

Dated

Planning agreement

Parties

Inner West Council ABN 19 488 017 987

**The Uniting Church in Australia Property Trust (NSW) on behalf of
Uniting (NSW.ACT)** ABN 78 722 539 923

Parties

Inner West Council ABN 19 488 017 987 (**Council**)
of Administrative Centre, 7-15 Wetherill Street, Leichhardt NSW
2040

**The Uniting Church in Australia Property Trust (NSW) on behalf of Uniting
(NSW.ACT)** ABN 78 722 539 923 (**Developer**)
of Level 5, 222 Pitt Street, Sydney NSW 2000

Introduction

- A** The Developer has sought a change to LEP 2013 to increase the height limit and floor space ratio limit for the Land.
- B** The Developer proposes to make a Development Application for redevelopment of the Land. The redevelopment of the Land will include Seniors Housing.
- C** The Developer forwarded the Council a draft public benefit offer on 17 July 2017 offering to contribute 15% Affordable Housing Units in the Development.
- D** The draft public benefit offer referred to above in Recital C accompanies the Planning Proposal by the Developer which outlines the Developer's agreement to enter into this Agreement to make the Development Contribution if Development Consent is granted to a Development Application that includes Seniors Housing.
- E** This Agreement describes the works and public benefit comprising the Development Contribution and provides for the manner in which, and the terms upon which, the Developer is to provide the Development Contribution.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Agreement:

- (1) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW);
- (2) **Affordable Housing** means housing for very low income households, low income households or moderate income households, being such as are prescribed by the regulations or as provided for in an environmental planning instrument. The maximum rent payable by any resident of affordable housing is 30% of the resident's actual household income, plus 100% of any government provided rent assistance benefits received by resident or a member of the resident's household including Commonwealth Rent Assistance;
- (3) **Affordable Housing Units** means units within the Development that provide Affordable Housing;

- (4) **Agreement** means this document, including any schedule or annexure to it, signed by the parties;
- (5) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (6) **Certificate of Practical Completion** means a written notice from the Council to the Developer stating that the Affordable Housing Units in respect of which the Council has received a Notice of Practical Completion has achieved Practical Completion on a specified date;
- (7) **Compliance Certificate** means a compliance certificate within the meaning of section 109C(1)(a)(i) of the Act to the effect that work has been completed as specified in the certificate and complies with the plans and specifications for the Development;
- (8) **Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:
- (a) is by its nature confidential;
 - (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
 - (c) any party knows or ought to know is confidential; or
 - (d) is information which may reasonably be considered to be of a confidential nature;
- (9) **Construction Certificate** means a construction certificate within the meaning of section 109C(1)(b) of the Act to the effect that work completed in accordance with specified plans and specifications will comply with the requirements for the Development;
- (10) **Council's Discretion** means:
- (a) the Council's power to make any law; or
 - (b) the Council's exercise of any statutory power or discretion;
- (11) **Defects Liability Period** means the period of 12 months beginning on the date when the Affordable Housing Units achieve Practical Completion;
- (12) **Development** means the development of the Land as described in the Development Application which includes demolition of the existing buildings, remediation where necessary, construction of building/s of up to five (5) storeys (not including parking level) comprising seniors housing, associated landscaping, car parking and communal areas;
- (13) **Development Application** means a Development Application being the development application, as defined in the Act, to be lodged by the Developer with Council seeking Development Consent for the Development, as amended from time to time;
- (14) **Development Consent** means a development consent, as defined in the Act, which authorises the carrying out of the Development on the Land and any modification to a development consent and any subsequent development consent;
- (15) **Development Contribution** means the dedication of the Affordable Housing Units;

- (16) **Development Contribution Works** means the construction of the Affordable Housing Units;
- (17) **Final Design** has the meaning given in clause 9.1;
- (18) **Governmental Agency** means any government and any governmental body whether legislative, judicial or administrative, a department, commission, authority, tribunal, agency or entity or commonwealth, state, territorial or local but does not include a governmental body in respect of any service or trading functions as distinguished from regulatory or fiscal functions;
- (19) **GST** has the same meaning as in the GST Law;
- (20) **GST Law** has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST;
- (21) **Land** means the land at 17 Marion Street, Leichhardt contained in Folio Identifiers Lot 21 DP 328, Lot 22 DP 328, Lot A DP 377714, Lot B DP 377714, Lot 24 DP 328, Lot 25 DP 328.
- (22) **Legislation** means the Act and the *Local Government Act 1993* (NSW);
- (23) **LPI NSW** means Land and Property Information Service NSW;
- (24) **Notice of Practical Completion** means a written notice from the Developer to the Council which specifies that the Developer considers that the Affordable Housing Units will achieve Practical Completion on a particular date, and includes a new Notice of Practical Completion served under clause 10.4(4)(a); and
- (25) **Occupation Certificate** means a certificate issued by the Council which allows occupation of the Affordable Housing Units;
- (26) **Party** means a party to this agreement, including their successors and assigns;
- (27) **Practical Completion** means, in respect of the Affordable Housing Units, the stage in the construction of the Affordable Housing Units when construction is complete except for minor omissions and defects and an Occupation Certificate has been issued by the Council.
- (28) **Rectification Certificate** means a compliance certificate within the meaning of section 109C(1)(a)(v) of the Act to the effect that work the subject of a Rectification Notice has been completed as specified in the notice;
- (29) **Rectification Notice** means a written notice that identifies a breach of this Agreement in respect of any work required to be carried out by the Developer as a Development Contribution, containing sufficient detail of the work to be done to enable the Council to issue a Rectification Certificate and requiring the breach to be rectified within a reasonable specified time;
- (30) **Regulation** means the *Environmental Planning and Assessment Regulation 2000*; and
- (31) **Seniors Housing** has the same meaning set out in Section 10 of the State Environmental Planning Policy (Housing for Seniors or People with a Disability) 2004 NSW under the Act.
- (32) **SPP** means a Sydney Planning Panel constituted under the Act.

1.2 Interpretation

- (1) In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
 - (a) headings are inserted for convenience only and do not affect the interpretation of this Agreement;
 - (b) if the day on which any act, matter or thing is to be done under this Agreement is not a Business Day, the act, matter or thing must be done on the next Business Day;
 - (c) a reference in this Agreement to dollars or \$ means Australian dollars and all amounts payable under this Agreement are payable in Australian dollars;
 - (d) a reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or reenactment, and any subordinate legislation or regulations issued under that legislation or legislative provision;
 - (e) a reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced;
 - (f) a reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement;
 - (g) an expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or Governmental Agency;
 - (h) where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning;
 - (i) a word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular;
 - (j) a reference to any gender denotes the other genders;
 - (k) references to the word 'include' or 'including' are to be construed without limitation;
 - (l) a thing includes the whole and each part of it separately; and
 - (m) a reference to a Party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
- (2) A provision of this Agreement must not be construed to the disadvantage of a Party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

2 Planning agreement under the Act

- 2.1 The parties agree that this Agreement is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act.

3 Application of this Agreement

- 3.1 This Agreement applies to the Land and to the Development.

4 Operation of this Agreement

- 4.1 This Agreement, when unsigned by the parties and lodged by the Developer with the Council, is an irrevocable offer from the Developer to the Council to enter into this Agreement if the Council grants Development Consent to the Development to the Developer on conditions acceptable to the Developer, in the Developer's absolute discretion.
- 4.2 This Agreement commences on the latest date on which any of the following occur:
- (1) each of the following occurs:
 - (a) the Council, SPP or the Land and Environment Court, grants Development Consent to the Development on conditions acceptable to the Developer, in its absolute discretion;
 - (b) public notice of the granting of the Development Consent has been given in accordance with the Act and the Regulation (if Development Consent is granted by the Council or SPP);
 - (c) the date the Developer notifies the Council in writing that it intends to commence the Development;
 - (2) any Class 4 action in respect of the validity of the Development Consent has been finally determined and is on conditions that are acceptable to the Developer, in its absolute discretion
 - (3) the carrying out of any part of the Development where the Development Consent is subject to a condition imposed under section 93I(3) of the Act requiring this Agreement to be entered into; and
 - (4) all the parties have signed this Agreement.
- 4.3 The Council must notify the Developer of the Development Consent in accordance with the Act and Regulation in a timely manner.

5 Confidentiality

- 5.1 The terms of this Agreement are not confidential. This Agreement may be exhibited by either party.
- 5.2 Except as stated in this Agreement, Council must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose any Confidential Information to any person without the prior written consent of the Developer.
- 5.3 If requested by a party, the other party must:
- (1) not issue, publish or authorise any media release, advertisement or publicity concerning this Agreement or its subject matter without obtaining the prior written consent of the other party; and
 - (2) use all reasonable endeavours to ensure that its officers, employees, agents, contractors and related companies do the same.
- 5.4 This clause 5 does not apply to any information which:

- (1) is generally available to the public (other than as a result of the wrongful disclosure by the Council); or
- (2) is required or authorized to be disclosed by any law.

6 Development Contributions to be made under this Agreement

- 6.1 The Developer must make the Development Contribution by registering a restriction on the title to the Land reflecting the dedication of 15% of the total number of residential units in the Development as Affordable Housing Units in the Development in perpetuity. If 15% of the total number of Affordable Housing Units in the Development does not equate to a whole number, then the number of Affordable Housing Units will be rounded down to the next whole number.
- 6.2 The Developer is a recognised affordable housing provider and the Council agrees the Developer will retain ownership of the Affordable Housing Units but that such ownership will be subject to a restriction on title preventing the change of the use or status of the Affordable Housing Units.
- 6.3 The Developer will register this Agreement over the Land at LPI NSW within 20 Business Days of the parties executing this Agreement and in accordance with Section 93H of the Act. The Council must sign any documents necessary to allow the Developer to comply with this clause.
- 6.4 The Developer acknowledges and confirms it is aware the registration of the restriction on title means the Developer's obligations under this Agreement will run with the Land and will be enforceable against it and binding on the owner of the Land from time to time as if each owner for the time being had entered into this Agreement.
- 6.5 If this Agreement is terminated, then the Council must execute the documentation and do all the things reasonably requested by the Developer to have this Agreement removed from the title to the Land (along with any caveat that may be lodged in accordance with this Agreement) within 10 Business Days of the Developer submitting to the Council the documentation necessary to remove this Agreement from the title to the Land.
- 6.6 The Council must execute the documentation and do all things reasonably requested by the Developer to have the Agreement removed from the title to the Land and the restriction on title registered on the title to the Land if the Developer has made the Development Contribution and within ten Business Days of the Developer submitting the following to the Council:
 - (1) The documentation necessary to remove this Agreement from title to the Land; and
 - (2) Further documentation to enable registration of the restriction on title by the LPI on the title to the Land.

8 Application of s94 and s94A of the Act to the Development

- 8.1 The Agreement does not exclude the operation of Division 6 Part 4 of the Act.
- 8.2 The Agreement does not provide any exemption to the Developer from any contributions pursuant to s 94 and s 94A of the Act in relation to the Development.
- 8.3 The Agreement does not exclude the Developer from any exemption available from contributions pursuant to s 94 and s 94A of the Act in relation to the Development.

8A Other Government Subsidies

- 8A.1 The Agreement does not exclude or prevent the Developer from applying for or receiving any subsidies or benefits from any government agencies, or any other agencies or service providers arising from the provision from the Development.

9 Works as condition of Development Consent

9.1 Works

The Developer must construct the Affordable Housing Units:

- (1) in accordance with the Development Consent;
- (2) in a proper and workmanlike manner; and
- (3) in accordance with the relevant Construction Certificate.

9.2 Notice of Practical Completion

The Developer must serve a Notice of Practical Completion on the Council for the Affordable Housing Units when the Developer considers the Affordable Housing Units have achieved Practical Completion.

9.3 Council's response to Notice of Practical Completion

- (1) The Council must inspect the Affordable Housing Units within 10 Business Days of receipt of a Notice of Practical Completion in respect of that Contribution Item.
- (2) Within 15 Business Days of receiving a Notice of Practical Completion the Council must (acting reasonably):
 - (a) serve a Certificate of Practical Completion on the Developer; or
 - (b) serve a written notice on the Developer specifying:
 - (i) that the Affordable Housing Units have not achieved Practical Completion; and
 - (ii) the work the Council requires the Developer to carry out in order for the Affordable Housing Units to achieve Practical Completion.
- (3) If the Council does not comply with clause 9.3(2) the Affordable Housing Unit are deemed to have been subject to a Certificate of Practical Completion on the date specified in the Notice of Practical Completion.
- (4) If the Council serves a notice on the Developer under clause 9.3(2)(b) the Developer must:
 - (a) carry out the work specified in the notice within a reasonable time and then serve on the Council a new Notice of Practical Completion; or
 - (b) serve a notice on the Council disputing the matters set out in the notice served under clause 9.3(2)(b).

9.4 Dispute resolution provisions apply

If the Developer serves a notice on the Council under clause 9.3(4)(b), clause 12 applies.

10 Rectification of defects

- 10.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 10.2 The Developer must comply with a Rectification Notice at its cost.
- 10.3 When the Developer considers that it has complied with a Rectification Notice it may request the Council to issue a Rectification Certificate relating to the work the subject of the relevant Rectification Notice.
- 10.4 Within 10 Business Days of receipt of the Developer's request under clause 10.3, the Council must:
- (1) issue a Rectification Certificate to the Developer if it is satisfied that the Developer has complied with the relevant Rectification Notice; or
 - (2) give the Developer notice of its decision to refuse to issue a Rectification Certificate containing sufficient detail of the reasons for its decision so as to inform the Developer of the work that needs to be done to enable the Council to issue a Rectification Certificate.
- 10.5 Without limiting any other right of the Developer, on receipt of a notice under clause 10.4(2), the Developer may obtain a Compliance Certificate from an accredited certifier, appointed by agreement between the parties acting reasonably, in relation to the work the subject of the Rectification Notice.
- 10.6 A Rectification Certificate or a Compliance Certificate referred to in clause 10.5 discharges the Developer from any further obligation to comply with a Rectification Notice.
- 10.7 If the Developer does not fully comply with a Rectification Notice, the Council may rectify the defect and may recover the reasonable cost of doing so as a debt due in a court of competent jurisdiction.

11 Force majeure – unforeseen events causing delay

- 11.1 In this clause 11, **Prescribed Event** means any of the following events:
- (1) act of God;
 - (2) war, terrorism, riot, insurrection, vandalism or sabotage;
 - (3) strike, lockout, ban, limitation of work or other industrial disturbance that is statewide; or
 - (4) law, rule or regulation of any government or Governmental Agency, and executive or administrative order or act of general or particular application;
 - (5) fire;
 - (6) lightning;
 - (7) storm or other adverse weather conditions;
 - (8) explosion;
 - (9) civil commotion;
 - (10) national emergency (whether in fact or law);

- (11) martial law;
- (12) sabotage;
- (13) power surge or failure;
- (14) breakdown of plant, machinery or equipment;
- (15) shortage of labour, transportation, fuel, power or plant, machinery, equipment or material,

which:

- (16) is unforeseen by the Affected Party;
- (17) is beyond the control of the Affected Party; and
- (18) occurs without the fault or negligence of the Affected Party.

11.2 If a Party (**Affected Party**):

- (1) is prevented from or delayed in performing an obligation (other than to pay money) by a Prescribed Event;
- (2) as soon as possible after the Prescribed Event occurs, notifies the other party of full particulars of:
 - (a) the Prescribed Event;
 - (b) the effect of the Prescribed Event on performance of the Affected Party's obligations;
 - (c) the anticipated period of delay; and
 - (d) the action (if any) the Affected Party intends to take to mitigate or remove the effect and delay; and
- (3) promptly and diligently acts to mitigate or remove the Prescribed Event and its effect;

then the obligation is suspended during, but for no longer than, the period the Prescribed Event continues and such further period as is reasonable in the circumstances.

11.3 Subject to clause 11.4, if an Affected Party is prevented from or delayed in performing the obligation by the Prescribed Event for at least 60 days, any party may by notice to the other Party terminate this Agreement.

11.4 Where the Developer is the Affected Party, the Developer will not be entitled to terminate this Agreement under clause 11.3 except in circumstances where the Development is totally or substantially destroyed by a Prescribed Event and the Developer gives written notice to the Council that it will no longer be proceeding with the Development.

11.5 The Party which is not the Affected Party must use reasonable endeavours to remove or mitigate the Prescribed Event and its effects.

11.6 Nothing in clause 11.2(3) or clause 11.5 obliges either party to settle any strike, lockout, ban, limitation of work or other industrial disturbance.

11A. Reporting

11A.1 On demand by Council (but not more than once every 12 months), the Developer is to provide Council with the leasing and rental details for Affordable Housing Units, evidencing

that the requirements of clause 6.1 are being complied with.

11B. Non-Compliance

- 11B.1 The Developer agrees to pay to Council's affordable housing fund any rent paid by the residents for any Affordable Housing Unit that exceeds 30% of the resident's actual household income plus 100% of any government provided rent assistance benefits received by the resident or any member of the resident's household including Commonwealth Rent Assistance.

12 Dispute resolution

- 12.1 If a dispute arises in connection with this Agreement, a Party to the dispute must give to the other party or Parties to the dispute notice specifying the dispute and requiring its resolution under this clause 12 (**Notice of Dispute**).
- 12.2 A person from each Party with sufficient authority to resolve the subject matter of a Notice of Dispute must confer within 5 Business Days after the Notice of Dispute is given to try to resolve the dispute.
- 12.3 If the dispute is not resolved within 10 Business Days after the Notice of Dispute is given to the other party or Parties (**First Period**) (despite the parties acting in good faith and using all reasonable endeavours to resolve the dispute), either Party may by written notice to the other party require the dispute to be submitted to expert determination.
- 12.4 If a dispute is not resolved under clause 12.3 the dispute may by agreement between the parties, both acting reasonably having regard to the nature of the dispute, be resolved by expert determination, in which event:
- (a) the dispute must be determined by an independent expert in the relevant field agreed upon and appointed jointly by the Council and the Developer or in the event that no agreement can be reached or appointment made within 20 Business Days, appointed on application of a party by the then current President of the Law Society of New South Wales;
 - (b) The expert must be appointed in writing and the terms of appointment must not be inconsistent with this clause;
 - (c) The determination of the dispute by such expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
 - (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
 - (e) Each party will bear its own costs in connection with the process and the determination by the expert together with an equal proportion of the expert's fees and costs; and
 - (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except where the determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal and any party may commence litigation in relation to the dispute if it has not been resolved within 20 Business Days of the expert giving his or her decision.
- 12.5 If the dispute is not finally resolved in accordance with this clause 12, either party is at liberty to litigate the dispute.
- 12.6 Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

- 12.7 Subject to clause 12.5, a party must not commence or maintain a court action or proceeding upon a dispute in connection with this Agreement until the dispute has been referred to an expert and determined under this clause 12.
- 12.8 This clause 12 continues in force even where the Agreement has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the Agreement for any reason.
- 12.9 This clause 12 applies even where the Agreement is otherwise void or voidable.
- 12.10 The Parties must:
- (1) keep confidential any information or documents disclosed under this clause; and
 - (2) only use any information or documents disclosed under this clause to attempt to resolve the dispute.

13 Enforcement

- 13.1 Without limiting any other provision under this Agreement, during the period commencing on the date of this Agreement until such time as the restriction on title is registered on the title for each of the Affordable Housing Units (clause 6.6) or this Agreement is terminated, the Council may lodge and maintain a caveat over the Land precluding any dealing which is inconsistent with this Agreement.
- 13.2 If the Council lodges a caveat in accordance with clause 13.1, then the Council must promptly do all things reasonably required to ensure that the caveat does not prevent or delay the registration of:
- (i) this Agreement;
 - (ii) any plan of consolidation or plan of subdivision contemplated, required or permitted under this Agreement or any Development Consent; and
 - (ii) any other dealing contemplated, required or permitted under this Agreement or any Development Consent.
- 13.3 The Council must promptly do all things reasonably required to remove the caveat from the titles for the Land once clause 6.6 takes effect or in the event that this Agreement is terminated.
- 13.4 The Council agrees registration of a caveat is adequate security to the Council for the performance of the Developer's obligations under this Agreement.

14 Notices

- 14.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (1) delivered or posted to that Party at its address set out below;
 - (2) emailed to that Party at its email address set out below.

(a) **Council**

Attention: The General Manager

Address: Administrative Centre, 7-14 Wetherill Street, Leichhardt NSW

2040;

Email:

(b) **Developer**

Attention: Gabriel Thielbeer

Address: Level 5, 222 Pitt Street, Sydney NSW 2000

Email: gthielbeer@uniting.org

- 14.2 If a Party gives the other Party 3 Business Days' notice of a change of its address or email address, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or emailed to the latest address.
- 14.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (1) if it is sent by post, 2 Business Days after it is posted;
 - (2) if sent by email before 5pm on a Business Day at the place of receipt, on the day and at the time it is sent (as recorded on the sender's equipment) and otherwise at 9am on the next Business Day at the place of receipt; or
 - (3) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 14.4 Despite clause 14.3:
- (1) an email message is not treated as given or received if within 2 hours after the time sent the sender receives an automated message that the email has not been delivered; and
 - (3) an email message is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 2 hours after the transmission ends or by 11am on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- 14.5 Any Notice by a party may be given and may be signed by its solicitor.

15 Approvals and consent

- 15.1 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party. A Party is not obliged to give its reasons for giving or withholding consent or for giving consent subject to conditions.

16 Assignment and dealings

- 16.1 The Developer may assign or otherwise deal with this Agreement with the prior written consent of the Council, which consent must not be unreasonably withheld.
- 16.2 The Council is required to give its consent under clause 16.1 if:
- (1) the Developer gives the Council at least 10 Business Days' notice of the proposed assignment;
 - (2) the proposed assignee executes a deed with the parties under which:

- (a) the proposed assignee agrees to perform all of the obligations of the Developer under this Agreement which have not already been performed by the Developer;
 - (b) the proposed assignee is bound by this Agreement as if the proposed assignee were named in this Agreement in place of the Developer; and
 - (c) the Developer is released from its obligations under this Agreement;
 - (3) the Developer pays all reasonable legal fees incurred by the Council in relation to the proposed assignment.
- 16.3 On receipt on the deed referred to in clause 16.2(2) the Council must execute the deed so that the Developer is released from its obligations under this Agreement.

17 Costs

- 17.1 The Developer agrees to pay Council its costs and expenses connected with the negotiation, preparation and execution of this Agreement (including valuation and legal fees) up to \$20,000 including GST.
- 17.2 Council agrees to bear its own costs and expenses connected with the negotiation, preparation and execution of this Agreement (including valuation and legal fees) that exceed \$20,000 including GST.
- 17.3 Subject to clause 16.3, the Developer must pay all stamp duty and other government imposts payable in connection with this Agreement and all other documents and matters referred to in this Agreement when due or earlier if requested in writing by the Council.

18 Entire agreement

- 18.1 Subject to clause 18.2, this Agreement:
- (1) is the entire agreement and understanding between the Parties on everything connected with the subject matter of this Agreement; and
 - (2) supersedes any prior agreement or understanding on anything connected with that subject matter.
- 18.2 The explanatory note prepared in relation to this Agreement under clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (NSW) must not be used to assist in construing this Agreement.

19 Further acts

- 19.1 Each Party must promptly execute all documents and do all things that another Party from time to time reasonably requests to affect, perfect or complete this Agreement and all transactions incidental to it.

20 Governing law and jurisdiction

- 20.1 This Agreement is governed by the law of New South Wales. The Parties submit to the non-exclusive jurisdiction of its courts and courts of appeal from them. The Parties will not object to the exercise of jurisdiction by those courts on any basis.

21 Joint and individual liability and benefits

- 21.1 Except as otherwise set out in this Agreement, any agreement, covenant, representation or warranty under this Agreement by 2 or more persons binds them jointly and each of them

individually, and any benefit in favour of 2 or more persons is for the benefit of them jointly and each of them individually.

22 No fetter

- 22.1 Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

23 Representations and warranties

- 23.1 The Parties represent and warrant that they have power to enter into this Agreement and comply with their obligations under the Agreement and that entry into this Agreement will not result in the breach of any law.

24 Severability

- 24.1 If a clause or part of a clause of this Agreement can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.
- 24.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

25 Modification

- 25.1 No modification of this Agreement will be of any force or effect unless it is in writing and signed by the Parties to this Agreement.

26 Waiver

- 26.1 The fact that a Party fails to do, or delays in doing, something the Party is entitled to do under this Agreement, does not amount to a waiver of any obligation of, or breach of obligation by, another Party.
- 26.2 A waiver by a Party is only effective if it is in writing.
- 26.3 A written waiver by a Party is only effective in relation to the particular obligation or breach in respect of which it is given. It is not to be taken as an implied waiver of any other obligation or breach or as an implied waiver of that obligation or breach in relation to any other occasion.

27 Goods and services tax

- 27.1 Words or expressions used in this clause, which have a particular meaning in the GST Law (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.
- 27.2 The parties believe that there is no GST liability in respect of the grant of the Development Consent by Council or the payment or provision of the Development Contribution because the Development Consent is a non-monetary contribution and:
- (a) it is not consideration for the grant of the Development Consent by Council in accordance with section 82-10(1) of the GST Act; and
 - (b) the grant of the Development is not consideration for the supply of the non-

monetary Development Contribution under section 82-5 of the GST Act.

- 27.3 Despite clause 27.2, to the extent that the Commissioner of Taxation, a court or tribunal determines that any supply made under or in connection with this Agreement is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

Executed as an agreement.

Signed for and on behalf of **Inner West Council** by its authorised representative in the presence of:

.....
Signature of witness

.....
Signature of authorised representative

.....
Name of witness
(BLOCK LETTERS)

.....
Name of authorised representative
(BLOCK LETTERS)

.....
Address of witness

The Common Seal of The Uniting Church)
in Australia Property Trust (NSW) was)
hereunto affixed on)
 of 201 pursuant to a resolution of
the trust at a duly convened meeting in the
presence:

.....
Member

.....
Member

.....
(Print) Full Name

.....
(Print) Full Name

