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## Contents

<b>32.</b>	<b>Definitions and interpretation</b> .....	<b>4</b>
32.1	Definitions .....	4
32.2	Interpretation.....	12
32.3	Inconsistency .....	13
32.4	Terms defined in Standard Form .....	13
<b>33.</b>	<b>Amendments to Standard Form</b> .....	<b>14</b>
<b>34.</b>	<b>No representations or warranties except in contract</b> .....	<b>15</b>
<b>35.</b>	<b>Investment of deposit</b> .....	<b>15</b>
35.1	Application of clause.....	15
35.2	Tax file number .....	15
35.3	Interest on deposit .....	15
35.4	Depositholder.....	15
<b>36.</b>	<b>Bank Guarantee</b> .....	<b>15</b>
36.1	Application of Bank Guarantee clause .....	15
36.2	Provision of Bank Guarantee.....	16
36.3	Change in issuer's financial strength .....	16
36.4	Essential terms .....	16
36.5	Procedure at completion.....	16
36.6	Calling on Bank Guarantee.....	16
36.7	Procedure for refund of deposit .....	16
36.8	Treatment of Bank Guarantee .....	16
<b>37.</b>	<b>GST</b> .....	<b>16</b>
37.1	Definitions .....	16
37.2	GST exclusive.....	17
37.3	Increase in consideration.....	17
37.4	Application of margin scheme .....	17
37.5	Tax invoice.....	17
37.6	Reimbursements.....	17
37.7	Adjustment events .....	17
37.8	Any GST inclusive supply .....	18
<b>38.</b>	<b>Insolvency or incapacity</b> .....	<b>18</b>
38.1	Insolvency .....	18
38.2	Incapacity.....	18
<b>39.</b>	<b>Vendor disclosure</b> .....	<b>18</b>
39.1	Acknowledgments.....	18
39.2	Purchaser relies on own enquiries .....	18
<b>40.</b>	<b>Mine subsidence</b> .....	<b>19</b>
40.1	Risk Mitigation Plan .....	19
40.2	Maximum Heights and FSR.....	19
<b>41.</b>	<b>Flood management</b> .....	<b>20</b>
<b>42.</b>	<b>Geotechnical matters</b> .....	<b>20</b>
<b>43.</b>	<b>Services</b> .....	<b>21</b>
43.1	Services Plan.....	21
43.2	Stormwater pipe.....	22



<b>44.</b>	<b>Environmental and other site conditions .....</b>	<b>22</b>
<b>45.</b>	<b>Purchaser's other acknowledgements .....</b>	<b>23</b>
45.1	Other acknowledgements .....	23
45.2	Positive covenant.....	24
45.3	Public domain .....	24
<b>46.</b>	<b>Fences.....</b>	<b>25</b>
<b>47.</b>	<b>Purchaser's development obligations .....</b>	<b>25</b>
47.1	Approval process acknowledgements .....	25
47.2	Secretary's Environmental Assessment Requirements .....	26
47.3	Lodgement of Development Application.....	27
47.4	Design consultants .....	29
47.5	Purchaser's Development not consistent with Guidelines and Maximum Heights and FSR.....	29
47.6	Vendor's review of applications .....	29
47.7	Dedication Land.....	30
<b>48.</b>	<b>Development Consent .....</b>	<b>30</b>
48.1	Obtaining Development Consent.....	30
48.2	Compliance with Development Consent.....	30
48.3	Restriction on title or positive covenant .....	31
<b>49.</b>	<b>Purchaser's obligations to develop .....</b>	<b>31</b>
49.1	Obligations to develop .....	31
<b>50.</b>	<b>Subdivision .....</b>	<b>31</b>
50.1	Subdivision .....	31
50.2	Affectations .....	32
50.3	Additional plan of subdivision .....	33
<b>51.</b>	<b>Vendor Works.....</b>	<b>33</b>
<b>52.</b>	<b>Completion .....</b>	<b>33</b>
<b>53.</b>	<b>Interest and notice to complete.....</b>	<b>34</b>
53.1	Interest.....	34
53.2	Notice to complete .....	34
<b>54.</b>	<b>Encumbrances .....</b>	<b>34</b>
54.1	Discharge or withdrawal of existing encumbrance .....	34
54.2	Purchaser's Caveat .....	34
<b>55.</b>	<b>Licence to enter.....</b>	<b>35</b>
55.1	Purchaser's licence to enter property .....	35
55.2	Purchaser may wish to market the property after exchange .....	35
55.3	Vendor's Licence .....	36
<b>56.</b>	<b>Site signage .....</b>	<b>36</b>
<b>57.</b>	<b>Dispute resolution.....</b>	<b>36</b>
<b>58.</b>	<b>Events of Default.....</b>	<b>37</b>
58.1	What constitutes an Event of Default .....	37
58.2	Effect of Event of Default.....	37
58.3	Notice of default.....	38
<b>59.</b>	<b>Indemnities .....</b>	<b>38</b>



**60. Assignment.....38**

**61. Representatives, meetings and notices .....39**

61.1 Appointment of purchaser’s representative .....39

61.2 Appointment of vendor’s representative .....39

61.3 Meetings .....39

61.4 Address for service of notices .....39

**62. Guarantee.....40**

**63. Trustee purchaser .....43**

**64. Variation and waiver .....43**

64.1 Variation.....43

64.2 No waiver .....43

64.3 Future exercise of power .....43

**65. Liability.....43**

**66. Intellectual Property.....44**

**67. Confidential Information.....44**

**68. General .....45**

68.1 Caveat.....45

68.2 Entire agreement .....45

68.3 No partnership, agency or employment.....45

68.4 Prohibitions and enforceability.....45

68.5 Enforceability .....45

68.6 Further assurances.....45

68.7 Attorney execution .....45

68.8 Stamp duty and costs .....45

68.9 Governing law .....45

68.10 To the extent not excluding by law .....46

68.11 Rights cumulative .....46

68.12 Survival and non-merger .....46

68.13 Statutory Authority .....46

68.14 Restructure or reconstitution.....46

**Schedule 1 Table.....47**

**Attachment 1 Purchaser’s Proposal.....50**

**Attachment 2 Seawall Works Plan .....51**

**Attachment 3 Draft Subdivision Plan .....52**

**Attachment 4 Lee 5 Public Domain Concept Plan .....53**

**Attachment 5 Development Requirements .....54**

**Attachment 6 Prescribed documents .....55**

## 32. Definitions and interpretation

### 32.1 Definitions

In this contract, a term has the meaning given to it in the Standard Form, and:

**450mm Stormwater Pipe** means the existing stormwater pipe of approximately 450mm in diameter.

**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.

**Authorisation** means:

- (a) an approval, consent, declaration, exemption, accreditation, notarisation, licence, permit, certificate, waiver or other authorisation, however described, required by any law; and
- (b) in relation to anything that could be prohibited or restricted by law if an Authority acts in any way within a specified period, the expiry of that period without that action being taken,

including any variation, modification, renewal or amendment with any Authority.

**Bank Guarantee** means a bank guarantee that:

- (a) is issued by an authorised deposit taking institution under the *Banking Act 1959* (Cth), or any other issuer acceptable to the vendor at its absolute discretion;
- (b) contains the issuer's unconditional undertaking to pay the vendor on demand an amount equal to 10% of the price inclusive of GST;
- (c) does not contain an expiry date; and
- (d) is otherwise acceptable to the vendor in form and substance.

**Change in Control** means:

- (a) where the purchaser is a company, the acquisition by any person or corporation, either alone or together with any associate of that person or corporation, of 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.

**Claim** means any action, claim, demand or proceeding (including based in contract, tort or statute or under any indemnity, and including any action based on personal injury or death) made against the person concerned however it arises and whether it is present or future, fixed or unascertained, actual or contingent, and specifically includes making any requisition, objection or claim for compensation, a delay in completion or rescinding or terminating this contract or attempting or purporting to do so.

**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 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 issued under Part 6 of the EP&A Act in respect of works on the property in accordance with all relevant laws.

**Consent Authority** has the meaning given to that term under Division 4.2 of the EP&A Act.

**Contamination** means the presence in, on or under land of a substance (whether a solid, liquid or gas) at a concentration above the concentration at which the substance is normally present on, in or under (respectively) land in the same locality, being a presence that presents a risk of harm to human health or to any other aspect of the Environment. For the purpose of this definition, a substance may present a risk of harm either on its own or by reason of the presence of or interaction with another substance or Environmental Aspect or other matter.

**Council** means Newcastle City Council.

**Date for DA Submission** means the date in Item 3, as may be extended under this contract.

**Date for Development Consent** means the date in Item 4.

**Date for Draft DA** means the date in Item 2, as may be extended under this contract.

**Date for Registration** means the date being 12 months after the date of this contract, as may be extended under this contract.

**Date for Vendor Works Completion** means the date in Item 6, as may be extended under this contract.

**Dedication Land** means a strip of land of at least 2 metres wide along the entire northern boundary of the property.

**Demolition Works** means the demolition of that part of the Existing Building located on the property.

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

**Development Application** means a development application in respect of development that is State Significant Development submitted by the purchaser to the Consent Authority under Part 4 of the EP&A Act for the Development, and all documents accompanying, supporting or otherwise submitted to the Consent Authority by the purchaser in connection with that application, including the Request for the Secretary's Environmental Assessment Requirements and the Environmental Impact Statement.

**Development Consent** means development consent granted under Part 4 of the EP&A Act in respect of the Development Application.

**Development Consent Process** means the steps in the process of assessing and determining the Development Application under Part 4 of the EP&A Act.

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

**Development Requirements** means the requirements set out in Attachment 5.

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

**Disclosure Material** means any written or documented material disclosed by or on behalf of the vendor in relation to the property up to the date of the contract, including the Reports.

**Draft Subdivision Plan** means the plan in Attachment 3.

**Environment** means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) any organic or inorganic matter;
- (d) any living organism;
- (e) natural or man-made or modified features or structures; and
- (f) ecosystems and all elements of the biosphere.

**Environmental Aspect** means in respect of any land (including the property):

- (a) each interaction of any activity on the land or of the land itself with the Environment; and
- (b) each of the following:
  - (i) heritage items or relics on the land or heritage values or significance of the land or anything on it;
  - (ii) Contamination of or from the land or from activities on the land;
  - (iii) Pollution of or from the land or from activities on it;
  - (iv) asbestos or another hazardous substance on the land;
  - (v) the flora and fauna on or in the vicinity of the land including threatened species, populations or ecological communities or their habitats on or in the vicinity of the land;
  - (vi) critical habitat on or in the vicinity of the land;
  - (vii) the propensity of the land to be affected by natural disasters such as bushfires, flooding or geotechnical instability or earthquakes; and
  - (viii) the physical, chemical or geotechnical characteristics of the land or any structures on it.

**Environmental Impact Statement** means the environmental impact statement that is required under section 4.12(8) of the EP&A Act to accompany the Development Application.

**Environmental Law** means any:

- (a) legislation, including any Act, ordinance, regulation, by-law, order or proclamation;
- (b) directive or policy of an Authority; or
- (c) Authorisation,

relating to an Environmental Aspect.

**Environmental Notice** means any direction, notice, fine, penalty, declaration, order, demand or requirement given or made by an Authority or court under Environmental Law.

**Environmental Reports** means the following reports:

- (a) the report titled "Honeysuckle Redevelopment Remediation Strategy Civic / Honeysuckle Precincts" prepared by Woodward-Clyde and dated May 1996;
- (b) the plan titled "Sampling, Analysis & Quality Plan" prepared by JBS Environmental and dated February 2007;
- (c) the report titled "Environmental Site Assessment, Lee 5 (Part Lot 1111 DP 1027135)" prepared by PB and dated November 2002;
- (d) the report titled "Supplementary Contamination Assessment, Lee 5" prepared by JBS Environmental and dated July 2007;
- (e) the plan titled "Remedial Action Plan, Lee 5" prepared by JBS Environmental and dated October 2007;
- (f) the plan titled "Site Audit Report, Remediation Action Plan, Lee 5" prepared by Environ and dated January 2008;
- (g) the report titled "Validation of Stockpiled Material, Lee 4 and 5, Honeysuckle Drive, Newcastle" prepared by JBS and dated 21 November 2008;
- (h) the report titled "Lee Wharf 4 and 5, Application for Specific Exemption" prepared by SKM and dated 20 June 2012;
- (i) the report titled "Additional Groundwater Investigation, Honeysuckle NSW" prepared by Parsons Brinckerhoff and dated April 2003;
- (j) the report titled "NEPM 2013 Review, Five Sites in the Honeysuckle Precinct" prepared by Environ and dated 5 December 2013;
- (k) the report titled "Preliminary Assessment of Opportunities & Constraints for Honeysuckle Precinct" prepared by JBS&G and dated 16 November 2015; and
- (l) the report titled "Coal Tar Impacted Asphalt" prepared by The City of Newcastle and dated 5 April 2017.

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

**Event of Default** means an event referred to in clause 58.1.

**Existing Building** means the existing building part of which is located on the property.

**Flood Management Plan** means the plan titled “Honeysuckle Redevelopment Area Flood Study” prepared by BMT WMB and dated 8 March 2018.

**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:

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

**Guarantor** means each of the following:

- (a) BLOC Holdings (ACT) Pty Ltd ACN 149 091 565;
- (b) Warwick Miller of 40 Wolseley Road, Mosman; and
- (c) 22 Brisbane Avenue Pty Ltd ACN 618 920 933 as trustee for the 22 Brisbane Avenue Trust.

**Guidelines** means each of:

- (a) Council’s Newcastle Development Control Plan 2012; and
- (b) each environmental planning instrument (as that term is defined under the EP&A Act) that is applicable to the Development or the Development Application, including:
  - (i) *Newcastle Local Environmental Plan 2012*;
  - (ii) *State Environmental Planning Policy No 65 (Design Quality of Residential Apartment Development)*; and
  - (iii) *State Environmental Planning Policy (State and Regional Development) 2011*.

**Heritage and Archaeology Reports** means the following reports:

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

**Insolvency Event** means, in relation to a person, any of the following:

- (a) the person, being an individual, commits an act of bankruptcy;
- (b) the person becomes insolvent;
- (c) the person assigns any of the person’s property for the benefit of creditors or any class of them;



- (d) a receiver, receiver and manager, administrator, controller, provisional liquidator or liquidator is appointed to the person or the person enters into a scheme of arrangement with the person's creditors or is wound up;
- (e) the holder of a security interest takes any step towards taking possession of or takes possession of any assets of the person or exercises any power of sale;
- (f) a judgment or order is made against the person in an amount exceeding \$10,000 (or the equivalent in any other currency) and that judgment or order is not satisfied, quashed or stayed within 20 business days after being made;
- (g) any step is taken to do anything listed in the above paragraphs; and
- (h) any event that is analogous or has a substantially similar effect to any of the events specified in this definition in any jurisdiction.

**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%.

**Item** means an item in Schedule 1.

**Land** means Lot 1 in DP 1236735 known as 50 Honeysuckle Drive, Newcastle.

**Lee 5 Public Domain Concept Plan** means the plan in Attachment 4.

**Liabilities** means any and all damages, punitive damages, liabilities, actions (including actions based on personal injury or death), obligations, duties, losses, charges, costs or expenses (including legal expenses and consulting fees), interest, penalties, fines and taxes.

**Licence Term** means the period which commences on the date of completion of this contract and ends on the date being the total of:

- (a) the number of days of delay caused by the Seawall Works Variation to the completion of the Seawall Works; and
- (b) 3 months,

from the date of completion.

**LRS** means the NSW Land Registry Services.

**Maximum Heights and FSR** means the maximum heights and floor space ratio for buildings on the property identified in the in the following maps under the *Newcastle Local Environmental Plan 2012*:

- (a) Height of Buildings Map Sheet HOB 004G in respect of heights; and
- (b) 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 *Newcastle Local Environmental Plan 2012* or any other environmental planning instrument (including *State Environmental Planning Policy No 1 – Development Standards*).

**Mine Subsidence Reports** means the following reports:

- (a) the report titled "Peer Review – Cottage Creek Mine Subsidence Investigations" prepared by BK Hebblewhite and dated 3 December 2009;
- (b) the report titled "Supplementary Peer Review – Cottage Creek Mine Subsidence Investigations" prepared by BK Hebblewhite and dated 5 June 2010;
- (c) the report titled "Lee 5 and Lot 22, Mine Subsidence Risk Mitigation Works" prepared by Coffey Geotechnics and dated 17 December 2014;
- (d) the report titled "Lee 5 Mine Rehabilitation Review of Environmental Factors" prepared by ERM and dated 16 March 2017;
- (e) the report titled "Technical Specification for Stabilisation of Mine Workings, Lee 5 and Lot 22" prepared by WSP Parsons Brinkerhoff and dated March 2017;
- (f) the report titled "Mine Stabilisation Report for Lot 22 and Lee 5" prepared by WSP and dated December 2017; and
- (g) letter from SANSW to the vendor dated 22 December 2017.

**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.

**Occupation Certificate** means a final occupation certificate under section 6.9 of the EP&A Act in relation to the Development.

**PCG** means the project control group established under clause 61.3.

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

**Pollution** has the meaning given to that term under the *Protection of the Environment Operations Act 1997* (NSW).

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

**Purchaser's Caveat** means a caveat lodged by or for:

- (a) the purchaser;
- (b) any assignee of the purchaser's interest under this contract; or
- (c) any person claiming through or under the purchaser.

**Purchaser's Proposal** means the design and intent for the Development as set out in Attachment 1, as varied from time to time with the vendor's written approval.

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

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

**Registration Sunset Date** means the date in Item 5, as may be extended under this contract.

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

**Reports** means the Environmental Reports, Flood Management Plan, Heritage and Archaeology Reports, Mine Subsidence Reports and Services Plan.

**Request for the Secretary's Environmental Assessment Requirements** means a written application to the Secretary in the form required by the *Environmental Planning and Assessment Regulation 2000* (NSW) for the environmental assessment requirements with respect to the Environmental Impact Statement.

**Risk Mitigation Plan** means the plan titled "Proposed Mine Subsidence Mitigation Plan - Honeysuckle, Hunter Development Corporation GEOTWARA20878AA-AN" prepared by Coffey Geotechnics and dated 20 December 2010.

**SANSW** means Subsidence Advisory NSW.

**Seawall Works** means, in respect of that part of the Land shown in the Seawall Works Plan:

- (a) removing the existing concrete wharf structure;
- (b) cutting the piles;
- (c) placing rock revetment; and
- (d) backfilling that area with sandy fill with ENM or VENM classification.

**Seawall Works Plan** means the plan in Attachment 2.

**Seawall Works Variation** means, in respect of the Seawall Works:

- (a) a variation to the type of fill material to be used;
- (b) the removal of redundant wharf structures; or
- (c) a variation to that part of the Seawall Works located on the property which will not impact the structural integrity of the remainder of the Seawall Works.

**Secretary** means the Secretary of the Department of Planning and Environment.

**Secretary's Environmental Assessment Requirements** means the environmental assessment requirements of the Secretary notified from time to time to the purchaser in response to a Request for the Secretary's Environmental Assessment Requirements.

**Services Plan** means the plan titled "Survey of Services Lot 2000 DP 1145675" prepared by deWitt Consulting and dated December 2016.

**Standard Form** means the contract for the sale and purchase of land 2018 edition, to which these additional clauses are attached.

**State Significant Development** means development that is declared to be State significant development under Division 4.7 of the EP&A Act.

**Third Party Claim** means:

- (a) any action, claim, demand, suit or proceeding however arising (including based in contract, tort or statute or under any indemnity, and including any action based on personal injury or death or otherwise); and

(b) any order, notice, demand, direction or requirement of any Authority,  
in each case whether it is present or future, fixed or unascertained, actual or contingent.

**Transfer** means the NSW Land Registry Services transfer form for the transfer of the Dedication Land from the purchaser.

**Vendor Works** means:

- (a) the Demolition Works; and
- (b) the Seawall Works.

**Vendor Works Completion Sunset Date** means the date in Item 7, as may be extended under this contract.

## **32.2 Interpretation**

In this contract, unless the context requires otherwise:

- 32.2.1 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;
- 32.2.2 if the vendor has an obligation to cause something to be done, the vendor may either:
  - (a) do that thing itself; or
  - (b) engage a third person to do that thing;
- 32.2.3 the singular includes the plural and vice versa;
- 32.2.4 words implying a gender imply any gender;
- 32.2.5 headings are used for convenience only and do not affect the interpretation of this contract;
- 32.2.6 a reference to a document (including this contract) includes the document as modified from time to time and any document replacing it;
- 32.2.7 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;
- 32.2.8 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);
- 32.2.9 an agreement, representation or warranty in favour of 2 or more persons is for the benefit of them jointly and severally;
- 32.2.10 an agreement, representation or warranty on the part of 2 or more persons binds them jointly and severally;
- 32.2.11 the word person includes an individual, a firm, a body corporate, a partnership, a joint venture, an unincorporated body or association or any Authority;

- 32.2.12 a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- 32.2.13 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;
- 32.2.14 a reference to a day is a reference to a period of time commencing at midnight and ending 24 hours later;
- 32.2.15 a reference to time is a reference to eastern standard time;
- 32.2.16 month means calendar month and year means 12 months;
- 32.2.17 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;
- 32.2.18 in writing includes any communication sent by letter, facsimile transmission or email;
- 32.2.19 including and similar expressions are not words of limitation;
- 32.2.20 money amounts are stated in Australian currency unless otherwise specified;
- 32.2.21 where a word or phrase is defined, another part of speech or grammatical form of that word or phrase has a corresponding meaning;
- 32.2.22 no rule of construction applies to the disadvantage of the party preparing this contract on the basis that it prepared or put forward this contract or any part of it;
- 32.2.23 a gender includes all other genders;
- 32.2.24 a clause, schedule or attachment is a reference to a clause or attachment in or to this contract; and
- 32.2.25 any body (**Original Body**) which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the Original Body.

### **32.3 Inconsistency**

To the extent that the provisions of these additional clauses are inconsistent with the Standard Form, these clauses prevail.

### **32.4 Terms defined in Standard Form**

Unless the context requires otherwise, terms defined in clause 1 have the meanings given to them in clause 1 when used (in any form) in these additional clauses even though they are not italicised or capitalised in these additional clauses.

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**33. Amendments to Standard Form**

- 33.1 In clause 1, the definition of “bank” is deleted and replaced with “the Reserve Bank of Australia or an authorised deposit-taking institution which is a bank that carries on business in Australia”.
- 33.2 In clause 1, the definitions of “GST Act” and “GST rate” are deleted.
- 33.3 Clause 3 is deleted.
- 33.4 Clause 4.3 is deleted.
- 33.5 Clause 7.1.1 is amended by deleting the words “the total amount claimed exceeds 5% of the price” and replacing them with the words “the total amount claimed exceeds 1% of the price”.
- 33.6 Clause 7.2.4 is amended by deleting the words “and the costs of the purchaser”.
- 33.7 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 “that specifies the requisition and those grounds” in the first line of clause 8.1.2.
- 33.8 Clause 10.1 is amended by replacing line 1 with: “The purchaser cannot make any Claim in respect of”.
- 33.9 Clause 10 is amended by inserting the following additional clause:
- “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 3 or not and all of that material is deemed to have been disclosed in substance in this contract”.
- 33.10 Clause 13 is deleted.
- 33.11 Clause 16.3 is amended by deleting the words “(being an estate in fee simple)”.
- 33.12 Clause 16.5 is amended by deleting “, plus another 20% of that fee”.
- 33.13 Clause 16.8 is deleted.
- 33.14 Clause 19.2.1 is deleted.
- 33.15 Clause 20.6.5 is deleted.
- 33.16 Clause 21.4 is amended by deleting the words “the month” in the second line and replacing them with the words “that month”.
- 33.17 Clause 23 is deleted.
- 33.18 Clause 24 is deleted.
- 33.19 Clause 28 is deleted.
- 33.20 Clause 29 is deleted.

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**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 this 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 warrants to the vendor that it has not been introduced to the property through or by any agent other than the vendor's agent referred to on the front page of this contract (if any). The purchaser indemnifies the vendor against any claim for commission, charges, costs or expenses in relation to the sale of the property caused by a breach of this warranty.

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**35. Investment of deposit****35.1 Application of clause**

This clause 35 does not apply if the vendor has agreed to accept, and the purchaser wishes to provide, a Bank Guarantee for the deposit.

**35.2 Tax file number**

If the depositholder does not receive the tax file number of each purchaser within 10 business days after the contract date, then all interest earned on the deposit will be paid to the vendor.

**35.3 Interest on deposit**

For the purposes of clause 2.9:

- 35.3.1 if the vendor validly terminates this contract because of the purchaser's default, then the vendor is entitled to the deposit and all interest earned on the deposit; and
- 35.3.2 except where clause 35.2 provides otherwise, if the purchaser validly terminates this contract because of the vendor's default, then the purchaser is entitled to the deposit and all interest earned on the deposit.

**35.4 Depositholder**

The parties release the depositholder from any Claim in connection with investment of the deposit under clause 2.9.

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**36. Bank Guarantee****36.1 Application of Bank Guarantee clause**

This clause 36 applies only if the vendor has agreed to accept, and the purchaser wishes to provide, a Bank Guarantee for all or an agreed part of the deposit.

**36.2 Provision of Bank Guarantee**

The purchaser must provide the original Bank Guarantee to the depositor on or before the date of this contract. This time is essential.

**36.3 Change in issuer's financial strength**

If the financial strength of the Bank Guarantee's issuer changes such that the issuer is no longer acceptable to the vendor (acting reasonably), then the purchaser must provide the vendor with a replacement Bank Guarantee within one month after receiving the vendor's written notice (the time for service is essential).

**36.4 Essential terms**

The purchaser's obligations under clause 36.3 are essential terms of this contract. If the purchaser breaches them, then:

36.4.1 the deposit will immediately become payable to the vendor under this contract; and

36.4.2 the vendor may immediately call on the Bank Guarantee.

**36.5 Procedure at completion**

On completion:

36.5.1 the purchaser must pay, by unendorsed bank cheque, the price and any other amount payable by the purchaser to the vendor under this contract; and

36.5.2 the vendor must return the Bank Guarantee to the purchaser.

**36.6 Calling on Bank Guarantee**

The vendor may call on the Bank Guarantee without notice to the purchaser if all or any part of the deposit is payable to the vendor under this contract.

**36.7 Procedure for refund of deposit**

The vendor must return the Bank Guarantee to the purchaser if the purchaser is entitled to a refund of the deposit.

**36.8 Treatment of Bank Guarantee**

36.8.1 In this contract, a reference to the deposit is a reference to the money secured under the Bank Guarantee. As far as possible, the parties must treat the money secured under the Bank Guarantee in the same way as the deposit.

36.8.2 The amount of the Bank Guarantee is not treated as part of the price for the purpose of clause 16.7.

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**37. GST****37.1 Definitions**

In this clause:



- 37.1.1 words and expressions that are not defined in this contract but which have a defined meaning in the GST Law have the same meaning as in the GST Law;
- 37.1.2 **GST** means GST within the meaning of the GST Law and includes penalties and interest. If under or in relation to the *Intergovernmental Agreement Implementation (GST) Act 2000* (NSW) the supplier makes voluntary or notional payments, then:
- (a) the definition of GST includes those voluntary or notional payments; and
  - (b) expressions containing the term 'GST' have a corresponding expanded meaning; and
- 37.1.3 **GST Law** has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

## 37.2 **GST exclusive**

Except where specified to the contrary in this contract, all consideration payable under this contract in relation to any supply is exclusive of GST.

## 37.3 **Increase in consideration**

If GST is payable in respect of any supply made by a supplier under this contract (**GST Amount**), the recipient must pay to the supplier an amount equal to the GST payable on the supply. The recipient must pay the GST Amount at the same time and in the same manner as the consideration for the supply is to be provided under this contract in full and without deduction, set off, withholding or counterclaim (unless otherwise provided in this contract).

## 37.4 **Application of margin scheme**

Despite any other provision in this clause, the parties agree that the margin scheme applies in working out the GST payable on the supply of the property under this contract.

## 37.5 **Tax invoice**

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST Amount under clause 37.3. This clause 37.5 does not apply if the margin scheme applies to the sale of the property.

## 37.6 **Reimbursements**

If this contract requires a party to pay, reimburse or contribute to any expense, loss or outgoing suffered or incurred by another party, the amount which the first party must pay, reimburse or contribute is the sum of:

- 37.6.1 the amount of the payment, reimbursement or contribution, less any input tax credit in respect of the payment, reimbursement or contribution to which the other party is entitled; and
- 37.6.2 if the payment, reimbursement or contribution is subject to GST, an amount equal to that GST.

## 37.7 **Adjustment events**

If an adjustment event occurs in relation to a taxable supply under this contract:

- 37.7.1 the supplier must issue an adjustment note to the recipient within 5 business days after becoming aware of the adjustment; and

37.7.2 any payment necessary to give effect to that adjustment must be made within 5 business days after the date of receipt of the adjustment note.

### **37.8 Any GST inclusive supply**

Clauses 37.1 to 37.7 (inclusive) do not apply to any supply that is specified to be GST inclusive in this contract.

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## **38. Insolvency or incapacity**

### **38.1 Insolvency**

If an Insolvency Event occurs in respect of the purchaser (or any one of them if there is more than one purchaser), then the vendor may terminate this contract by serving a notice and the provisions of clause 9 will apply.

### **38.2 Incapacity**

If the purchaser (or any one of them if there is more than one purchaser) is an individual and dies, or becomes mentally ill or incapable of managing the purchaser's own affairs, then the vendor may rescind this contract.

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## **39. Vendor disclosure**

### **39.1 Acknowledgments**

The purchaser acknowledges that:

39.1.1 all matters disclosed in this contract and the Disclosure Material are specifically disclosed and clearly described;

39.1.2 the vendor does not warrant the accuracy or completeness of the matters set out in the Disclosure Material.

### **39.2 Purchaser relies on own enquiries**

The purchaser:

39.2.1 warrants that it has inspected the Disclosure Material;

39.2.2 warrants this it is relying on its own enquiries in relation to the documents attached to this contract and the Disclosure Material; and

39.2.3 cannot make any Claim:

(a) because of any matter disclosed or described in this contract or the Disclosure Material;

(b) because any document attached to this contract or in the Disclosure Material is incomplete or inaccurate;

(c) because it has relied on anything in the Disclosure Material that was prepared by a third party; or

- (d) to the extent that the Disclosure Material contains information about any projection or estimate as to any financial return or income that can be derived from the property.
- 39.3 The purchaser undertakes to, at its own cost, carry out all necessary investigations, assessments and inspections of the property and its surrounds in order to properly ascertain the fitness or suitability of the property for the Development, and any constraints or risks relevant to the Development including constraints and risks presented by land-use or planning controls, Contamination, heritage, services, geotechnical and utilities.
- 39.4 The purchaser will be solely responsible for costs of complying with this clause, including the costs of any investigative or remedial works.
- 39.5 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.
- 39.6 The vendor discloses and the purchaser acknowledges that:
  - 39.6.1 there is a 450mm Stormwater Pipe and a stormwater pipe of approximately 900mm in diameter which run across the property;
  - 39.6.2 the vendor proposes to re-align Honeysuckle Drive and expects, as at the date of this contract, to complete the re-alignment in the 3rd quarter of 2020;
  - 39.6.3 the vendor's works to Honeysuckle Drive may impact the purchaser's access to the property and cause noise, dust, vibration and disturbance to users and occupiers of the property;
  - 39.6.4 part of the Land being Lots 2 and 5 in the plan of acquisition DP1238761 has been resumed by Transport for NSW; and
  - 39.6.5 Lot 4 in the plan of acquisition DP1238761 has not yet been created.
- 39.7 The purchaser cannot make any Claim because the re-alignment of Honeysuckle Drive is not completed by the time referred to in clause 39.6.3.

## **40. Mine subsidence**

### **40.1 Risk Mitigation Plan**

- 40.1.1 The purchaser acknowledges the vendor's disclosure of the Risk Mitigation Plan.
- 40.1.2 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.

### **40.2 Maximum Heights and FSR**

- 40.2.1 The purchaser's Development must not exceed, and the Development Application must not propose an exceedance of, the heights described in the Maximum Heights and FSR without the vendor's consent (which must not be unreasonably withheld).

- 40.2.2 If the vendor does provide the consent referred to in clause 40.2.1 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 satisfying any requirements of SANSW.
- 40.2.3 For the avoidance of doubt, the vendor cannot withhold consent to the purchaser's Development if it has height and FSR consistent with the Purchaser's Proposal.
- 40.2.4 The purchaser will be required to satisfy all of the requirements of SANSW for the purchaser's Development and undertake any required mine subsidence works in connection with the purchaser's Development.
- 40.2.5 The purchaser may not make any Claim in connection with anything referred to in the Mine Subsidence Reports or the requirements of SANSW for the Development.

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**41. Flood management**

- 41.1 The purchaser acknowledges the vendor's disclosure of the Flood Management Plan.
- 41.2 The purchaser represents and warrants that:
  - 41.2.1 it has inspected the Flood Management Plan; and
  - 41.2.2 it has made its own enquiries in relation to the Flood Management Plan.
- 41.3 The purchaser may not make any Claim in connection with anything referred to in the Flood Management Plan or any flood planning levels disclosed by the vendor.
- 41.4 The purchaser acknowledges that the flood planning levels may change as determined by the relevant Authority.

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**42. Geotechnical matters**

- 42.1 The purchaser represents and warrants that it accepts all risks in connection with geotechnical matters.
- 42.2 The purchaser must not make any Claim in connection with geotechnical matters.
- 42.3 The purchaser acknowledges that:
  - 42.3.1 prior to completion, the vendor will carry out the Seawall Works;
  - 42.3.2 the wharf and seawall structures and anchor rods which remain as part of the property are the purchaser's responsibility;
  - 42.3.3 it may not build on, in or under the area of approximately 10 metres wide along the northern boundary of the property; and
  - 42.3.4 settlement of the Seawall Works will occur over time.
- 42.4 The purchaser must not make any Claim in connection with anything disclosed in clause 42.3 or the geotechnical report referred to in clause 42.5.1.
- 42.5 The vendor will provide to the purchaser:

- 42.5.1 as soon as reasonably practicable after it receives the report, a copy of the geotechnical report it is procuring in relation to the area to be affected by the Seawall Works; and
- 42.5.2 documentation to confirm the extent of the redundant seawall and anchor rods that remain on the property after the Seawall Works are completed.
- 42.6 The purchaser may, at any time up to the date being one month after the commencement of the Seawall Works, give notice to the vendor requesting a Seawall Works Variation.
- 42.7 The vendor must not unreasonably withhold its consent to a Seawall Works Variation .
- 42.8 If the vendor consents to the Seawall Works Variation requested by the purchaser under clause 42.7, the following clauses will apply.
  - 42.8.1 The vendor will procure that the Seawall Works Variation is carried out.
  - 42.8.2 The purchaser must reimburse the vendor for the costs incurred by the vendor in connection with the Seawall Works Variation promptly after a demand.
  - 42.8.3 If the Seawall Works Variation causes any delay to the completion of the Seawall Works:
    - (a) clause 52.1 will be taken to be replaced with:
      - “52.1 Completion of this contract is to take place on the later of:
        - 52.1.1 the earlier of:
          - (a) the date being 30 days after the date the Consent Authority issues the Development Consent; and
          - (b) the date being 12 months after the date of this contract; and
        - 52.1.2 the date being 30 days after the date the plan of subdivision to separately identify the property is registered.”; and
      - (b) during the Licence Term, the vendor and its employees, contractors and consultants may enter upon the property with such equipment as the vendor considers reasonably necessary for the purposes of carrying out and completing the Seawall Works.

## **43. Services**

### **43.1 Services Plan**

- 43.1.1 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.
- 43.1.2 The purchaser may not make any Claim in connection with anything referred to in the Services Plan.

**43.2 Stormwater pipe**

- 43.2.1 The purchaser may, at its cost, relocate the 450mm Stormwater Pipe to a location on the adjoining land owned by the vendor (**Adjoining Land**) agreed by the parties (acting reasonably).
- 43.2.2 If the purchaser exercises its rights under clause 43.2.1:
- (a) it carries out the works and accesses and uses the Adjoining Land at its own risk;
  - (b) the purchaser indemnifies and at all times must keep the vendor indemnified against all Liabilities 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;
  - (c) the purchaser releases the vendor and agrees that the vendor is not liable for any Liabilities in connection with access to and use of the Adjoining Land by the purchaser or its employees, contractors and agents;
  - (d) 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; and
  - (e) the purchaser must comply with any other conditions on the purchaser's access to and use of the Adjoining Land which the vendor may, in its absolute discretion, impose.

**44. Environmental and other site conditions**

- 44.1 The purchaser represents and warrants that:
- 44.1.1 it has inspected the Environmental Reports; and
  - 44.1.2 it has made its own enquiries in relation to the Environmental Reports.
- 44.2 The vendor discloses the property may be subject to Contamination. The purchaser accepts the risk of any such Contamination and will undertake any remediation works at its own cost.
- 44.3 The purchaser accepts all risk in relation to the condition of the property including all risk in relation to any existing Contamination of or emanating to or from the property or groundwater or surrounding areas, any existing Pollution or non-compliance with any Environmental Law in connection with the Property, and acknowledges that the vendor makes no representation or warranty as to the condition of the property or compliance of the property with any Environmental Law.
- 44.4 Without limiting clause 44.3, the purchaser accepts all risks in connection with the soil and other material on the property and acknowledges that it is responsible for removing, disposing or otherwise managing the soil and material at its own cost and risk.
- 44.5 On and from the date of completion of this contract, the purchaser:
- 44.5.1 releases the vendor from any Claim by the purchaser; and
  - 44.5.2 forever discharges the vendor and will fully and effectively keep the vendor indemnified against any Third Party Claim made which the vendor may suffer or incur,

to the extent the Claim or Third Party Claim (as applicable) is made after the date of completion of this contract arising from or in connection with:

- 44.5.3 the condition of the property, including any of the matters referred to in the Environmental Reports;
  - 44.5.4 the fitness or suitability of the property for any particular use including the Development;
  - 44.5.5 any Contamination existing on the property on or after the date of completion of this contract, including the remediation or management of that Contamination;
  - 44.5.6 any Contamination emanating from the property after the date of completion of this contract, including the remediation or management of that Contamination;
  - 44.5.7 any Pollution or hazardous materials occurring at or from the property after the date of completion of this contract;
  - 44.5.8 any Environmental Notice given or made after the date of completion of the contract in connection with the property.
- 44.6 The liability of the purchaser under clause 44.5 will be reduced to the extent that the Liability was incurred or suffered due to the fraud or gross negligence by the vendor, its servants, agents or officers after the date of completion of this contract.
- 44.7 Without limiting clause 44.5, if any Environmental Notice is given or made after the date of completion of the contract in connection with the property, the vendor may by written notice direct the purchaser to comply with that Environmental Notice to the extent that it relates to the property, and the purchaser must comply with that direction at its own cost.

## **45. Purchaser's other acknowledgements**

### **45.1 Other acknowledgements**

- 45.1.1 The purchaser cannot, subject to the other provisions of this contract, make any Claim as a result of:
  - (a) the position of any easement required by the Consent Authority or any other Authority;
  - (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 this contract;
  - (c) the creation of any covenant or easement or section 88B instrument giving effect to any of the matters referred to in clause 45.1.1(a) or 45.1.1(b);
  - (d) any condition or obligation imposed by a Consent Authority in relation to the property or the Development.
- 45.1.2 Subject to clause 45.2, the property is sold and the purchaser will take the property subject to all rights of way, reservations, covenants and easements noted on the certificate of title folio identifier for the property.
- 45.1.3 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 expressly specified 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.

45.1.4 Except as expressly set out in this contract, the purchaser cannot make any Claim for any matter referred to in this clause 45.1.

45.1.5 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.

**45.2 Positive covenant**

The vendor notes that there is a public positive covenant affecting part of the Land. The vendor agrees to remove this public positive covenant from the property as part of subdividing the property from the balance of the Land.

**45.3 Public domain**

45.3.1 The purchaser:

- (a) must include in all its future sales contracts relating to the property a condition that all owners accept the adjacent public domain shown on the Lee 5 Public Domain Concept Plan will be embellished to be generally consistent with the Lee 5 Public Domain Concept Plan to include public domain elements which include 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 domain; 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 45.3.1(a) is made for all future transactions involving the property;
- (c) acknowledges that the vendor proposes to construct the adjacent public domain itself or by engaging others; and



- (d) acknowledges that the construction of the adjacent public domain may impact the purchaser's access to the property and cause noise, dust, vibration and disturbance to users and occupiers of the property.

45.3.2 The purchaser must not make a Claim in connection with the matters in this clause 45.3.

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## **46. Fences**

46.1 The purchaser cannot make any Claim:

46.1.1 if any of the fences on or surrounding the property are not on the correct boundary;

46.1.2 as to the nature or state of repair of any fence; or

46.1.3 if there are no fences or if any fence is a give and take fence

46.2 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.

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## **47. Purchaser's development obligations**

### **47.1 Approval process acknowledgements**

47.1.1 The purchaser acknowledges that the Development is State Significant Development.

47.1.2 Unless otherwise agreed with the vendor, the purchaser must not prior to the completion of the Development submit any development application under Part 4 of the EP&A Act that is not a development application for the Development.

47.1.3 The purchaser must, at its own cost and in the proper form, comply with the requirements of the EP&A Act and the Consent Authority in relation to the Development Consent Process.

47.1.4 The purchaser must at its own cost, in relation to the Development Consent Process:

- (a) keep the vendor fully and properly informed of the progress of the Development Application; and
- (b) provide the vendor with copies of the:
  - (i) Secretary's Environmental Assessment Requirements;
  - (ii) Development Application;
  - (iii) Environmental Impact Statement; and
  - (iv) any other documents related to the Development Consent Process as requested by the vendor,

within the timeframe specified in this contract or, if no timeframe is specified:

- (v) if the document is submitted to the Consent Authority, within 5 business days of submitting the document to the Consent Authority; or
- (vi) if the document is not required to be submitted to the Consent Authority, within the timeframe reasonably required by the vendor.

**47.2 Secretary's Environmental Assessment Requirements**

47.2.1 The purchaser must, promptly after the date of this contract, submit to the vendor a Request for the Secretary's Environmental Assessment Requirements in the identical form that it proposes to submit to the Secretary in relation to the Development, for the vendor's consent to submit the Request for the Secretary's Environmental Assessment Requirements to the Secretary.

47.2.2 The purchaser must ensure the Request for the Secretary's Environmental Assessment Requirements is consistent with the:

- (a) Purchaser's Proposal (or as otherwise agreed between the parties);
- (b) Guidelines and Maximum Heights and FSR (or as otherwise agreed between the parties); and
- (c) Development Requirements,

and must, when submitting the Request for the Secretary's Environmental Assessment Requirements to the vendor under clause 47.2.1, disclose any inconsistency.

47.2.3 If the vendor, acting reasonably, determines that the Request for the Secretary's Environmental Assessment Requirements does not comply with clause 47.2.2, the vendor may refuse consent to submit the Request for the Secretary's Environmental Assessment Requirements with the Consent Authority.

47.2.4 The vendor must provide to the purchaser, within 5 business days of the vendor's receipt of the Request for the Secretary's Environmental Assessment Requirements, either:

- (a) written consent to submit the Request for the Secretary's Environmental Assessment Requirements to the Secretary; or
- (b) written notice that the vendor refuses consent to the submission of the Request for the Secretary's Environmental Assessment Requirements under clause 47.2.3, which notice must include either or both of the reasons for refusing consent and the alterations to the Request for the Secretary's Environmental Assessment Requirements that are reasonably required by the vendor prior to the vendor granting consent.

47.2.5 If the vendor fails to provide the purchaser with the documents referred to in the clause 47.2.4 within the time specified, then the vendor is deemed to have granted the purchaser written consent under clause 47.2.4(a) to submit the Request for the Secretary's Environmental Assessment Requirements in the form provided to the vendor by the purchaser, provided that nothing in this clause will limit the rights of the vendor or the obligations and duties of the purchaser under this contract nor entitle the purchaser to develop the property in a manner that is not consistent with the Purchaser's Proposal (or as otherwise agreed between the parties).

47.2.6 The vendor and the purchaser 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.

- 47.2.7 Upon receipt by the purchaser of a written notice from the vendor under clause 47.2.4(b), the purchaser must as soon as practicable, amend the proposed Request for the Secretary's Environmental Assessment Requirements taking the vendor's reasons or proposed alterations into account, and re-submit the amended Request for the Secretary's Environmental Assessment Requirements to the vendor for consent, and the process under clause 47.2.2 to this clause 47.2.7 will re-apply.
- 47.2.8 The purchaser must not amend the Request for the Secretary's Environmental Assessment Requirements in any material way after the vendor has consented to it under this clause.
- 47.2.9 The purchaser must, on or before the date in Item 1, submit the Request for the Secretary's Environmental Assessment Requirements consented to by the vendor to the Secretary, in the form consented to by the vendor.
- 47.2.10 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 submitted to the Secretary for the vendor review and consultation process as to the Request for the Secretary's Environmental Assessment Requirements to be completed.

**47.3 Lodgement of Development Application**

- 47.3.1 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 identical form it is proposed to be submitted to the Consent Authority.
- 47.3.2 The purchaser must ensure the Development Application is consistent with the:
  - (a) Purchaser's Proposal (or as otherwise agreed between the parties);
  - (b) Secretary's Environmental Assessment Requirements;
  - (c) Guidelines and Maximum Heights and FSR (or as otherwise agreed between the parties); and
  - (d) Development Requirements.
- 47.3.3 If the vendor, acting reasonably, determines that the Development Application does not comply with clause 47.3.2, the vendor may refuse consent to submit the Development Application to the Consent Authority.
- 47.3.4 The vendor must provide to the purchaser, within 10 business days of the vendor's receipt of the Development Application, either:
  - (a) written consent to submit the Development Application to the Consent Authority; or
  - (b) written notice that the vendor refuses consent to the submission of the Development Application under clause 47.3.3, which notice must include either or both of the reasons for refusing consent and the alterations to the Development Application that are reasonably required by the vendor prior the vendor granting consent.



- 47.3.5 If the vendor fails to provide the purchaser with the documents referred to in the clause 47.3.4 within the time specified, then the vendor is deemed to have granted the purchaser written consent under clause 47.3.4(a) to submit the Development Application in the form provided to the vendor by the purchaser, provided that nothing in this clause will limit the rights of the vendor or the obligations and duties of the purchaser under this contract nor entitle the purchaser to develop the property in a manner that is not consistent with the Purchaser's Proposal (or as otherwise agreed between the parties).
- 47.3.6 The vendor and the purchaser 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.
- 47.3.7 Each time the vendor requires the purchaser to make alterations to the Development Application pursuant to clause 47.3.4(b), then after having made such alterations, the purchaser must resubmit the Development Application for the vendor's review and consent pursuant to clauses 47.3.2 to 47.3.6.
- 47.3.8 Upon receipt by the purchaser of a written notice from the vendor under clause 47.3.4(b), the purchaser must as soon as practicable, amend the proposed Development Application taking the vendor's reasons or proposed alterations into account, and re-submit the amended Development Application to the vendor for consent, and the process under clause 47.3.2 to this clause 47.3.8 will re-apply.
- 47.3.9 The purchaser must not amend the Development Application in any material way after the vendor has consented to it under this clause.
- 47.3.10 If the vendor has not issued a notice under clause 47.3.4 in relation to the Development Application, and is not deemed to have issued such a notice under clause 47.3.5, 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.
- 47.3.11 The purchaser must, on or before the Date for DA Submission, submit the Development Application consented to by the vendor to the Consent Authority in the form consented to by the vendor.
- 47.3.12 If the submission of the Development Application to the Consent Authority is delayed by events outside of the purchaser's reasonable control, the purchaser may extend the Date for DA Submission by the amount equivalent to the delay by notice in writing to the vendor, but by not more than 6 months in total.
- 47.3.13 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.
- 47.3.14 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 would, in the vendor's opinion (acting reasonably), result in the Development Application not being consistent with:
- (a) Purchaser's Proposal (or as otherwise agreed between the parties);
  - (b) Secretary's Environmental Assessment Requirements;
  - (c) Guidelines and Maximum Heights and FSR (or as otherwise agreed between the parties); or

(d) Development Requirements,

- 47.3.15 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 Consent Process. The purchaser must not make any variations to the Development Application without the vendor's consent (which must not be unreasonably withheld).
- 47.3.16 The purchaser must pursue the Development Application with all due diligence and use its reasonable endeavours to procure the approval of the Consent Authority to the Development Application.

**47.4 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 the vendor.

**47.5 Purchaser's Development not consistent with Guidelines and Maximum Heights and FSR**

- 47.5.1 Despite any other provisions in this contract, if the vendor consents to the purchaser lodging a Development Application for the Development which is inconsistent with either the Guidelines or Maximum Heights and FSR (**Guidelines Inconsistency**), the purchaser does so at its own risk.
- 47.5.2 Without limiting clause 47.3.14 or 47.3.15, if the Authority requires the Development to be modified to remove the Guidelines Inconsistency, the purchaser must modify the Development Application to remove the Guidelines Inconsistency. 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;
  - (b) the modification to the Development Application does not affect the public domain.

**47.6 Vendor's review of applications**

The purchaser acknowledges and agrees that:

- 47.6.1 the vendor (or any person on its behalf) does not assume or owe any duty of care or other responsibility or obligation to the purchaser to review, or in reviewing, any Request for Secretary's Environmental Assessment Requirements or Development Application (including any modification or alteration), including for errors, omissions or non-compliance with the requirements of law, any Authority or this contract;
- 47.6.2 the purchaser will not be entitled to make, and the vendor will not be liable upon or in connection with, any Claim or Liability arising out of or in connection with any failure by the vendor (or any person on its behalf) to detect or notify the purchaser of errors, omissions or non-compliance with the requirements of law, any Authority or this contract in any Request for Secretary's Environmental Assessment Requirements or Development Application (including any modification or alteration); and
- 47.6.3 no review of, comment upon, consent to, or approval or rejection of, nor any failure or refusal to review, comment upon, consent to, or approve or reject, any Request for Secretary's Environmental Assessment Requirements or Development Application (including any modification or alteration) by the vendor (or any person on its behalf) will:

- (a) relieve the purchaser from or alter its liabilities or obligations, whether under this contract or otherwise according to law; or
- (b) limit or otherwise affect the vendor's rights against the purchaser, whether under this contract or otherwise according to law.

**47.7 Dedication Land**

- 47.7.1 The purchaser must transfer ownership of the Dedication Land to the vendor (or any other Government Agency nominated by the vendor) for nominal consideration of \$1.00, promptly after the date on which the purchaser obtains an Occupation Certificate (or an earlier date agreed between the parties).
- 47.7.2 The parties propose that the Dedication Land is consolidated with the adjacent public domain at the same time as the transfer of ownership.
- 47.7.3 The purchaser is responsible for all the costs in connection with the transfer of the Dedication under this clause 47.7, including the costs of the preparation of a plan of consolidation and the Transfer.
- 47.7.4 At any time within 6 months after the date of the transfer of the Dedication Land, the vendor may notify the purchaser of any defects in the Dedication Land (including any trees which were not maintained by the purchaser in a proper manner prior to the date of the transfer.
- 47.7.5 The purchaser must rectify each defect as soon as reasonably practicable after it receives notice of it from the vendor.

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**48. Development Consent****48.1 Obtaining Development Consent**

- 48.1.1 The purchaser must at its own cost:
  - (a) provide to the vendor a draft of the Development Application by the Date for Draft DA; and
  - (b) use all reasonable endeavours to obtain Development Consent by the Date for Development Consent.
- 48.1.2 If the preparation of the draft Development Application is delayed by events outside of the purchaser's reasonable control, the purchaser may extend the Date for Draft DA by the amount equivalent to the delay by notice in writing to the vendor, but by not more than 6 months in total.

**48.2 Compliance with Development Consent**

- 48.2.1 The purchaser must comply with all of the conditions of the Development Consent at its own cost.
- 48.2.2 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.

- 48.2.3 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.

### **48.3 Restriction on title or positive covenant**

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 48.2.3 either prior to or after completion of this contract.

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## **49. Purchaser's obligations to develop**

### **49.1 Obligations to develop**

- 49.1.1 Subject to issue of the Development Consent, the purchaser acknowledges and agrees to:
- (a) lodge an application for the issue of a Construction Certificate for the Development promptly after completion of this contract; and
  - (b) promptly and expeditiously:
    - (i) use its reasonable endeavours to obtain a Construction Certificate to carry out the Development;
    - (ii) apply for any other approvals or consents necessary to carry out the Development; and
    - (iii) provide the vendor with copies of the Construction Certificate and any approvals or consents referred to in clause 49.1.1(b)(ii) after they are obtained; and
    - (iv) carry out the Development in accordance with this contract.
- 49.1.2 Provided an act of Force Majeure has not occurred, the purchaser must commence construction of the Development.

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## **50. Subdivision**

### **50.1 Subdivision**

- 50.1.1 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 the vendor, 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.

- 50.1.2 The parties agree that the plan will be substantially in the form of the Draft Subdivision Plan 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.
- 50.1.3 The vendor must use all reasonable endeavours to procure the registration of a plan substantially in the form of the Draft Subdivision Plan on or before the Date for Registration.
- 50.1.4 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 Date for Registration by the amount equivalent to the delay by notice in writing to the purchaser.
- 50.1.5 Each time the Date for Registration is extended under clause 50.1.4, the Registration Sunset Date will be extended by the same number of days at the same time.
- 50.1.6 If the plan substantially in the form of the Draft Subdivision Plan is not registered on or before the Registration Sunset Date, subject to clause 50.1.7, 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.
- 50.1.7 Where the purchaser wishes to rescind this contract under clause 50.1.5, it must serve on the vendor a valid notice of rescission not later than 7 days after the Registration Sunset Date. In this regard time is of the essence and the purchaser cannot rescind under clause 50.1.5, unless it strictly complies with the timeframe for rescission in this clause.
- 50.1.8 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 the vendor in respect of changes to the Draft Subdivision Plan are set out in this clause 50.
- 50.1.9 The purchaser cannot make any Claim 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.
- 50.1.10 In clause 50.1.9, 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.

**50.2 Affectations**

- 50.2.1 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 (**Affectations**).
- 50.2.2 Despite any other provisions in this clause:
  - (a) the purchaser cannot make any Claim 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.

**50.3 Additional plan of subdivision**

- 50.3.1 The vendor discloses that it may procure the registration of a plan of subdivision of the balance of the Land, prior to a plan substantially in the form of the Draft Subdivision Plan.
- 50.3.2 The purchaser cannot make any Claim in respect of anything referred to in clause 50.3.1.

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**51. Vendor Works**

- 51.1 Completion of this contract is subject to and conditional on the completion of the Vendor Works, on or before the Vendor Works Completion Sunset Date.
- 51.2 The vendor must use reasonable endeavours to procure the completion of the Vendor Works on or before the Date for Vendor Works Completion.
- 51.3 If the carrying out of the Vendor Works is delayed by events outside of the vendor's reasonable control, the vendor may extend the Date for Vendor Works Completion by the amount equivalent to the delay by notice in writing to the purchaser.
- 51.4 Each time the Date for Vendor Works Completion is extended under clause 51.3, the Vendor Works Completion Sunset Date will be extended by the same number of days at the same time.
- 51.5 If the Vendor Works are not completed on or before the Vendor Works Completion Sunset Date, subject to clause 51.6, 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.
- 51.6 Where the purchaser wishes to rescind this contract under clause 51.5, it must serve on the vendor a valid notice of rescission not later than 7 days after the Vendor Works Completion Sunset Date. In this regard time is of the essence and the purchaser cannot rescind under clause 51.5, unless it strictly complies with the timeframe for rescission in this clause.

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**52. Completion**

- 52.1 Completion of this contract is to take place on the latest to occur of:
  - 52.1.1 the earlier of:
    - (a) the date being 30 days after the date the Consent Authority issues the Development Consent; and
    - (b) the date being 12 months after the date of this contract;
  - 52.1.2 the date being 30 days after the date the plan of subdivision to separately identify the property is registered; and
  - 52.1.3 the date being 30 days after the date on which the vendor notifies the purchaser that the Seawall Works have been completed in accordance with the environmental

assessment carried out in respect of those works under section 5.5 of the EP&A Act.

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**53. Interest and notice to complete****53.1 Interest**

53.1.1 If through no fault of the vendor the purchaser does not complete this contract before the date for completion, then on the actual date of completion, the purchaser must pay the vendor interest on the balance of the price from but excluding the date for completion to and including the date of actual completion at the Interest Rate.

53.1.2 Payment of interest in accordance with this clause 53.1 is an essential term of this contract.

53.1.3 Interest payable pursuant to this clause is a genuine pre-estimate of the vendor's loss as a result of the purchaser's failure to complete on or before the date for completion.

53.1.4 Interest payments made or due do not form part of the price.

**53.2 Notice to complete**

53.2.1 If a party is entitled to serve a notice to complete, then the party may:

- (a) at any time serve a notice requiring completion on a specified date (being not less than 10 business days after the date of service of that notice);
- (b) make time of the essence; and
- (c) specify a time of day between 11.00am and 4.00pm as the time for completion.

53.2.2 The parties agree that 10 business days is a reasonable and proper period to specify in any notice to complete.

53.2.3 The party serving a notice to complete reserves the right to withdraw the notice and to issue further notices to complete.

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**54. Encumbrances****54.1 Discharge or withdrawal of existing encumbrance**

If any certificate of title for the property at completion notes any mortgage or caveat (excluding a Purchaser's Caveat), then on completion the purchaser must accept a discharge of that mortgage, a caveator consent to facilitate registration of the transfer to the purchaser, or a withdrawal of that caveat (each in registrable form), so far as it relates to the property.

**54.2 Purchaser's Caveat**

The purchaser must complete despite any notation of a Purchaser's Caveat in any certificate of title for the property at completion.

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**55. Licence to enter****55.1 Purchaser's licence to enter property**

- 55.1.1 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 the property for the Development.
- 55.1.2 The purchaser must give the vendor at least 10 days' notice of its requirements to access the property.
- 55.1.3 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.
- 55.1.4 Any such access does not constitute early possession.
- 55.1.5 If permission for access is granted by the vendor the following conditions apply to the purchaser's use of the property:
- (a) in exercising its right of entry, the purchaser enters the property at its own risk;
  - (b) the purchaser indemnifies and at all times must keep the vendor indemnified against all Liabilities 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;
  - (c) the purchaser releases the vendor and agrees that the vendor is not liable for any Liabilities in connection with access to the property by the purchaser or its employees, contractors and agents;
  - (d) 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; and
  - (e) any other conditions on the purchaser's access to the property which the vendor may, in its absolute discretion, impose.
- 55.1.6 This clause does not give the purchaser the right to commence the Development prior to issue of a Construction Certificate.

**55.2 Purchaser may wish to market the property after exchange**

The purchaser may market the property for lease or sale after the date of this contract on the condition that any marketing material clearly discloses that:

- 55.2.1 the vendor is the owner of the property;
- 55.2.2 the purchaser has an interest in the property pursuant to a conditional contract; and
- 55.2.3 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.

### 55.3 Vendor's Licence

- 55.3.1 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.
- 55.3.2 In exercising this right of entry, the vendor must not interfere with the quiet enjoyment of the property by the purchaser.

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### 56. Site signage

- 56.1 Subject to clause 56.4, the vendor agrees that the purchaser may erect two signs on the property after the date of this contract, to advertise the Development and/or the purchaser.
- 56.2 Each of the signs referred to in clause 56.1 must be:
- 56.2.1 of a size, style and appearance approved by the vendor (which must not be unreasonably withheld); and
- 56.2.2 erected in a location approved by the vendor (which must not be unreasonably withheld).
- 56.3 The purchaser must take reasonable actions to ensure that its contractors and other parties working on the property do not erect any signs or post any advertising, except signage required by law or the requirements of Authorities.
- 56.4 The purchaser must obtain all consents required from any Authority in connection with the installation of the signs referred to in this clause.

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### 57. Dispute resolution

- 57.1 In this clause, **dispute** means any dispute arising out of or relating to this contract.
- 57.2 A party may not commence any court or arbitration proceedings relating to a dispute unless it complies with this clause 57, except where the party seeks urgent interlocutory relief.
- 57.3 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.
- 57.4 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.
- 57.5 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:
- 57.5.1 the dispute resolution technique and procedures to be adopted;
- 57.5.2 the timetable for all steps in those procedures; and
- 57.5.3 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,

- 57.6 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.
- 57.7 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.
- 57.8 If the dispute is not resolved within 42 days after notice is given under clause 57.3, then any party which has complied with this clause 57 may in writing terminate any dispute resolution process undertaken pursuant to this clause 57 and may then refer the dispute to arbitration, independent determination or commence Court proceedings in relation to the dispute.
- 57.9 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 57 is to attempt to settle the dispute.
- 57.10 No party may use any information or documents obtained through any dispute resolution process undertaken pursuant to this clause 57 for any purpose other than in an attempt to settle the dispute.

## **58. Events of Default**

### **58.1 What constitutes an Event of Default**

Without limiting any other provisions of this contract, it is an Event of Default, whether or not it is within the control of the purchaser, if:

- 58.1.1 the purchaser fails to perform or observe any undertaking, obligation, or agreement expressed or implied in this contract 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;
- 58.1.2 the purchaser fails to perform or observe any undertaking, obligation or agreement expressed or implied in this contract and that failure is, in the reasonable opinion of the vendor, not remediable; or
- 58.1.3 any Authorisation necessary to enable the purchaser to comply with its obligations under this contract ceases to be of full force and effect; or
- 58.1.4 any warranty, representation or statement by the purchaser is or becomes false or incorrect under this contract.

### **58.2 Effect of Event of Default**

Where an Event of Default occurs:

- 58.2.1 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
- 58.2.2 terminate this contract and sue the purchaser for damages.

**58.3 Notice of default**

The purchaser acknowledges that a notice of default served by the vendor on the purchaser will be prima facie evidence that the Event of Default has occurred and will automatically entitle the vendor to exercise its rights under clause 58.2.

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**59. Indemnities**

59.1 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, incurred or suffered by the vendor arising from:

- 59.1.1 the occurrence of an Event of Default;
- 59.1.2 exercising its powers as a result of an Event of Default or potential Event of Default;
- 59.1.3 any wilful, unlawful or negligent act or omission of the purchaser, its employees or agents;
- 59.1.4 any non-compliance by the purchaser with the terms of this contract; and
- 59.1.5 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.

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**60. Assignment**

60.1 The purchaser may not assign its rights under this contract without the consent of the vendor (which must not 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.

60.2 The vendor may, in its absolute discretion, assign its interests and rights under this contract provided that:

- 60.2.1 the vendor also assigns concurrently its interests and rights under this contract to the proposed assignee;
- 60.2.2 the proposed assignee executes a deed whereby it agrees to be bound by the terms and conditions of this contract; and
- 60.2.3 if the vendor owns the property at that time, the vendor transfers the property at the same time to the proposed assignee.

60.3 If the vendor assigns its interest pursuant to clause 60.2 and the assignee enters into the deed referred to in clause 60.2.2:

- 60.3.1 the purchaser acknowledges that the proposed assignee has a caveatable interest in the property; and
- 60.3.2 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.

60.4 Within a reasonable time after the assignment of the vendor's interest in accordance with clause 60.2, the vendor will lodge at LRS a withdrawal of caveat in registrable form.

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**61. Representatives, meetings and notices****61.1 Appointment of purchaser's representative**

61.1.1 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 this contract and the Development.

61.1.2 The purchaser must provide the vendor with notice of the purchaser representative details within 7 days from the date of this contract.

**61.2 Appointment of vendor's representative**

The vendor appoints the person who holds the position of Chief Operating Officer from time to time, for the purpose of all discussion, consultations, meetings with the purchaser in relation to this contract and the Development.

**61.3 Meetings**

61.3.1 The vendor and the purchaser will establish a PCG which shall comprise of the representative of each party.

61.3.2 The purpose of the PCG is:

- (a) to monitor the progress in obtaining the Development Consent;
- (b) for the purchaser to provide updates on the progress of the Development in accordance with this contract;
- (c) any matters of concern to the parties arising out of the Development, the Vendor's Works or public domain works;
- (d) for the parties to endeavour to ensure that the objectives of the parties under this contract are attained.

61.3.3 Each party is entitled to invite any of its consultants to attend a meeting of the PCG.

61.3.4 The parties must ensure that the PCG meets at least one every 2 months (or with such alternative frequency as the parties may agree in writing) until completion of the Development.

61.3.5 The vendor must give the purchaser not less than 5 business days' notice of the proposed time and venue for such meetings.

**61.4 Address for service of notices**

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

For the vendor:

Hunter and Central Coast Development Corporation  
Suite B, Level 5  
26 Honeysuckle Drive

NEWCASTLE NSW 2300  
Attention: Jeremy Amann  
Fax: (02) 4904 2762

For the purchaser:

Horizon Newcastle Pty Limited  
C/- P Squared Advisory Pty Limited  
Level 3, 59 Wentworth Avenue  
KINGSTON ACT 2604  
Attention: Warwick Miller

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**62. Guarantee**

- 62.1 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.
- 62.2 The Guarantor unconditionally and irrevocably guarantees to the vendor:
- 62.2.1 payment to the vendor of the Guaranteed Money; and
  - 62.2.2 the due and punctual performance and observance of the Guaranteed Obligations.
- 62.3 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.
- 62.4 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.
- 62.5 The Guarantor acknowledges:
- 62.5.1 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;
  - 62.5.2 subject to the terms of this contract the vendor may make a demand under this Guarantee at any time and from time to time;
    - (a) without any pre-conditions first being met;
    - (b) whether or not demand has been made by the purchaser;
    - (c) whether or not the vendor has or is able to demand payment or performance from the purchaser or anybody else;
    - (d) whether or not the vendor is able to or has attempted to recover any relevant amount or performance from the purchaser or anybody else;
    - (e) whether or not the vendor has exercised or exhausted any of its rights against the purchaser or anybody else;
    - (f) whether or not the purchaser or anybody else has to pay the relevant amount or perform the relevant obligation.



62.6 As a separate undertaking, provided the purchaser has a liability to the vendor arising in relation to this contract, the Guarantor unconditionally and irrevocably indemnifies the vendor against:

62.6.1 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

62.6.2 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.

62.7 The Guarantor agrees to pay or reimburse the vendor on demand for:

62.7.1 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

62.7.2 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.

62.8 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 it from the Guarantor immediately before the payment.

62.9 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.

62.10 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 one or more of the following:

62.10.1 the vendor or another person granting time or other indulgence to, compounding or compromising with or releasing the purchaser; or

62.10.2 acquiescence, delay, acts, omissions or mistakes on the part of the vendor; or

62.10.3 any variation or novation of a right of the vendor, or alteration of this contract or a document, in respect of the purchaser; or

62.10.4 the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor.

62.11 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:

- 62.11.1 raise a set-off or counterclaim available to it or the purchaser against the vendor in reduction of its liability under the Guarantee; or
  - 62.11.2 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
  - 62.11.3 make a claim or enforce a right (including a mortgage, charge or other encumbrance) against the purchaser or its property; or
  - 62.11.4 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.
- 62.12 The Guarantor acknowledges that before signing this contract, and incurring obligations and giving rights under the Guarantee; it:
- 62.12.1 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
  - 62.12.2 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.
- 62.13 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.
- 62.14 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.
- 62.15 The vendor may assign or otherwise deal with its rights under the Guarantee.
- 62.16 This clause is an essential term of this contract
- 62.17 The purchaser may at any time provide an alternative or replacement guarantor which is a Related Body Corporate of the purchaser of equal to or greater financial standing to the Guarantor, with the prior written consent of the vendor (which must not be unreasonably withheld).
- 62.18 The purchaser must pay the vendor's costs of providing its consent to a new guarantor under clause 62.17 including the cost of negotiating and preparing the legal documents for the replacement of the Guarantor.
- 62.19 In this clause:

**Guarantee** means the guarantee and indemnity referred to in this clause 62;

**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; and

**Guaranteed Obligations** means all express or implied obligations of the purchaser to the vendor in connection with this contract.

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**63. Trustee purchaser**

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

63.1.1 enters into this contract in its capacity as trustee of the trust and in its own capacity; and

63.1.2 each person who signs this contract warrants that as at the date of this contract and until completion:

- (a) the party is the sole and only trustee of the trust;
- (b) the party is empowered by the relevant trust deed of the trust to enter into this contract; and
- (c) the trustee's right of indemnity out of, and lien over, the assets of the trust have not been limited in any way.

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**64. Variation and waiver****64.1 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.

**64.2 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.

**64.3 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.

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**65. Liability**

65.1 If any party to this contract consists of more than one person then:

65.1.1 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;

65.1.2 a representation, warranty or undertaking made by any one 'or more of them binds all of them; and

65.1.3 a right given to them is a right given severally to each of them.

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**66. Intellectual Property**

- 66.1 If this contract is rescinded or terminated, for whatever reason, the purchaser assigns, at its cost, ownership in the Development Material and any Intellectual Property to the vendor on the date of the rescission or termination.
- 66.2 If ownership of or title in Intellectual property in relation to Development Material is not capable of being assigned to the vendor, the purchaser must, at its own cost, promptly procure a suitable and irrevocable licence for the vendor to use that Development Material or that Intellectual Property.
- 66.3 The purchaser must ensure all license fees are paid and all consents required under law are obtained as a result of any reproduction, adoption or use of any Intellectual Property or Development Material necessary for the Development.
- 66.4 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.
- 66.5 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.

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**67. Confidential Information**

- 67.1 The purchaser must keep the Confidential Information confidential.
- 67.2 Without limiting clause 67.1, the purchaser must:
- 67.2.1 ensure that the Confidential Information is not disclosed to any person other than a Permitted Person without the prior written approval of the vendor;
  - 67.2.2 take all steps and do all things reasonable necessary in order to safeguard the Confidential Information;
  - 67.2.3 require all Permitted Persons who have access to the Confidential Information to comply with the provisions of this contract;
  - 67.2.4 not use or allow the use of any portion of the Confidential Information, except for the purposes for which it was provided; and
  - 67.2.5 not make or allow copies of or extracts of Confidential Information except for the purpose of provision to Permitted Persons.
- 67.3 For the avoidance of doubt, the following disclosures do not breach this clause:
- 67.3.1 disclosures required by any Authority, by law or by court order;
  - 67.3.2 disclosures to a Permitted Person as required under this contract; and
  - 67.3.3 any other disclosures approved by the vendor in writing.
- 67.4 The purchaser must, when requested by the vendor, immediately cease using the Confidential Information and return it to the vendor.

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**68. General****68.1 Caveat**

The purchaser must not lodge a caveat over the property.

**68.2 Entire agreement**

This contract constitutes the entire agreement 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 contract is of no force or effect.

**68.3 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.

**68.4 Prohibitions and 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.

**68.5 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.

**68.6 Further assurances**

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

**68.7 Attorney execution**

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

**68.8 Stamp duty and costs**

68.8.1 The purchaser must pay all duties on or in respect of this contract and indemnities the vendor for any duty payable by the purchaser in relation to this contract.

68.8.2 The Purchaser must pay its own costs in connection with the preparation, completion and carrying into effect of this contract.

**68.9 Governing law**

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.

**68.10 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.

**68.11 Rights cumulative**

The rights and remedies conferred on a party by this contract are in addition to all other rights and remedies of that party.

**68.12 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.

**68.13 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.

**68.14 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.

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## Schedule 1      Table

Item 1.	Request for the Secretary's Environmental Assessment Requirements to be submitted to the Consent Authority	The date which is 3 months from the date of this contract
Item 2.	Date for Draft DA	The date which is 4 months from the date of this contract
Item 3.	Date for DA Submission	The date which is 6 months from the date of this contract
Item 4.	Date for Development Consent	The date which is 12 months from the date of this contract
Item 5.	Registration Sunset Date	The date which is 24 months from the date of this contract
Item 6.	Date for Vendor Works Completion	The date which is 12 months from the date of this contract
Item 7.	Vendor Works Completion Sunset Date	The date which is 24 months from the date of this contract



# Signing Page

Executed by the parties

## Vendor

Signed by an authorised delegate of **Hunter and Central Coast Development Corporation ABN 94 688 782 063** and I hereby certify that I have no notice as to the revocation of such delegation:

.....  
Signature of Witness

.....  
Signature of Authorised Person

.....  
Print full name

.....  
Print full name

## Purchaser

Executed by **Horizon Newcastle Pty Limited ACN 629 323 922 as trustee for the Horizon Newcastle Unit Trust** in accordance with s 127(1) of the *Corporations Act 2001*:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Print full name

.....  
Print full name





**Guarantor**

**Executed by BLOC Holdings (ACT) Pty Ltd ACN 149 091 565** in accordance with s 127(1) of the *Corporations Act 2001*:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Print full name

.....  
Print full name

**Signed sealed and delivered by Warwick Miller** in the presence of:

)  
)  
) .....

.....  
Witness

.....  
Print full name

.....  
Address of witness

**Executed by 22 Brisbane Avenue Pty Ltd ACN 618 920 933 as trustee for the 22 Brisbane Avenue Trust** in accordance with s 127(1) of the *Corporations Act 2001*:

.....  
Signature of Director

.....  
Signature of Director/Company Secretary

.....  
Print full name

.....  
Print full name



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## Attachment 1 Purchaser's Proposal



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## Attachment 2 Seawall Works Plan



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**Attachment 3    Draft Subdivision Plan**



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## Attachment 4 Lee 5 Public Domain Concept Plan

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## Attachment 5 Development Requirements

The Development must include, and the Development Application must seek approval for:

- the upgrade of the footpath between the back of the kerb and boundary of the property along Honeysuckle Drive in accordance with the Council's requirements; and
- construction of a strip of land at least 2 metres wide along the entire northern boundary of the property as part of the waterfront promenade.



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## Attachment 6 Prescribed documents