are not acceptable to the Vendor, acting reasonably, then the Vendor is entitled to rescind this contract by service of written notice to the Purchaser and the Purchaser must immediately discontinue the development approval process.
- (l) The Purchaser must not make any variations to the Development Application without the Vendor's consent, not to be unreasonably withheld.
- (m) The Purchaser must pursue the Development Application with all due diligence and must use its reasonable endeavours to have the Development Application approved by the Consent Authority.

44.5 **Design Consultants**

The Purchaser must not change the architects and other key consultants specified in the Purchaser's Proposal without the prior written consent of HDC.

44.6 **Purchaser's Development not consistent with Guidelines**

Notwithstanding anything in this Contract, if the Vendor approves the Purchaser lodging a Development Application for the Development which includes additional height which is not consistent with the Guidelines (the "**Height Variation**"), the Purchaser does so at its own risk.

Without limiting the extension of time provision in clause 45.2, the Purchaser is still required to comply with all the timeframes in the Schedule and will not be entitled to any additional extensions of time as a result of the Development Application being inconsistent with the Guidelines in any respect.

If the Authority requires the Development to be modified to remove the Height Variation, the Purchaser must modify the Development Application to remove the Height Variation. In modifying the Development Application, the Purchaser must ensure that:

- (a) any modification to the Development Application is not inconsistent with the design principles in the Purchaser's Proposal; and
- (b) the modification to the Development Application does not reduce the public domain or public open space included in the Purchaser's Proposal.

The parties acknowledge that if the Purchaser is required to modify its Development Application to remove the Height Variation that the Purchaser is entitled to utilise the extension period in clause 45.2.

45. DEVELOPMENT CONSENT

45.1 The Purchaser must:

- (a) Provide to the Vendor a draft of the Development Application by the date set out in Item 1 of the Schedule; and
- (b) use all reasonable endeavours to obtain Development Consent by the date set out in Item 3 of the Schedule.

45.2 If the Purchaser provides evidence to the Vendor that it has complied with clause 45.1 but not obtained Development Consent by the date set out in Item 3 of the Schedule as a result of events outside of its reasonable control then, subject to clause 45.3, the Vendor must extend the period in Item 3 of the Schedule by the further period sought by the Purchaser not exceeding the extension period set out in Item 4 of the Schedule. If the Purchaser does not obtain its Development Consent within the extension period and the parties do not mutually agree to a further extension, then either party may rescind the Contract and the Vendor retains the Deposit.

45.3 Notwithstanding clause 45.2 but subject to clause 44.6:

- (a) No extension will be granted under clause 45.2 where the delay in obtaining Development Consent arises from a variation to the Purchaser's Proposal. For the avoidance of doubt, this clause 45.3(a) does not apply to an extension caused by the removal of the Height Variation under clause 44.6.
- (b) Any extension granted under clause 45.2 is granted subject to payment by the Purchaser of interest on the balance of the Purchase Price calculated on a daily basis from the date the extension is granted up to and including the Completion Date, termination or rescission of the Contract, whichever is the earlier.
- (c) Interest will be charged at the Interest Rate and as set out in clause 49.
- (d) Even though the Vendor is not required to grant an extension of time under clause 45.3(a) or (b), it may choose to do so in its absolute discretion.

45.4 An extension of time under clause 45.2 does not give rise to an automatic extension of time under any other provision of this Contract.

45.5 The Purchaser must comply with all of the conditions of the Development Consent at its own cost.

45.6 The Purchaser must within 7 business days of receipt of notice of:

- (a) grant of the Development Consent; or
- (b) refusal (or deemed refusal) of the Development Consent,

serve on the Vendor notice in writing of the grant or refusal of the Development Application and provide a copy of the Development Consent (if applicable) to the Vendor, including any conditions of consent imposed by the Consent Authority.

- 45.7 The Purchaser warrants that it will complete the Development in accordance with the terms of the Development Consent and will not seek any modification to the Development Consent without prior written approval of the Vendor. Failure to comply with this clause constitutes an Event of Default.
- 45.8 If required by the Vendor, the Vendor is entitled to register a restriction on the use of land or a positive covenant on the title to the Property to give effect to the terms of clause 45.7 either prior to or after completion of the Contract. This clause will not merge on completion.

46. PURCHASER'S OBLIGATIONS TO DEVELOP

- 46.1 Subject to issue of the Development Consent, the Purchaser acknowledges and agrees to promptly and expeditiously:
- (a) apply for and use its reasonable endeavours to obtain a Construction Certificate to carry out the Development;
 - (b) apply for any other approvals or consents necessary to carry out the Development; and
 - (c) carry out the Development in accordance with this Contract
- 46.2 The Purchaser must lodge an application for the issue of a Construction Certificate for the Development promptly after completion of this Contract and must use its reasonable endeavours to obtain a Construction Certificate promptly.
- 46.3 Provided an act of Force Majeure has not occurred, the Purchaser must commence construction of the Development and proceed to the stage of Substantial Commencement within the time stipulated in Item 5 of the Schedule.
- 46.4 The Purchaser must promptly serve the Vendor with written notice that Substantial Commencement of the Development has occurred.
- 46.5 Subject to clauses 46.6, 46.7 and 46.8 provided that the Purchaser acts promptly and diligently in all works, activities and obligations under this Contract and has commenced the construction works if in the reasonable opinion of the Purchaser the Purchaser will or may be delayed in achieving Substantial Commencement by any matters outside the reasonable control of the Purchaser in connection with the remediation of any Contamination the Purchaser:
- (a) must promptly notify the Vendor of details of the delay including particulars of the delay, the action already taken by the Purchaser to address the delay and the action proposed to be taken to address the delay by the Purchaser; and

- (b) may seek an extension to the date for Substantial Commencement by written notice to the Vendor, provided that the extension sought does not exceed the Substantial Commencement Sunset Date.
- 46.6 Following receipt of a notice in writing under this clause seeking an extension of the date for Substantial Commencement the Vendor may, acting reasonably and having regard to the criteria in this clause, agree to an extension of time to the date for Substantial Commencement capped at the Substantial Commencement Sunset Date, where the extension of time is referable to the delay which is outside the reasonable control of the Purchaser.
- 46.7 The Purchaser must take all reasonable steps to minimise any delay and to reprogram and expedite any works in order to achieve Substantial Commencement by the time stipulated in item 8 of the Schedule.
- 46.8 Where more than one event causes concurrent delays and the cause of at least one of those events, but not all of them, is within the reasonable control of the Purchaser, then to the extent that the delays are concurrent, the Purchaser shall not be entitled to seek an extension of time under clause 46.5.
- 46.9 If there is a dispute as to whether or not Substantial Commencement of the Development has occurred then either the Vendor or the Purchaser is entitled to issue a written notice to the other party notifying the other party of the dispute. Both parties agree that fourteen (14) days (excluding the day on which that notice is given) is a reasonable period to allow a party to respond to the notice. If a notice is served on either party in accordance with this clause then it is agreed between the parties that both the Purchaser and the Vendor will acting in a bona fide manner and in good faith, use their reasonable endeavours to meet and consult with a view to resolving the dispute within seven (7) days of receipt of written notice of the dispute. If the dispute is unable to be resolved satisfactorily by the parties within seven (7) days from the date the parties meet then either party may within fourteen (14) days after expiration of the seven (7) day period refer the dispute for expert determination by a Quantity Surveyor agreed between the parties or, if the parties cannot agree, appointed by the President of the Law Society of NSW. The Quantity Surveyor will act as an expert and not as an arbitrator and will be directed to provide a written determination to both the Purchaser and the Vendor. Neither party may dispute the decision of the Quantity Surveyor, except in the case of manifest error. Any party wishing to dispute the decision must do so within fourteen (14) days of delivery of his decision. The cost of the Quantity Surveyor will be borne by the unsuccessful party to the expert determination.
- 46.10 If an event of Force Majeure has occurred, then the Purchaser must promptly provide evidence to the Vendor of any delays incurred by the Purchaser and the consequences of such delay and a request for an extension of time. The Vendor will consider the Purchaser's request for extension but does not warrant any extension of time will be granted.

- 46.11 Until the Purchaser has achieved Substantial Commencement of the Development the Purchaser must not transfer the Property without the Vendor's written consent, with such consent not being unreasonably withheld for a transfer to a Related Body Corporate of the Purchaser.
- 46.12 Until the Purchaser has achieved Substantial Commencement of the Development the Purchaser must not allow any Change in Control without the Vendor's written consent, such consent not to be unreasonably withheld for a transfer to a Related Body Corporate of the Purchaser.
- 46.13 If the Vendor provides consent under clauses 46.11 or 46.12, it may impose reasonable conditions on any transfer of the Property or Change of Control to a Related Body Corporate including, without limitation, requiring the Related Body Corporate to sign a deed on terms acceptable to the Vendor which requires it to comply with all of the Purchaser's obligations under the Transaction Documents. The Purchaser must pay the Vendor's costs of providing consent under clause 46.11 or clause 46.12 and drafting and negotiating the deed referred to in this clause.
- 46.14 This clause 46 will not merge on completion.

47. SUBDIVISION

- 47.1 Completion of this Contract is subject to and conditional on:
- (a) the registration of a plan substantially in the form of the Draft Subdivision Plan as determined by HDC, acting reasonably; and
 - (b) the Vendor obtaining all necessary consents, approvals and certifications from all necessary Authorities to allow the subdivision to occur
- on or before the Registration Sunset Date.
- 47.2 The parties agree that the plan will be substantially in the form of the Draft Subdivision Plan and if the lot being created by the plan is:
- (a) in substantially the same location; and
 - (b) is not more than 2% smaller than the Proposed Lot identified on the Draft Subdivision Plan.
- 47.3 The Vendor must use all reasonable endeavours to have a plan substantially in the form of the Draft Subdivision Plan registered on or before the Registration Date.
- 47.4 If the registration of the plan of subdivision for the Proposed Lot is delayed by events outside of the Vendor's reasonable control, the Vendor may extend the Registration Date by the amount equivalent to the delay by notice in writing to the Purchaser. Any extension under this special condition is capped at the Registration Sunset Date.
- 47.5 If the plan substantially in the form of the Draft Subdivision Plan is not registered on or before the Registration Sunset Date either party may rescind this Contract by

written notice to the other and neither party will have any claim against the other except for any antecedent breaches provided that where the Purchaser rescinds it must serve on the Vendor a valid notice of rescission not later than seven days after the Registration Sunset Date. In this regard time is of the essence and the Purchaser cannot rescind pursuant to this special condition unless it strictly complies with the time frames for rescission in this special condition.

- 47.6 All measurements and lot numbers on the Draft Subdivision Plan are provisional and subject to possible alteration prior to registration. The Vendor reserves the right to make alterations to the Draft Subdivision Plan as it determines, in its discretion. The Purchaser's only rights and remedies against HDC in respect of changes to the Draft Subdivision Plan are set out in this clause 47.
- 47.7 The Purchaser will make no objection, requisition or claim for compensation on account of any Minor Variation or discrepancy between the dimensions and position of the Proposed Lot as shown on the Draft Subdivision Plan and as shown on a finally registered plan of subdivision. In this clause "**Minor Variation**" means where the lot being created by the plan is no more than 2% smaller than the Proposed Lot in the Draft Subdivision Plan or any other variation or discrepancy from the Draft Subdivision Plan that does not materially adversely affect use of the newly created lot for the purpose of the Development.
- 47.8 The parties acknowledge that an Authority may require easements, covenants and restrictions to burden or benefit the Proposed Lot as part of the proposed subdivision and that the location and nature of those easements, covenants and restrictions are not yet known (the **Affectations**). Notwithstanding anything inconsistent in this clause:
- (a) the Purchaser will not make any objection, requisition, claim for compensation or rescind this Contract in respect of the Affectations; and
 - (b) the existence of Affectations on the finally registered plan of subdivision will not be considered for the purpose of determining whether the finally registered plan is substantially in the form of the Draft Subdivision Plan.

48. COMPLETION

- 48.1 The Completion Date is the date 30 days after the later of:
- (a) the date the Consent Authority issues the Development Consent for the Development; and
 - (b) the date the plan of subdivision to separately identify the Property is registered.
- 48.2 On or before Completion the Purchaser, having taken into consideration the Public Domain Concept Plan, must provide the Vendor with an updated retail strategy which must be consistent with the Purchaser's Proposal unless otherwise approved by the Vendor. The Purchaser must comply with the retail strategy provided to the Vendor on Completion.

49. INTEREST AND NOTICE TO COMPLETE

- 49.1 If through no fault of the Vendor the Purchaser does not complete this Contract before the Completion Date, then on the actual completion date, the Purchaser must pay the Vendor interest on the balance of the price from but excluding the Completion Date to and including the date of actual completion at the Interest Rate.
- 49.2 Payment of interest in accordance with this clause 49 is an essential term of this Contract.
- 49.3 Interest payments made or due do not form part of the Purchase Price.
- 49.4 If a party is entitled to give a notice to complete or a Notice to Comply making time of the essence, then 14 days (excluding the date on which that notice is given) is a reasonable period to allow for completion or compliance with that notice.

50. OPTION DEED

- 50.1 On completion of this Contract the Purchaser will grant to the Vendor and must enter into the Option Deed.
- 50.2 The Vendor will be entitled, although not obligated, to exercise the Option Deed on or after the date which is the earlier of:
- (a) The date when the Vendor becomes aware that:
 - (1) the Purchaser has not obtained Substantial Commencement by the date set out in Item 5 of the Schedule;
 - (2) the Property or part of it is sold or any estate or interest in the Property is transferred, without the consent in writing of the Vendor; or
 - (3) a Contract for Sale of the Property is entered into with a third party, without the written consent of the Vendor; or
 - (4) there is a Change in Control of the Purchaser without the written consent of the Vendor; or
 - (b) the date on which the Purchaser is declared, insolvent or enters into any scheme of arrangement, or makes any assignment for the benefit of its creditors or being a company resolves to go into liquidation or provisional liquidation, or an administrator is appointed to the Purchaser or a petition for the winding up of the Purchaser is presented or the Purchaser enters into any scheme of arrangement with its creditors without the consent of the Vendor.
- 50.3 The Vendor will have the right to determine, acting reasonably, whether events under clause 50.2 have occurred thereby entitling the Vendor to exercise the option in the Option Deed provided the Vendor has issued any first registered

mortgagee 28 days' notice in writing and the first registered mortgagee has not elected in writing within 28 days of the date of the notice to accept the role of finalising and executing the Development on terms acceptable to the Vendor. For the avoidance of doubt, if the first registered mortgagee exercises the right in this clause 50.3 it must achieve Substantial Commencement of the Development by a date which is no later than 6 months after the date set out in Item 5 of the Schedule and otherwise comply with the obligations in the Transaction Documents as if the first registered mortgagee was the Purchaser.

- 50.4 Subject to clause 50.3 once the Vendor exercises the Option Deed, then the Purchaser must sell the Property to the Vendor, and shall have no right of Action or claim against the Vendor, whatsoever, in law or equity provided the Vendor has complied with its obligations under this Contract and under the Option Deed.
- 50.5 The Option Deed Purchase Price shall be determined in accordance with clause 4(c) of the Option Deed.
- 50.6 Until the Option Deed expires or is waived by the Vendor, the Vendor and the Purchaser agree, that the Vendor shall be entitled to protect its rights under this Contract and under the Option Deed, by the Vendor registering a caveat on the title to the Property forbidding the recording of any dealing on the Property, without the consent of the Vendor first having been obtained and the Purchaser acknowledges that the Vendor from and including Completion has a caveatable interest in the Property. However, the Vendor must consent to registration of the Purchaser's financier's proposed first mortgage over the Property subject to the mortgagee providing the consent in clause 54.
- 50.7 The Vendor will, within 14 days of receipt of written notification of Substantial Commencement of the Development from the Purchaser, lodge a withdrawal of caveat for registration at the LPI (provided there is no dispute in relation to the notification).

51. LICENCE TO ENTER

51.1 Purchaser's Licence to enter the Property

- (a) At any time after the date of this Contract, the Purchaser may request permission for access from the Vendor to enter upon the Property with such equipment as the Purchaser considers reasonably necessary for the purposes of non-invasive investigations of Property for the Development. The Purchaser must give the Vendor at least 10 days' notice of its requirements to access the Property. If permission for access is granted by the Vendor then, in exercising its right of entry, the Purchaser must not interfere with the quiet enjoyment of the Property by the Vendor and must not harm or damage the Property. Any such access does not constitute early possession. If permission for access is granted by the Vendor the following conditions apply to the Purchaser's use of the Property amongst other conditions that the Vendor may impose, in its discretion:

- (1) in exercising its right of entry, the Purchaser enters the Property at its own risk; and
 - (2) the Purchaser indemnifies and at all times must keep the Vendor indemnified against all Actions, claims, demands made against the Vendor and which the Vendor otherwise may suffer for all loss and damage suffered by the Vendor or any third party by reason by the Purchaser exercising its right under this clause; and
 - (3) the Purchaser releases the Vendor and agrees that the Vendor is not liable for any Action, demand, liability, loss, damage or cost occurring directly or indirectly in connection with access to the Property by the Purchaser or its employees, contractors and agents; and
 - (4) the Purchaser must hold, and provide evidence that it, holds public liability insurance in the amount of \$20 million on terms reasonably acceptable to the Vendor.
 - (5) And any other conditions on the Purchaser's access to the Property which the Vendor may, in its absolute discretion, impose.
- (b) This clause will not merge on completion and this clause does not give the Purchaser the right to commence the Development prior to issue of a Construction Certificate.

51.2 Purchaser may wish to market the Property after exchange

- (a) The Purchaser may market the Property for lease or sale after the date of exchange of this Contract on the condition that any marketing material clearly discloses that the Vendor is the owner of the Property, that the Purchaser has an interest in the Property pursuant to a conditional contract and that grant of any lease or contract with respect to the Property is subject to completion of the conditional contract and transfer of the Property to the Purchaser.

51.3 The Vendor's Licence

- (a) At any time after completion, the Vendor, its employees, agents and Contractors may after giving reasonable notice, enter upon the Property for the purposes of monitoring the progress of the Development.
- (b) In exercising this right of entry, the Vendor must not interfere with the quiet enjoyment of the Property by the Purchaser

52. SITE SIGNAGE

- 52.1 Subject to clause 52.5, the Vendor agrees that the Purchaser may erect two signs on the Property on the making of this Contract. This sign will advertise the Development and/or the Purchaser.

- 52.2 The parties agree that the signs referred to in clause 52.1 are to be of a size, style and appearance approved by the Vendor. The Vendor's approval will not be unreasonably withheld.
- 52.3 The parties agree that the signs referred to in clause 52.1 are to be erected in a location approved by the Vendor. The Vendor's approval will not be unreasonably withheld.
- 52.4 The Purchaser agrees to take reasonable actions to ensure that subcontractors and other parties working on the Property will not erect any signs or post any advertising.
- 52.5 The Purchaser must obtain all consents required from any Authority in connection with the installation of the sign referred to in this clause.

53. DISPUTE RESOLUTION

- 53.1 In this clause:
- (a) “**dispute**” means any dispute arising out of or relating to this Contract;
 - (b) A party may not commence any court or arbitration proceedings relating to a dispute unless it complies with this clause 53, except where the party seeks urgent interlocutory relief.
- 53.2 A party claiming that a dispute has arisen under or in relation to this Contract must give written notice to the other party specifying the nature of the dispute.
- 53.3 On receipt of that notice by that other party, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution techniques such as mediation, expert evaluation or determination or other techniques agreed by them.
- 53.4 If the parties do not agree within 7 days of receipt of the notice (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; and
 - (c) the selection and compensation of the independent person required for such technique, the parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

The parties must mediate the dispute in accordance with the Mediation Rules of the Law Society of New South Wales. The parties must request the President of the Law Society of New South Wales or the President's nominee to select the mediator and determine the mediator's remuneration.

During the mediation of a dispute, there will be a standstill of any of the timeframes in this Contract which are relevant to that dispute.

53.5 If the dispute is not resolved within 42 days after notice is given under clause 53.2 then any party which has complied with the provisions of this clause 2 may in writing terminate any dispute resolution process undertaken pursuant to this clause 52 and may then refer the dispute to arbitration, independent determination or commence Court proceedings in relation to the dispute.

53.6 The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this clause 53.6 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 53 for any purpose other than in an attempt to settle the dispute.

53.7 The parties agree that the dispute resolution procedures contemplated by this clause will not apply where the provisions of clause 46.9 specifically apply.

54. CONSENT OF MORTGAGEE

54.1 The Purchaser agrees to obtain the written consent and acceptance of any mortgagee of the Property to the rights of the Vendor to repurchase the Property pursuant to the provisions of the Option Deed. The Purchaser further agrees to procure the mortgagee to acknowledge prior to entering into a mortgage over the Property, in the form of a deed acceptable to the Vendor, acting reasonably, that the mortgagee's security over the Property (if any) is subject to, and does not have priority over the rights set out in the Option Deed entered into between the Vendor and the Purchaser on completion. The form of the deed would be substantially as follows:

- (a) The mortgagee hereby acknowledges the existence of the Option Deed, the terms and conditions thereof and the Vendor's rights thereunder and acknowledges and agrees that the Vendor's rights as grantee under the Option Deed shall at all times and in respect take priority over the mortgagee's rights under the mortgage;
- (b) If the mortgagee's transfers, assigns, mortgages, encumbers or otherwise disposes of its interest in the mortgage or any part thereof to a third party ("**the new mortgagee**") then the mortgagee shall, at its own expense, prior to completion of the relevant transaction procure that the new mortgagee executes a deed including the content of this clause 53, mutatis mutandis.
- (c) If the mortgagee enters into possession of the Property for whatever reason then the mortgagee shall, as grantor, grant to the Vendor as grantee an Option Deed in favour of the Vendor ("**the Second Option Deed**") in identical terms, mutatis mutandis, to the Option Deed. The term of the Second Option Deed, shall be the then balance of the term of the Option Deed. Execution and delivery to the Vendor of the Second Option Deed which shall be prepared by the Vendor's solicitor at the expense of

the mortgagee, shall be accepted by the Vendor in satisfaction of the mortgagee's obligations pursuant to this clause;

- (d) If the mortgagee shall sell, transfer, assign, grant an Option Deed or otherwise dispose of the Property or any interest therein, then the purchaser shall execute as grantor an Option Deed in favour of the Vendor ("**the Third Option Deed**") in identical terms, mutatis mutandis to the Option Deed. The term of the Third Option Deed shall be the then balance of the term of the Option Deed. Execution and delivery to the Vendor of the Third Option Deed, which shall be prepared by the Vendor's solicitor at the expense of the mortgagee, shall be accepted by the Vendor in the satisfaction of the mortgagee's obligations pursuant to this clause.

Or such other arrangement to preserve the priority of the Option Deed as may be acceptable to the Vendor acting reasonably. This clause is an essential condition of this Contract.

55. EVENTS OF DEFAULT

55.1 What constitutes an Event of Default

It is an Event of Default, whether or not it is within the control of the Purchaser, if:

- (a) the Purchaser fails to pay on completion any part of the Purchase Price payable to the Vendor pursuant to Contract; or
- (b) the Purchaser fails to perform or observe any undertaking, obligation, or agreement expressed or implied in this Contract or any Transaction Document and that failure is, in the reasonable opinion of the Vendor, remediable and the Purchaser does not remedy the failure specified in the Notice to Comply within 30 days of the Purchaser being served with the Notice to Comply, or such longer period as reasonably determined by the Vendor; or
- (c) the Purchaser fails to perform or observe any undertaking, obligation or agreement expressed or implied in this Contract or any Transaction Document and that failure is, in the reasonable opinion of the Vendor, not remediable;
- (d) any authorisation necessary to enable the Purchaser to comply with its obligations under this Contract ceases to be of full force and effect; or
- (e) any warranty, representation or statement by the Purchaser is or becomes false or incorrect under this Contract.

55.2 Effect of Event of Default

Where an Event of Default occurs pursuant to clause 55.1, the Purchaser acknowledges that:

- (a) the Vendor will in addition to any other rights it has under this Contract and the Transaction Documents, have the right under the Option Deed to purchase the Property back from the Purchaser on the terms stated in the Option Deed; and/or
- (b) the Vendor may pursue any additional or alternative remedies provided at law. Without limiting the effect of this clause, the Vendor may seek to obtain injunctive relief or specific performance for non-compliance by the Purchaser with any term of this Contract and the Transaction Documents; and/or
- (c) terminate this Contract and sue the Purchaser for damages.

55.3 Notice of Default

The Purchaser acknowledges that a notice of default served by the Vendor on the Purchaser shall be prima facie evidence that the Event of Default has occurred and will automatically entitle the Vendor to exercise its rights under clause 55.2. This clause will not merge on completion.

56. INDEMNITIES

56.1 The Purchaser indemnifies and agrees to keep indemnified the Vendor, its officers, employees and agents from and against any Claim made by any person against the Vendor, its officers, employees and agents, reasonably incurred or suffered by the Vendor arising from:

- (a) the occurrence of an Event of Default;
- (b) exercising its powers as a result of an Event of Default or potential Event of Default;
- (c) any wilful, unlawful or negligent act or omission of the Purchaser, its employees or agents;
- (d) any non-compliance by the Purchaser with the terms of this Contract and the Transaction Documents; and
- (e) any claim made by a third party against the Vendor, where such claim is not caused by a negligent act of the Vendor, its agents, officers or employees.

57. ASSIGNMENT

57.1 The Purchaser may not assign its rights under this Contract without the consent of the Vendor, such consent not to be unreasonably withheld. The Vendor may withhold consent, if the Vendor, acting reasonably and honestly, is of the opinion that the proposed assignee is not capable of performing the remaining obligations of the Purchaser under this Contract.

- 57.2 The Purchaser acknowledges that the Vendor may in its absolute discretion assign its interests and rights under this Contract provided the Vendor also assigns concurrently its interests and rights under the Transaction Documents to the same assignee and provided the proposed assignee executes a deed whereby it agrees to be bound by the terms and conditions of this Contract and the Transaction Documents. In addition, the Vendor may only assign its interests and rights under this Contract provided it also novates its obligations and transfers the Property at the same time to the same assignee.
- 57.3 Subject to clause 57.2 if that the Vendor assigns its interest pursuant to clause 57.2, the Purchaser acknowledges that provided the assignee agrees to enter into a deed by which the proposed assignee agrees to be bound by the terms and conditions of this Contract and the Transaction Documents as they apply to the Vendor, the proposed assignee has a caveatable interest in the Property and the Purchaser will not object to, hinder or prevent the registration of a caveat on title to protect the assignee's interest in the Property. Upon assignment of the Vendor's interest in accordance with clause 57.2, the Vendor will within a reasonable time thereafter, lodge at LPI, a withdrawal of caveat in registrable form.

58. PURCHASER REPRESENTATIVE AND NOTICES

58.1 Appointment of Purchaser representative

If the Purchaser is a company, a consortium, joint venture or partnership, the Purchaser must appoint one representative for the purpose of all discussion, consultations, meetings with the Vendor in relation to the Transaction documents and the Development. The Purchaser must provide the Vendor with notice of the Purchaser representative details within 7 days from the date of this Contract.

58.2 Form of Notice

A notice, request, demand, consent or approval given by one party to another under this agreement must be in writing addressed to the recipient at the address shown below (or to the address designated by a party by written notice) :

(a) *For the Vendor*

C/- Hunter Development Corporation
Suite B Level 5 Pricewaterhouse Coopers Centre
26 Honeysuckle Drive
NEWCASTLE NSW 2300
Attention: Jeremy Amann
Fax: (02) 4904 2762

(b) *For the Purchaser*

Lee 4 Pty Ltd
4/3 Sydney Ave
Barton ACT 2600

Attention: Gavin Edgar

Fax: 02 6260 7751

58.3 When notice is duly given

A notice is treated as being duly given if it is signed by an officer or under the common seal of the sender and:

- (a) left at the other party's address;
- (b) sent by pre-paid mail to the other party's address; or
- (c) transmitted by facsimile to the other party's address.

58.4 When notice is duly given and received

- (a) A notice is treated as having been duly given and received:
 - (1) when delivered (if left at that party's address);
 - (2) on the third business day after posting (if sent by pre-paid mail);
 - (3) in the case of a facsimile transmission, when the transmission has been completed, except if:
 - (A) the sender's facsimile machine indicates a malfunction in transmission or the recipient notifies the sender of an incomplete transmission within 2 hours of receipt, in which case the facsimile transmission is regarded as not having been given or made; or
 - (B) the time of dispatch is after 5.00pm on the day in the place in which the notice is received, in which case the notice is regarded as received at the commencement of business on the next business day in that place.

59. GUARANTEE

59.1 The Guarantor gives the Guarantee in consideration of the Vendor agreeing to enter into this Contract. The Guarantor acknowledges the receipt of valuable consideration from the Vendor incurring obligations and giving rights under the Guarantee.

59.2 The Guarantor unconditionally and irrevocably guarantees to the Vendor:

- (a) payment to the Vendor of the Guaranteed Money; and

- (b) the due and punctual performance and observance of the Guaranteed Obligations.
- 59.3 If the Purchaser does not pay the Guaranteed Money on time and in accordance with the terms of this Contract then the Guarantor agrees to pay the Guaranteed Money to the Vendor on demand from the Vendor.
- 59.4 If the Purchaser does not duly and punctually perform the Guaranteed Obligations in accordance with the terms of this Contract then the Guarantor agrees to perform the Guaranteed Obligations on demand from the Vendor.
- 59.5 The Guarantor acknowledges:
 - (a) all amounts due under the Guarantee are payable as soon as the Vendor gives the Guarantor a written demand for payment in accordance with a provision of this Contract;
 - (b) subject to the terms of this Contract the Vendor may make a demand under this Guarantee at any time and from time to time;
 - (1) without any pre-conditions first being met;
 - (2) whether or not demand has been made by the Purchaser;
 - (3) whether or not the Vendor has or is able to demand payment or performance from the Purchaser or anybody else;
 - (4) whether or not the Vendor is able to or has attempted to recover any relevant amount or performance from the Purchaser or anybody else;
 - (5) whether or not the Vendor has exercised or exhausted any of its rights against the Purchaser or anybody else;
 - (6) whether or not the Purchaser or anybody else has to pay the relevant amount or perform the relevant obligation.
- 59.6 As a separate undertaking, provided the Purchaser has a liability to the Vendor arising in relation to the Contract the Guarantor unconditionally and irrevocably indemnifies the Vendor against:
 - (a) all liability or loss arising from, and any costs, charges or expenses incurred with, the Guaranteed Money not being recoverable from the Guarantor under this clause or from the Purchaser because of any circumstances whatsoever; and
 - (b) all liability or loss arising from, and any costs, charges or expenses incurred in connection with, the Guaranteed Obligations not being duly and punctually performed because of any circumstance whatsoever.

It is not necessary for the Vendor to incur expense or make payment before enforcing that right of indemnity.

- 59.7 The Guarantor agrees to pay or reimburse the Vendor on demand for:
- (a) the Vendor's costs, charges and expenses in making, enforcing and doing anything in connection with the Guarantee including legal costs and expenses on whichever is the high of a full indemnity basis or solicitor and own client basis; and
 - (b) all stamp duties, fees, taxes and charges which are payable in connection with the Guarantee or a payment, receipt or other transaction contemplated by it.
- 59.8 If a claim to a payment to the Vendor in connection with this Contract or the Guarantee is void or voidable (including, but not limited to, a claim under laws relating to liquidation, administration, insolvency or protection of creditors) is upheld, conceded or compromised then the Vendor is entitled immediately as against the Guarantor to the rights to which it would have been entitled under the Guarantee if the payment had not occurred and on request from the Vendor, the Guarantor agrees to do anything (including signing any document) to restore to the Vendor any mortgage, charge or other encumbrance (including this Contract) held by or from the Guarantor immediately before the payment.
- 59.9 The Guarantee is a continuing security and liability and is not discharged by any one payment and extends to all of the Guaranteed Money and other money payable under the Guarantee and to all the Guaranteed Obligations. The Guarantor waives any right it has of first requiring the Vendor to proceed against or enforce any other right, power, remedy or security or claim payment from the Purchaser or any other person before claiming from the Guarantor under the Guarantee.
- 59.10 The liabilities of the Guarantor under the Guarantee as a guarantor, principal debtor, principal obligor or indemnifier and the rights of the Vendor under the Guarantee are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following:
- (a) the Vendor or another person granting time or other indulgence to, compounding or compromising with or releasing the Purchaser; or
 - (b) acquiescence, delay, acts, omissions or mistakes on the part of the Vendor; or
 - (c) any variation or novation of a right of the Vendor, or alteration of this Contract or a document, in respect of the Purchaser; or
 - (d) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor.

- 59.11 As long as the Guaranteed Money or other money payable under the Guarantee remains unpaid or the Guaranteed Obligations or any of them remain unperformed, the Guarantor must not, without the Vendor's written approval:
- (a) raise a set-off or counterclaim available to it or the Purchaser against the Vendor in reduction of its liability under the Guarantee; or
 - (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise of any benefit of any security or guarantee held by the Vendor in connection with this Contract; or
 - (c) make a claim or enforce a right (including, without limitation, a mortgage, charge or other Encumbrance) against the Purchaser or its property; or
 - (d) prove in competition with the Vendor if a liquidator, provisional liquidator, receiver, manager, administrator or trustee in bankruptcy is appointed in respect of the Purchaser or the Purchaser is otherwise unable to pay its debts when they fall due.
- 59.12 The Guarantor acknowledges that before signing this Contract, and incurring obligations and giving rights under the Guarantee; it:
- (a) was given a copy of this Contract (and all documents giving rise to an obligation of the Purchaser in connection with this Contract) and had full opportunity to consider their provisions; and
 - (b) made itself aware of the financial position of the Purchaser and any other person who guarantees any of the Purchaser's obligations in connection with this Contract.
- 59.13 The Guarantor represents and warrants that its obligations under the Guarantee are valid and binding and that it does not enter into the Guarantee in the capacity of a trustee of any trust or settlement.
- 59.14 The liability of the Guarantor to guarantee to obligations of the Purchaser or indemnify the Vendor in relation to any claim is reduced to the extent that any claim or other liability arises from or was caused by or contributed to by the actions or inaction of the Vendor, its employees, contractors or agents
- 59.15 The Vendor may assign or otherwise deal with its rights under the Guarantee.
- 59.16 This clause is an essential term of this Contract
- 59.17 For the purpose of interpretation of this clause:
- "Guarantee"** means the guarantee and indemnity referred to in this clause 59.
- "Guaranteed Money"** means all amounts which at any time for any reason or circumstance are payable, are owing but are not currently payable, are contingently owing or remain unpaid (or which are reasonably foreseeable and likely after that time, to fall within any of those categories) by the Purchaser to the Vendor in

connection with this Contract or any transaction contemplated by it, whether at law, in equity, under statute or otherwise.

“Guaranteed Obligations” means all express or implied obligations of the Purchaser to the Vendor in connection with this Contract or the Transaction Documents.

60. TRUSTEE PURCHASER

60.1 If a party to this contract is a trustee of a trust, then that party:

- (a) enters into this Contract in its capacity as trustee of the trust and in its own capacity; and
- (b) each person who signs this Contract warrants that as at the Contract date and until Completion:
 - (1) the party is the sole and only trustee of the trust;
 - (2) the party is empowered by the relevant trust deed of the trust to enter into this Contract; and
 - (3) the trustee’s right of indemnity out of, and lien over, the assets of the trust have not been limited in any way.

61. DEPOSIT

61.1 The Purchaser must pay the Deposit on the making of this Contract by an unconditional Surety Bond or bank guarantee without an expiry date and on terms acceptable to the Vendor. Notwithstanding any other provision of this Contract, the Vendor is entitled to draw down on the full amount of the Surety Bond or bank guarantee on the earlier of:

- (a) the Completion Date; and
- (b) the date this contract is rescinded or otherwise terminated for any reason whatsoever (except if the termination is caused by the default of the Vendor).

61.2 Payment of any GST liability arising in relation to payment and release of the Deposit is to be accounted for by the Purchaser at completion of the Contract or, if the Contract is rescinded or terminated, at the date of rescission or termination.

62. VARIATION AND WAIVER

62.1 Variation

A variation or waiver of a provision or any amendment of this Contract is effective only if in writing and signed by all parties. A variation or waiver is effective only to the extent to which it is made or given.

62.2 **No Waiver**

A failure, delay, relaxation or indulgence on the part of a party in exercising any power conferred on that party by this Contract does not operate as a waiver of that power.

62.3 **Future exercise of Power**

A single or partial exercise of any power does not preclude any other or future exercise of it, or the exercise of any other power under this Contract.

63. **LIABILITY**

63.1 If any party to this Contract consists of more than one person then:

- (a) the liability of those persons in all respects under this Contract is a joint liability of all those persons and a separate liability of each of those persons;
- (b) a representation, warranty or undertaking made by any one 'or more of them binds all of them; and
- (c) a right given to them is a right given severally to each of them.

64. **INTELLECTUAL PROPERTY**

64.1 If this contract is rescinded or terminated, for whatever reason, the Purchaser must, at its cost, assign ownership in the Development Material and any Intellectual Property to the Vendor.

64.2 If ownership of or title in Intellectual property in relation to Development Material is not capable of being assigned to the Vendor under the above clause the Purchaser must at its own cost ensure that the Vendor is suitably and irrevocably licensed to use that Development Material or that Intellectual Property.

64.3 The Purchaser must ensure all license fees and/or consents required under law are paid and/or obtained as a result of any reproduction, adoption or use of any Intellectual Property or Development Material necessary for the Development.

64.4 As soon as practicable after the rescission or termination of this Contract the Purchaser must deliver to the Vendor all Intellectual Property and Development Material.

64.5 The Purchaser must ensure the Development Material is used, copied, supplied or reproduced only for the purposes of this Contract unless it has obtained the Vendor's prior written approval.

65. **CONFIDENTIAL INFORMATION**

65.1 The Purchaser agrees to keep the Confidential Information confidential.

65.2 Without limiting the above clause, the Purchaser must ensure:

- (a) that the Confidential Information is not disclosed to any person other than a Permitted Person without the prior written approval of the Vendor;
- (b) take all steps and do all things reasonable necessary in order to safeguard the Confidential Information;
- (c) require all Permitted Persons who have access to the Confidential Information to observe the provisions of this Contract;
- (d) not use or allow the use of any portion of the Confidential Information, except for the purposes for which it was provided; and
- (e) not make or allow copies of or extracts of confidential information except for the purpose of provision to Permitted Persons.

65.3 For the avoidance of doubt, the following disclosures do not breach this clause:

- (a) disclosures required by any Authority, by law or by Court order;
- (b) disclosures to a Permitted Person as required under this Contract; and
- (c) any other disclosures approved by the Vendor in writing.

65.4 The Purchaser agrees, when requested by the Vendor to immediately cease using the Confidential Information and return it to the Vendor.

66. GENERAL

66.1 Caveat

The Purchaser must not lodge a caveat over the Property.

66.2 Entire Contract

This Contract and the Transaction Documents constitute the sole and entire Contract between the parties with regard to its subject matter. A warranty, representation, guarantee or other term or condition of any nature not contained or recorded in this Agreement is of no force or effect.

66.3 No partnership, agency or employment

Nothing in this Contract constitutes or will be deemed to constitute a partnership between the parties or the appointment of one party as the agent of the other, or the employment of one party by the other, for any purpose. Other than as expressly provided by this Contract, no party has the authority or power) to bind the other or to Contract in the name of, and create a liability against, the other in any way or for any purpose.

66.4 Prohibitions, enforceability

Any provision, or the application of any provision, or any power which is prohibited in any jurisdiction is, in that jurisdiction, ineffective only to the extent of that prohibition.

66.5 Enforceability

Any provision, or the application of any provision, which is void, illegal or unenforceable in any jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

66.6 Further assurances

Each party must do all things and execute all documents necessary to give full effect to this Contract.

66.7 Counterparts

The Contract may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

66.8 Attorney execution

Each attorney executing this Contract declares that the attorney has no notice of the revocation of the power appointing that attorney.

66.9 Stamp Duty and Costs

The Purchaser must pay all duties (other than Vendor duty) on or in respect of this Contract and indemnities the Vendor for any duty payable by the Purchaser in relation to this Contract and any of the Transaction Documents. The Purchaser must pay its own costs in connection with the preparation, completion and carrying into effect of this Contract.

66.10 Governing Law and Service

This Contract is governed by the Law of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any court hearing appeals from those courts.

66.11 To the extent not excluding by law

The rights, duties and remedies granted or imposed under the provisions of this Contract operate to the extent not excluded by Law.

66.12 Survival and Non-Merger

The parties agree the rights and obligations under this contract will not merge in, but will survive after completion of this contract.

66.13 **Statutory Authority**

The parties acknowledge and agree that nothing in this Contract will in any way affect the Vendor's unfettered discretion to exercise any of its statutory powers pursuant to law. Without limiting this clause, anything which the Vendor does or fails to do pursuant to its functions and powers under any law will be deemed not to be an act or omission under this Contract and will not entitle the Purchaser to make a claim against the Vendor arising out of the subject matter of this Contract.

66.14 **Restructure or Reconstitution**

The Vendor may, for its sole convenience and at its sole discretion, assign, novate or otherwise deal with its rights and obligations under this Contract at its absolute discretion and without the Purchaser's consent to any other government agency or statutory state owned corporation or growth corporation (**Assignee**), provided that the Assignee is the owner of the Property.

SCHEDULE

Item 1	Request for the Secretary's Environmental Assessment Requirements to be submitted to Consent Authority	One month from exchange of contracts
Item 2	Development Application to be submitted to Consent Authority	6 months from exchange of contracts
Item 3	Development Consent granted	12 months from exchange of contracts
Item 4	Extension Period	A maximum amount of 6 months in one month increments
Item 5	Substantial Commencement reached	9 months from the Completion Date
Item 6	Date for draft Development Application to be submitted to HDC for approval	4 months from exchange of contracts
Item 7	Registration Sunset Date	12 months from exchange of contracts
Item 8	Substantial Commencement Sunset Date	3 months after the date for Substantial Commencement in item 5
Item 9	Resolution of Design Matters	9th February 2017

Date:

EXECUTION PAGE

SIGNED FOR AND ON BEHALF OF)
HUNTER DEVELOPMENT CORPORATION)
ABN 94 688 782 063 by an authorised delegate)
without assuming any)
personal liability and I hereby certify that)
I have no such notice of the revocation of)
such delegation and in the presence of:)

.....
Signature of Witness

.....
Authorised Person
Print Name:

.....
Name of Witness

.....
Address of Witness

EXECUTED BY LEE 4 PTY LTD)
ACN 620 632 573)
pursuant to s127 of the Corporations Act)
(2001) Cth in the presence of:)

.....
Signature of Director/Secretary

.....
Signature of Director

.....
Print name of Director/Secretary

.....
Print name of Director

EXECUTED BY DOMA TRUSTEE PTY LTD)
atf 6 NATIONAL CIRCUIT TRUST)
ABN 85 525 639 074)
pursuant to s127 of the Corporations Act)
(2001) Cth in the presence of:)

.....
Signature of Director/Secretary

.....
Signature of Director

.....
Print name of Director/Secretary

.....
Print name of Director

ANNEXURE A

(CALL OPTION DEED)

ANNEXURE B

(PURCHASER'S PROPOSAL)

ANNEXURE C

(Disclosed modification to Property)

Annexure D
(Public Domain Plan)

Annexure E
(Surety Bond)

Annexure F
(Draft Subdivision Plan)