

DRAFT Planning Agreement – 75 Mary Street, St Peters

JVM Holdings Pty Ltd ACN 108 640 642 as trustee for the JVM Family Trust

Chalak Holdings Pty Ltd ACN 108 830 084 as trustee for the Chalak Family Trust

Inner West Council
ABN 19 488 017 987

DRAFT FOR EXHIBITION 19.5.20

Table of contents

RECITALS	2
IT IS AGREED	2
2. DEFINITIONS AND INTERPRETATION	3
3. REGISTRATION AND SECURITY	7
4. REQUIREMENT TO PROVIDE PUBLIC BENEFITS	10
5. LAND OWNER'S WORKS	13
6. CONSTRUCTION OF THE LAND OWNER'S WORKS	14
7. DEFECTS LIABILITY PERIOD.....	16
8. DISPUTE RESOLUTION	16
9. GST	16
10. LIMITATION OF LIABILITY	17
12. VARIATION	19
13. ASSIGNMENT AND NOVATION	19
14. GENERAL PROVISIONS	20
Schedule 1 – Details	23
Schedule 2 - Requirements	
Schedule 3 – Public Benefits Plan.....	26
Schedule 4 - Deed of Novation	
Schedule 5 – Section 88B Instrument	29
Schedule 6 – Studio Specifications	34

THIS AGREEMENT is made on

BETWEEN JVM Holdings Pty Limited ACN 108 640 642 as trustee for the
JVM Family Trust

Chalak Holdings Pty Ltd ACN 108 830 084 as trustee for the Chalak
Family Trust
(**Land Owner**)

AND Inner West Council
ABN 19 488 017 987
of 2-14 Fisher Street, Petersham NSW 2049
(**Council**)

RECITALS

- A. The Land is owned by the Land Owner.
- B. The Land Owner has lodged a Planning Proposal seeking a change to the *Marrickville Local Environment Plan 2011*.
- C. The Planning Proposal, if approved by the making of the Amending LEP, will, amongst other things, permit with development consent a range of commercial, community and residential uses.
- D. This Agreement reflects the offer made and accepted by Council for public benefits to be delivered if development is carried out relying on the Amending LEP.

IT IS AGREED

1. OPERATIVE PROVISIONS

1.1 Planning Agreement under the Act

The Parties agree that this Agreement is a planning agreement pursuant to section 7.4 of the Act.

1.2 Scope and Application of this Agreement

- (a) This Agreement applies to the:
 - (i) Land;
 - (ii) Planning Proposal; and
 - (iii) Proposed Development.
- (b) This Agreement binds the Parties and applies to the Land on which the Proposed Development is to be carried out.

1.3 This Agreement does not exclude the application of sections 7.11 and 7.12 of the Act in connection with the Development Application and the Development Consent for the Proposed Development

1.4 Operation

This Agreement becomes operative from the date that the Amending LEP commences as an environmental planning instrument in accordance with section 3.24) of the Act except for clauses 1, 2 and 3 which are effective and binding on the Parties from the date that this Agreement is executed.

1.5 This Agreement terminates upon the earlier of:

- (a) provision of all of the Public Benefits by the Land Owner;
 - (b) an effective Court declaration or order that the Amending LEP is invalid; or
 - (c) termination pursuant to the terms of this Agreement.
- 1.6** In the event that the Planning Secretary decides at any time not to make the Amending LEP under section 3.36(b) of the Act and informs a party in writing of that decision, then either party may terminate this Agreement by not less than 28 days' notice to the other.
- 1.7** In the event that this Agreement is terminated under clause 1.5 or 1.6, the Council agrees to promptly cooperate with the Land Owner in the removal of any caveat or registration of this Agreement on the title to the Land.

2. DEFINITIONS AND INTERPRETATION

2.1 Definitions

In this Agreement, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Item 5 of **Schedule 1** or any new address notified by any party to all other Parties as its new Address for Service.

Amending LEP means a local environmental plan that applies to the Land and amends Marrickville LEP as contemplated in the Planning Proposal.

Approval means any approvals, consents, certificates, permits, endorsements, licences, conditions or requirements (and any modifications or variations to them) which may be required by law or an Authority.

Artist Studios means artist studios with a cumulative area (including shared toilet facilities) of approximately 239 m² located within the ground floor of the proposed building marked for Artist Studios on the Public Benefits Plan.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department and includes a certifier accredited under Part 6 of the Act.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5:00pm on that day.

Central Open Space means that part of the Public Open Space marked Central Open Space in the Public Benefits Plan.

Completion is that stage in the execution of the Land Owner's Works or relevant part when the Land Owner's Works are complete except for minor Defects:

- (a) which do not prevent the Land Owner's Works from being reasonably capable of being used for their intended purpose;
- (b) which the Land Owner has reasonable grounds for not promptly rectifying; and
- (c) rectification of which will not prejudice the convenient use of the Land Owner's Works.

Construction means and includes design, engineering fabrication and building work required to physically erect or install the relevant structure or other.

Construction Certificate has the same meaning as in the Act.

Costs means the costs of and directly attributable to the performance of the Land Owner's Works including:

- (a) preparation of design and construction drawings for the relevant works;
- (b) geotechnical, engineering or other expert or consultant advice;
- (c) costs of approvals;
- (d) costs of materials used or installed (as the case may be)
- (e) labour, equipment hire and other costs associated with excavation, construction and remediation.

Court means the New South Wales Land and Environment Court or any other court of competent jurisdiction.

Dealing means selling, transferring and assigning. For the avoidance of doubt it does not include leases, sub-leases, licenses, sub-licences, mortgages, charges and any other dealing in connection with the financing of the Land or the Proposed Development. **Deal** has the same meaning.

Deed of Novation means the Deed identified in **Schedule 4**.

Defect means any error, omission, shrinkage or blemish in appearance or other fault in the Land Owner's Works caused by the Land Owner, its employees, agents or contractors, which prevents the Land Owner's Works from being reasonably capable of being used for their intended purpose but excludes any damage caused to the Land Owner's Works by a third party (other than the Land Owner's employees, agents or contractors) and fair wear and tear as a result of use of these facilities.

Defects Liability Period means the period of 12 months from the date on which the Land Owner's Works or a part of the Land Owner's Works reach Completion.

Development Application has its meaning as in the Act.

Development Consent has its meaning as in the Act.

Government Agency means:

- (a) a government or government department or other body;
- (b) a governmental, semi-governmental or judicial person; or
- (c) a person (whether autonomous or not) who is charged with the administration of a law.

GST has the same meaning as in the GST Law.

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.

Guarantee means an irrevocable unconditional bank guarantee or documentary performance bond which must:

- (a) be denominated in Australian dollars;
- (b) be an unconditional undertaking;
- (c) be signed and issued by a bank licensed to carry on business in Australia, an Australian Prudential Regulation Authority (APRA) regulated authorised deposit taking institution or an insurer authorised by APRA to conduct new or renewal insurance business in Australia having at all times an investment grade security rating from an industry recognised rating agency of at least:
 - (i) BBB + (Standard & Poors and Fitch);

- (ii) Baa 1 (Moody's); or
- (iii) Bbb (Bests);
- (d) be issued on behalf of the Land Owner;
- (e) have no expiry or end date;
- (f) state the beneficiary as the Council;
- (g) be irrevocable;
- (h) state the Guarantee Amount as the minimum amount required by this document to be lodged as security;
- (i) state the purpose of the security as required in accordance with this document; and
- (j) be on such other terms approved by the Council.

Index Number means the Consumer Price Index (Sydney all groups) published by the Australian Bureau of Statistics from time to time.

Insolvency Event means:

- (a) having a controller, receiver, manager, administrator, provisional liquidator, liquidator or analogous person appointed;
- (b) an application being made to a court for an order to appoint a controller, provisional liquidator, trustee for creditors or in bankruptcy or analogous person to the person or any of the person's property
- (c) the person being taken under section 459F(1) of the Corporations Act to have failed to comply with a statutory demand;
- (d) an application being made to a court for an order for its winding up;
- (e) an order being made, or the person passing a resolution, for its winding up;
- (f) the person:
 - (i) suspending payment of its debts, ceasing (or threatening to cease) to carry on all or a material part of its business, stating that it is unable to pay its debts or being or becoming otherwise insolvent; or
 - (ii) being unable to pay its debts or otherwise insolvent;
- (g) the person taking any step toward entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors;
- (h) a court or other authority enforcing any judgment or order against the person for the payment of money or the recovery of any property; or
- (i) any analogous event under the laws of any applicable jurisdiction,

unless this takes place as part of a solvent reconstruction, amalgamation, merger or consolidation that has been approved by the other party.

Instrument means the terms of the instrument identified in Schedule 5, as amended in accordance with this Agreement.

Land means the land identified in Item 3 of **Schedule 1** of this Agreement, comprising the land the subject of this Agreement and the Planning Proposal.

Land Owner's Works means the provision of the Artist Studios to be undertaken by the Land Owner as set out in this Agreement and as refined and developed in accordance with this Agreement.

Marrickville LEP means the *Marrickville Local Environment Plan 2011*.

Monetary Contribution means an amount of \$2,000,000 payable to Council of which a minimum of 50% is to be used by Council for affordable housing and the remainder for public infrastructure in the vicinity of the Land.

Occupation Certificate has the same meaning as in the Act.

Party means a party to this agreement, and includes their successors and assigns.

Planning Proposal means the planning proposal to amend the Marrickville LEP with Department of Planning and Environment reference PGR_2016_MARRI_001_00 to:

- (a) rezone part of the Land from IN2 industrial and R2 Low Density Residential, to B4 Mixed Use;
- (b) increase the maximum floor space ratio from 0.6:1 and 0.95:1, to 2.2:1 across the Land; and
- (c) increase the maximum building height from 9.5m and no building height, to varying heights between 9.5m and 29m across the Land,

and subject to a Gateway Determination dated 10 October 2017 as amended by the proponent.

Principal Certifying Authority has the same meaning as Principal Certifier in the Act.

Proposed Development means the redevelopment of the Land into a mixed use precinct incorporating commercial, community and residential uses relying on the Amending LEP but excluding any subdivision of the Land.

Public Benefits Plan means the plan attached in Schedule 3 of this Agreement depicting the Land and the location of the Public Benefits.

Public Benefits means the Monetary Contribution, Public Open Space and the Land Owner's Works.

Public Open Space means provision of open space accessible to the public (by registration of the Instrument) as shown in the Public Benefits Plan being at least 600m² for the Central Open Space and at least 250m² for the Roberts Street Open Space.

Quantity Surveyor means an independent and qualified quantity surveyor as agreed by the Parties.

Register means the Torrens Title register maintained under the Real Property Act 1900.

Related Entity has the same meaning as in the Corporations Act 2001 (Cth).

Roberts Street Open Space means that part of the Public Open Space marked Roberts Street Open Space in the Public Benefits Plan.

Transferred Land means the stratum or strata lot containing the Artist Studios to be constructed and transferred to the Council in accordance with this Agreement.

2.2 Interpretation

In this Agreement unless the context clearly indicates otherwise:

- (a) a reference to this Agreement or another document means this agreement or that other document and any document which varies, supplements, replaces, assigns or novates this Agreement or that other document;
- (b) a reference in this Agreement to any law, legislation or a legislative provision includes any statutory modification, substitution, amendment or re-enactment and any subordinate legislation or regulations issued under that legislation or legislative provision. For the avoidance of doubt, this does not apply to the specifications and standards identified in the Agreement;
- (c) a reference to a body or authority which ceases to exist is a reference to either a body or authority that the Parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the introduction, a clause, schedule or annexure is a reference to the introduction, a clause, a schedule or an annexure to or of this Agreement;
- (e) clause headings and the table of contents are inserted for convenience only and do not form part of this Agreement;
- (f) the introduction, schedules (if any) and annexures (if any) form part of this Agreement;
- (g) the introduction accurately sets out the circumstances in which the Parties have entered into this Agreement;
- (h) 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.
- (i) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (j) a reference to a natural person includes their personal representatives, successors and permitted assigns;
- (k) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this Agreement;
- (l) a requirement to do anything includes a requirement to cause that thing to be done and a requirement not to do anything includes a requirement to prevent that thing being done;
- (m) including and includes are not words of limitation;
- (n) the words at any time mean at any time and from time to time;
- (o) a reference to a time is to that time in New South Wales;
- (p) a word that is derived from a defined word has a corresponding meaning;
- (q) the singular includes the plural and vice-versa;
- (r) words importing one gender include all other genders;
- (s) a reference to a thing includes each part of that thing; and
- (t) neither this Agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

3. REGISTRATION AND SECURITY

3.1 Registration of Agreement

- (a) The Land Owner:
 - (i) consents to the registration of this document at the NSW Land Registry Services on the certificate of title to the Land which must occur no later than prior to the issue of any Construction Certificate for above-ground works for any aspect of the Proposed Development;
 - (ii) warrants that it has or will obtain all consents to the registration of this document on the certificate of title to the Land; and
 - (iii) (must within 10 Business Days of a written request from the Council (provided it is not earlier than the time period required under (i)), do all things necessary to allow the Council to register this document on the certificate of title to the Land, including but not limited to:
 - (A) producing any documents or letters of consent required by the Registrar-General of the NSW Land Registry Services;
 - (B) providing the production slip number when the Land Owner produces the certificate of title to the Land at the NSW Land Registry Services; and
 - (C) providing the Council with a cheque for registration fees payable in relation to registration of this document at NSW Land Registry Services.
- (b) The Council and the Land Owner must act promptly in undertaking the registration and in complying with and assisting to respond to any requisitions raised by the NSW Land Registry Services that relate to registration of this document.

3.2 Release and discharge of Agreement

- (a) The Council agrees to promptly do all things reasonably required by the Land Owner to release and discharge this Agreement with respect to any part of the Land upon the Land Owner providing all of the Public Benefits in respect of that part of the Land.
- (b) Should the Land Owner request Council to extinguish the Agreement on folio(s) of the Register for the Land, at any time, the Council will consider that request having regard to the:
 - (i) remaining Public Benefits to be provided; and
 - (ii) the provision of security or other arrangements to Council's satisfaction to secure the performance of any outstanding obligations.
- (c) The Parties agree that if the Land is subdivided such that development takes place in more than one stage, the registration of this Agreement will be removed from the title of any allotment of the Land subject to a strata scheme under the *Strata Schemes (Freehold Development) Act 1973* save where the strata scheme covers the Transferred Land in which case the Agreement must remain registered on the title of the Transferred Land until such time that the transfer or dedication has taken place. It will be Council's responsibility to remove the registration of this Agreement from the title after transfer has taken place.

3.3 Caveat

- (a) Without limiting any other provision of this Agreement, after execution of this Agreement and until such time as the registration of this Agreement is completed, the Land Owner agrees that Council may, at any time, lodge a

caveat over the Land precluding any Dealing which is inconsistent with this Agreement.

- (b) If the Council lodges a caveat in accordance with clause 3.3(a), then the Council must immediately 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 subdivision contemplated, required or permitted under this Agreement;
 - (iii) any other Dealing contemplated, required or permitted under this Agreement;
 - (iv) a Dealing where there has been compliance (if required) with clause 13 of this Agreement; and
 - (v) the transfer of any part of the Land to a Related Entity of the Land Owner or a trust or fund of which a related body corporate of the Land Owner is trustee, manager or responsible entity.
- (c) The Council must promptly do all things reasonably required to remove the caveat from the Register for the Land once this Agreement has been registered on the Register.

3.4 Provision of Bank Guarantee

- (a) The Land Owner must deliver the Guarantee for \$3,226,500 before the issue of the first Construction Certificate for the Proposed Development.
- (b) The Land Owner is entitled to and Council will accept a replacement of the Guarantee provided under clause (a) with a Guarantee for \$322,650 for and during the Defects Liability Period.
- (a) The Land Owner agrees that Council may make an appropriation from the Guarantee in such amount as the Council, acting reasonably, thinks appropriate if:
 - (i) the Land Owner fails to comply with clause 5.3 of this document (provision of detailed design drawings and detailed cost estimate); ;
 - (ii) the Land Owner fails to comply with clause 4.1 (payment of Monetary Contribution);
 - (iii) the Land Owner fails to deliver the Public Benefits in accordance with clause 4;
 - (iv) an Insolvency Event occurs in respect of the Land Owner;
 - (v) the Land Owner fails to rectify a Defect in accordance with clause 7 of this Agreement;
 - (vi) the detailed designs for the Artist's Studios are not finalised between the parties within 12 months of the date of issue of a Construction Certificate that approves the construction of any structures above the ground floor of the Proposed Development; or
 - (vii) there has been a breach of this document and the Council incurs any other expense or liability in exercising its rights and powers under this document.
- (b) Any amount of the Guarantee appropriated by Council in accordance with clause 3.4 must be applied only towards:
 - (i) the costs and expenses reasonably incurred by Council rectifying

- any default by the Land Owner under this document; and
 - (ii) carrying out any works required to achieve the Public Benefits.

Council must return to the Land Owner any other amounts.

3.5 Expenditure by the Council

- (a) If the Council claims on the Guarantee to Complete the Land Owner's Works, then the Council:
 - (i) is not required to expend more money than the Guarantee Amount and may elect not to carry out items of the Developer's Works to ensure that those works can be carried out for an amount equal to or less than the Guarantee Amount;
 - (ii) may expend more than the Guarantee Amount but only if the Land Owner agrees that the expenditure is reasonable or otherwise the additional expenditure is determined to be reasonable by an expert appointed by the parties under clause 8. Any such agreed or determined additional expenditure in excess of the Guarantee Amount will be deemed to be a debt due and owing to the Council by the Land Owner.-
- (b) If the Council calls upon the Guarantee in accordance with this clause 3 then the Land Owner must immediately provide to the Council a replacement Guarantee to ensure that, at all times until the Guarantee is released in accordance with paragraph (b), the Council is in possession of a Guarantee for a face value equivalent to the Guarantee Amount.
- (c) If:
 - (i) the monies secured by the Guarantee have not been expended;
 - (ii) the Council has concurred with Completion in accordance with clause 6.5 of this document, and
 - (iii) the Council has been provided with the security for the Defects Liability Period in accordance with 3.4(b), then the Council will promptly return the Guarantee to the Landowner following the issue of a notice pursuant to clause 6.5 of this document.
- (d) If, following expiry of the Defects Liability Period, the Council is satisfied that all defects have been rectified in accordance with clause 8 then the Council must promptly return to the Land Owner the portion of the Guarantee retained by the Land Owner as security for the Defects Liability Period.

4. REQUIREMENT TO PROVIDE PUBLIC BENEFITS

4.1 Monetary Contribution prior to Construction Certificate

- (a) The Land Owner must pay the Monetary Contribution to Council prior to the issue of a Construction Certificate for the Proposed Development.
- (b) Payment can be made by cheque.

4.2 Artist Studios prior to Occupation Certificate

- (a) The Land Owner (at its cost) must carry out all steps required to create the Artist Studios including provision of fit out and services as per the Studio

Specification at Schedule 6.

- (b) The Land Owner must dedicate or transfer the Artist Studios in a stratum or strata lot to the Council (including making any necessary subdivision applications).
- (c) The Artist Studios and dedication of the Transferred Land under this Agreement must occur prior to the issue of the first Occupation Certificate for a residential apartment on the Land within the Proposed Development.

4.3 Transferred Land

- (a) The Land Owner and the Council expressly acknowledge and agree that the Transferred Land is of value, but nonetheless is to be transferred to the Council for no consideration.
- (b) Subject to the other terms of this agreement including Schedule 2, the Land Owner will not bring or make against Council any additional claim, offset or credit for the value of that Transferred Land.
- (c) The final dimensions and location of the Transferred Land are subject to the scope and refinement of the Land Owner's Works under this Agreement, the conditions of any Development Consent or Construction Certificate for the Proposed Development and survey but will not be less than 239m².
- (d) The Transferred Land to Council will be subject to the terms in the instrument identified in Schedule 5 (**Instrument**) attaching to the lot, including:
 - (i) Item 1 - Council will maintain all assets within the Land for the Artist Studios, inclusive of services that benefit the Land for the Artist Studios;
 - (ii) Item 2 - a restriction on use that the Artist Studios must be a publicly operated community space for artists or creative industries
- (e) Prior to registration of the Plan of Subdivision creating the Transferred Land lot, the Land Owner must provide Council with a draft schedule of shared facilities and services that itemises the proportionate responsibility for those facilities and services and a report from a Quantity Surveyor verifying the proportionate allocation to the Transferred Land as being fair and equitable considering the intended use and capacity of the Artist Studios on the Transferred Land and a building management statement (**BMS**).
- (f) The Land Owner and Council, acting reasonably, must agree to a building management statement as referred to in clause 4.3(e).
- (g) Within 20 Business Days of Council receiving the documents in sub-clause (e), Council, acting reasonably, will give the Land Owner written notice as to whether or not the draft proportionate allocation of responsibility for shared facilities and BMS is satisfactory and if not include the reasons as to why they are not satisfactory.
- (h) If the Parties cannot agree on the allocation or BMS, then either Party can refer the dispute to be resolved by adopting the procedures in clause 8. If agreement cannot be reached subsequent to compliance with clause 8 then the dispute is to be determined by an expert as follows:
 - (i) the Parties are to attempt to reach agreement on the expert to be appointed;
 - (ii) if the Parties cannot agree on an expert within 15 Business Days after service of a notice intending to refer the dispute to an expert, then either party may request a Councillor or President (NSW Chapter) of the Australian Institute of Quantity Surveyors to appoint

a member of that institute as the expert quantity surveyor;

- (iii) both Parties, within 20 Business Days of the date of appointment of the expert, may make written submissions to the expert (and provide a copy to the other party) on the matter the subject of the dispute;
 - (iv) the Parties agree that the hearing by the expert will be concluded within 30 Business Days and the expert's decision be given within 30 Business Days of the date of appointment of the expert and shall use their best endeavours to see that these time frames are met; and
 - (v) the experts decision is final and binding on the Parties and the cost of the expert's decision is to be borne by the Parties in the shares the expert determines.
- (i) The Land Owner must register the Instrument and BMS as agreed or determined under this clause by the dates and times specified in this Agreement.
 - (j) The Council will accept the transfer of the Transferred Lands including by signing all necessary documentation.
 - (k) In the event that the Land Owner fails to transfer the Transferred Lands to Council in accordance with the relevant timing requirements identified within this agreement., then Council may compulsorily acquire the following land or right for \$1.00 in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW):
 - (i) the relevant part of the Transferred Lands but subject to the restrictions and covenants contemplated in this Agreement; and
 - (ii) if necessary for access to the relevant part of the Transferred Lands, easements for access and services, but only across those areas contemplated in the Development Application for the Proposed Development.
 - (l) The Land Owner and the Council agree that:
 - (i) subclause (k) is an agreement between the Land Owner and the Council for the purposes of section 30 of the *Land Acquisition (Just Terms Compensation) Act 1991* (NSW);
 - (ii) in clause 4.3, the Parties have agreed on all relevant matters concerning the compulsory acquisition and the compensation to be paid for the acquisition; and
 - (iii) the Land Owner must pay the Council, promptly on demand, an amount equivalent to all costs incurred by the Council in acquiring the whole or any part of the Transferred Lands as contemplated by subclause (k).

4.4 Public Open Space

The Land Owner (at its cost) must carry out all steps required to create the Public Open Space including by registering the Instrument to ensure that the Public Open Space is accessible to the public prior to the issue of the first Occupation Certificate for a residential apartment on the Land within the Proposed Development.

4.5 Directions by the Council

The Land Owner must comply with any reasonable directions by the Council in respect of the transfer of the Transferred Land to the Council. The Parties agree that this clause does not permit Council to require changes to the scope of or terms

of transfer of the Transferred Land.

4.6 Identification of Transferred Land

The Land Owner, in consultation with the Council, acting reasonably, must identify the location of the Transferred Land and Public Open Space within the subdivision plan that is to accompany any development application for construction and subdivision of the Proposed Development.

4.7 Extinguishment or creation of interests on Transferred Land

- (a) Prior to the dedication or transfer of the Transferred Land to the Council, the Land Owner must:
 - (i) extinguish all leases and licences over the Transferred Land; and
 - (ii) use its best endeavours to extinguish all redundant encumbrances and those that, in the Council's reasonable opinion, would unreasonably impede the intended use of all or any part of the Transferred Land.
- (b) Nothing in this clause 4.7 prevents the registration of the Instrument or encumbrances referenced in the Instrument.

5. LAND OWNER'S WORKS

5.1 Acknowledgement about Public Benefits Plan

The Parties acknowledge that at the date of this Agreement no Development Application has been lodged with respect to the Proposed Development and so the Public Benefits Plan is indicative only and the detail of that plan may change as a result of the detailed design, resolution of issues arising from the mixed use nature of the Proposed Development and Development Consent processes. The Parties expressly acknowledge and agree that nothing in this clause requires the Central Open Space to be more than 600m² or the Roberts Street Open Space to be more than 250m².

5.2 Refinement of Land Owner's Works

The Parties agree that further design, detail and refinement of the Land Owner's Works is necessary but expressly acknowledge and agree that nothing in this Agreement is intended or will be construed:

- (a) to require (unless the Land Owner agrees), such refinement or variation of the Land Owner's Works as contemplated in this Agreement that necessitates that the Land Owner providing more than 239m² for the Artist Studios and
- (b) to enable Council to change the design or require the Land Owner to change the design of the Land Owner's Works in a manner which increases the time taken to undertake the Land Owner's Works by at least three months or increases the Costs, of the Land Owner's Works by more than 10%.

5.3 Final Design of the Land Owner's Works prior to Construction

- (a) Preparation of plans and specifications

The Land Owner must prepare construction drawings in accordance with the Development Consent prior to issue of the Construction Certificate for the relevant aspect of the Land Owner's Works, for approval by Council.

- (b) Approval by the Council

The Council acting reasonably, will promptly and in any case within 20 Business Days give the Land Owner written notice whether or not the final design of the Land Owner's Works under clause 5.3(a) is satisfactory or requires modification having regard to:

- (i) the Schedules and the Public Benefits Plan;
 - (ii) the conditions of any Development Consent that applies to the Land Owner's Works; or
 - (iii) any standards, or specifications for the material selection or methodology, adopted by Council from time to time, provided that any direction given under this clause does not significantly increase:
 - (A) the Cost of that element of the Land Owner Works by more than 10%; or
 - (B) the complexity of implementation in a manner which may lead to a delay in the completion of the balance of the work approved under any relevant Development Consent for the Proposed Development by more than three months.
- (c) [Not used]
- (d) The Land Owner must promptly take into account the comments made by the Council in accordance with clause 5.3(b) and either:
 - (i) amend the design to reflect the comments made; or
 - (ii) notify Council that the Land Owner so declines, and provide written reasons together with any alternative which the Land Owner considers may address the concern.
- (e) if the Land Owner so declines under clause 5.8 (d)(ii) either Party can refer the dispute to be resolved by adopting the procedures in clause 8. If agreement cannot be reached subsequent to compliance with clause 8 then the dispute as to the plans is to be determined by an expert as follows:
 - (i) the Parties are to attempt to reach agreement on the expert to be appointed;
 - (ii) if the Parties cannot agree on an expert within 15 Business Days after service of a notice intending to refer the dispute to an expert, then either party may request the President (NSW Chapter) of the Planning Institute of Australia to appoint a member of that institute as the expert planner;
 - (iii) both Parties, within 20 Business Days of the date of appointment of the expert, may make written submissions to the expert (and provide a copy to the other party) on the matter the subject of the dispute;
 - (iv) the Parties agree that the hearing by the expert will be concluded within 30 Business Days and the expert's decision be given within 30 Business Days of the date of appointment of the expert and shall use their best endeavours to see that these time frames are met; and
 - (v) the experts decision is final and binding on the Parties and the cost of the expert's decision is to be borne by the Parties in the shares the expert determines.

6. CONSTRUCTION OF THE LAND OWNER'S WORKS

6.1 Insurance

The Land Owner must:

- (a) maintain public liability insurance, with an insurer approved by the Council, acting reasonably, with the Council nominated as an interested party, for

an amount not less than the amount stated in Item 5 of **Schedule 1**, covering all aspects and staging of the Land Owner Works and submit a copy of the certificate of insurance to the Council prior to the commencement of the construction of the Land Owner's Works and when otherwise required by the Council (acting reasonably); and

- (b) maintain all other necessary insurance policies in respect of the Land.

6.4 Works Completion

When, in the opinion of the Land Owner, the Land Owner's Works have reached Completion, then the Land Owner must notify the Council in writing, and must include in that notice:

- (a) a statement from the person with direct responsibility, carriage and supervision of that work that in their opinion the Land Owner's Works have reached Completion; and
- (b) copies of all certifications, warranties and guarantees (where available to the Land Owner), maintenance information or other material reasonably required for the ongoing repair, maintenance, or servicing (as the case may be) of any part of the Land Owner's Work; and
- (c) at least three (3) sets of the "as built" drawings of the Land Owner's Work, including one set in electronic CAD format.

6.5 Final Inspection by Council

- (a) The Council must inspect the Land Owner's Works within 15 Business Days of notification to the Council under clause 6.4. Within 5 Business Days after that inspection, Council must by written notice to the Land Owner either:
 - (i) concur that Completion has been achieved; or
 - (ii) disagree that Completion has been achieved and (if Council so disagrees), identify the errors or omissions which in the opinion of the Council prevents Completion by reference to the Development Consent or Construction Certificate or the plans and specification agreed under clause 5.
- (b) The Parties agree that where a notice is issued by Council under clause (a)(ii), the provisions of clause (a) continue to apply until such time as Council issue a notice under clause (a)(i) or (ii). If after two attempts by the Land Owner to obtain Council's concurrence under this clause, Council has not concurred that Completion has been achieved, then either party can refer the dispute to be resolved by adopting the procedures in clause 8. If agreement cannot be reached subsequent to compliance with clause 8, then the dispute is to be determined by an expert as follows:
 - (i) The Parties are to attempt to reach agreement on the expert to be appointed;
 - (ii) If the Parties cannot agree on an expert within 7 Business Days after service of a notice intending to refer the dispute to an expert, then either party may request the President of the Association of Accredited Certifiers to appoint a member of that institute as an expert;
 - (iii) Both Parties, within 10 Business Days of the date of appointment of the expert, may make written submissions to the expert (and provide a copy to the other party) on the matter the subject of the dispute;
 - (iv) The Parties agree that the hearing by the expert will be concluded within 15 Business Days and the expert's decision be given within 20 Business Days of the date of appointment of the

expert and shall use their best endeavours to see that these time frames are met; and

- (v) The expert's decision is final and binding on the Parties and the cost of the expert's decision is to be borne by the Parties in the shares the expert determines.

7. DEFECTS LIABILITY PERIOD

If the Council notifies the Land Owner of a Defect in the Land Owner's Works within the Defects Liability Period and the Land Owner agrees with the defect, the Land Owner must remedy that Defect to the reasonable satisfaction of the Council, within a reasonable period (having regard to the nature of the Defect).

8. DISPUTE RESOLUTION

8.1 Reference to dispute

Without limiting clauses 4.3(h), 5.3(e), and 6.5(b), 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 8.

8.2 Dispute procedure

- (a) 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.
- (b) If the dispute is not resolved within 5 Business Days after the Notice of Dispute is given to the other party or Parties (first period), either Party may by written notice to the other party require the dispute to resolve by another form of alternative dispute resolution (including expert determination, arbitration, or mediation) which is appropriate for the resolution of the relevant dispute. In the case of a dispute under clause 3.5(ii) the parties must resolve it by reference to an expert for determination. The expert's decision is final and binding on the Parties and the cost of the expert's decision is to be borne by the Parties in the shares the expert determines.

8.3 Neither party may constrain

Except in the case of a dispute under clause 3.5(ii), if:

- (a) at least one meeting has been held in accordance with clause 8.2(a); and
- (b) the Parties have been unable to reach an outcome; and
- (c) either of the Parties (acting in good faith) forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 8.2(b);

then that party may, by 10 Business Days' notice in writing to the other, terminate the dispute resolution process in respect of that dispute. The termination of the process set out in this clause 8 does not of itself amount to a breach of the Agreement.

8.4 Court proceedings

Despite anything in this clause, a party at any time may commence court proceedings in relation to any dispute or claim arising under or in connection with this Agreement where that party seeks urgent interlocutory relief.

9. GST

9.1 Additional amounts for GST

If a party to this Agreement (**Supplier**) makes a supply under or in connection with this Agreement and is liable by law to pay GST on that supply, then the consideration otherwise payable by the recipient of the supply will be increased by an amount equal to the GST paid or payable by the Supplier.

9.2 Reimbursement

If this Agreement requires a party to pay for, or reimburse any expense, loss or outgoing (**reimbursable expense**) suffered or incurred by another party, the amount required to be paid, or reimbursed by the first party is the amount of the reimbursable expense net of any input tax credit or reduced input tax credit to which the other party is entitled in respect of the reimbursable expense.

9.3 Provision of Tax Invoices and other documentation for GST

Each party agrees to do all things, including providing tax invoices and other documentation that may be necessary or desirable to enable or assist the other party to claim any input tax credit, set-off, rebate or refund in relation to any amount of GST paid or payable in respect of any supply under this Agreement.

9.4 Amounts GST exclusive

Subject to the operation of this clause, and unless otherwise expressly stated amounts in this Agreement are GST exclusive.

9.5 No merger

This clause will not merge on completion or termination of this Agreement.

10. LIMITATION OF LIABILITY

- (a) The Land Owners enter into this Agreement only in their capacity as trustees (where and as specified) and in no other capacity.
- (b) A liability arising under or in connection with this Agreement is limited to and can be enforced against the trustee only to the extent to which it can be satisfied out of property of the trust from which the trustee is indemnified for the liability. This limitation of the trustee's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this Agreement.
- (c) No party to this Agreement or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the trustee in respect of any liability in any capacity other than as trustee of the trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the trustee, or provide in any liquidation, administration or arrangement of or affecting the trustee (except in relation to property of the trust); or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this agreement or otherwise against the trustee in any capacity other than as trustee for the trust.
- (d) This clause 10 does not apply to any obligation or liability of the Land Owner to the extent to which there is, in respect of that obligation or liability, whether under the trust deed or by operation of law, a reduction in the extent of the Land Owner's indemnification, or loss of the Land Owner's right of indemnification, out of the assets of the trust as a result of the Land Owner's failure to properly

perform its duties as trustee of the trust.

- (e) Nothing in clause shall make the trustee liable to any claim for an amount greater than the amount which the Council would have been able to claim and recover from the assets of the trust in relation to the relevant liability if the trustee's right of indemnification out of the assets of the trust had not been prejudiced by failure to properly perform its duties.
- (f) The trustee is not obliged to do or refrain from doing anything under this Agreement (including incur any liability) unless its liability is limited in the same manner as set out in clauses (a) to (d).
- (g) If at any time the title to the Land becomes registered in the name of a party or parties acting in the role of a trustee or custodian and the rights are transferred under the Deed of Novation, then that party may require the limitations of liability clause expressed in the Deed of Novation.

11. WARRANTIES

- (a) Each party represents and warrants that:
 - (i) (power) it has full legal capacity and power to enter into this document and to carry out the transactions that it contemplates;
 - (ii) (corporate authority) it has taken all corporate action that is necessary or desirable to authorise its entry into this document and to carry out the transactions contemplated;
 - (iii) (Authorisations) it holds each Authorisation that is necessary or desirable to:
 - (A) enable it to properly execute this document and to carry out the transactions that it contemplates;
 - (B) ensure that this document is legal, valid, binding and admissible in evidence; or
 - (C) enable it to properly carry on its business as it is now being conducted,and it is complying with any conditions to which any of these Authorisations is subject;
 - (iv) (documents effective) this document constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except to the extent limited by equitable principles and laws affecting creditors' rights generally), subject to any necessary stamping or registration;
 - (v) (solvency) there are no reasonable grounds to suspect that it will not be able to pay its debts as and when they become due and payable; and
 - (vi) (no controller) no controller is currently appointed in relation to any of its property, or any property of any of its subsidiaries.
- (b) The Land Owner warrants to Council that, at the date of this document:
 - (i) it is legally entitled to obtain all consents and approvals that are required by this document and do all things necessary to give effect to this document;
 - (ii) all work performed by the Land Owner and the Personnel under this document will be performed with due care and skill and to a standard which is equal to or better than that which a well experienced person in the industry would expect to be provided by an organisation of the Land Owner's size and experience;
 - (iii) it is not aware of any matter which may materially affect the Land

Owner's ability to perform its obligations under this document;

- (iv) it is entitled to indemnification out of the assets of the trust in respect of all of the liabilities and obligations of the Land Owner under or arising out of or in connection with this document; and
 - (v) it is not aware of any breach or other issue in relation to the trust that would adversely affect the entitlement of the Land Owner to be so indemnified.
- (c) The Land Owner warrants to Council that, prior to commencing delivery of the Public Benefits it will have obtained all Authorisations and insurances required under any Law to carry out its obligations under this document.

12. VARIATION

12.1 Written agreement to vary

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

12.2 Variation as to Instrument, Public Benefit Plans and Guarantees

Despite clause 12.1, the Parties may agree that:

- (a) the Transferred Land be transferred to Council in stages;
- (b) the Instrument be varied to comply with registration requirements and any staging; and
- (c) the design of Land Owner's Works be varied as contemplated in this Agreement.

13. ASSIGNMENT AND NOVATION

13.1 Dealings by Council

- (a) The Council may Deal with its interest in this document without the consent of the Land Owner if the Dealing is with a Government Agency. The Council must give the Land Owner notice of the Dealing within five Business Days of the date of the Dealing.
- (b) The Council may not otherwise Deal with its interest in this document without the consent of the Land Owner, such consent not to be unreasonably withheld or delayed.

13.2 Dealing by the Land Owner

- (a) Prior to registration of this document in accordance with clause 3, the Land Owner must not Deal with this document or the Land without the Council, the Land Owner and the third party the subject of the Dealing entering into the Deed of Novation and delivering a properly executed copy of the Deed of Novation to Council.
- (b) On and from registration of this document in accordance with clause 3:
 - (i) the Land Owner may Deal with this document without the consent of the Council only as a result of the sale of the whole or part of the Land (without subdivision) to a purchaser of the Land and provided the Council, the Land Owner and the third party the subject of the Dealing enter into the Deed of Novation;
 - (ii) the Land Owner may register a plan of strata subdivision, and the Council consents to this document remaining registered only on the certificate of title to the common property of the strata plan upon registration of the strata plan; and
 - (iii) the Land Owner must not otherwise Deal with this document to a third party that is not a purchaser of the whole or any part of the Land without:

- (A) the prior written consent of the City; and
- (B) the Council, the Land Owner and the third party the subject of the Dealing entering into a deed of consent to the Dealing on terms acceptable to the City.

- (c) The Land Owner must pay Council's costs and expenses relating to any consent or documentation required due to the operation of this clause 13.2 and Council must not unreasonably refuse to execute the Deed of Novation and must do so within 14 Business Days.
- (d) The Deed of Novation may be amended as agreed from time to time by the Parties acting reasonably.

14. GENERAL PROVISIONS

14.1 Entire Agreement

This Agreement sets out the whole agreement of the Parties in respect of the subject matter. There are no other agreements, warranties or undertakings.

14.2 Waiver

A waiver by either Party is only effective if it is given in writing, and will only relate to the particular obligation or breach (as the case may be) identified in that communication.

14.3 Further assurances

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.

14.4 Representations and warranties

The Parties represent and warrant that they have power:

- (a) to enter into this Agreement; and
- (b) comply with their obligations under the Agreement.

14.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this Agreement,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5:00 PM on the specified day, it is taken to have been done on the following Business Day.

14.6 Governing law and jurisdiction

This Agreement is governed by the law of New South Wales. The Parties submit to the jurisdiction of the courts of that state.

14.7 Severance

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. 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.

14.8 Preservation of existing rights

The expiration or termination of this Agreement does not affect any right that has accrued to a party before the expiration or termination date.

14.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this Agreement for any reason, will not merge on the occurrence of that event but will remain in full force and effect.

14.10 Counterparts

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

14.11 Relationship of Parties

Unless otherwise stated:

- (a) nothing in this Agreement creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the Parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

14.12 No fetter

Nothing in this Agreement will be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and nothing will be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.

14.13 Inner West Council rights

This Agreement does not impose an obligation on Inner West Council to:

- (a) grant Development Consent for the Proposed Development; or
- (b) exercise any function under the Act in relation to a change to an environmental planning instrument, including the making or revocation of an environmental planning instrument.

14.14 Expenses and stamp duty

- (a) Subject to subclause (b), the Land Owner is liable for and must pay all stamp duty (including any fine or penalty) on or relating to this Agreement unless otherwise specified.
- (b) Council is liable for and must pay all stamp duty (if relevant) relating to the transfer of the Transferred Land.
- (c) Each party agrees to pay their own costs of negotiating and finalising this Agreement.

14.15 Notices

- (a) Service of Notice

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:

- (i) delivered or posted to that Party at its address set out in Item 11 of Schedule 1; or
 - (ii) emailed to that Party at the email address set out in Item 11 of Schedule 1. If more than one email address is specified, the notice, to be valid, must be sent to all of the email addresses identified.
- (b) Change of Address

If a Party gives the other Party 10 Business Days' notice of a change of its address or email, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or email.
- (c) Time of Service of Notice

Any notice, consent, information, application or request is to be treated as given or made at the following time:

 - (i) if it is delivered, when it is left at the relevant address;
 - (ii) if it is sent by post, 2 Business Days after it is posted; and
 - (iii) if it is sent by email, by 9:00 AM the next Business Day unless before that time the sender receives an automated message that the email was not delivered.
- (d) Service After Hours, on Weekends and Holidays

If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a Business Day, or if on a Business Day, after 5:00 PM on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next Business Day.

Schedule 1 – Details

Item	Name	Description
1	Land Owner's Name	JVM Holdings Pty Limited as trustee for the JVM Family Trust
	Land Owner's ACN	ACN 108 640 642 and
	Land Owners Address	Suite 2.11, 75 Mary Street, St Peters
	Land Owner's Name	Chalak Holdings Pty Ltd as trustee for the Chalak Family Trust
	Land Owner's ACN	ACN 108 830 084
	Land Owner's Address	Suite 2.11, 75 Mary Street, St Peters
2	Council	Inner West Council
	Council's ABN	19 4880 179 87
	Council's Address	2-14 Fisher Street, Petersham NSW 2049
3	Land	Land comprised in: Lot 1 DP 556914; Lot 1 DP745014; Lot 1 DP745657; Lot 1 DP180958; Lot A DP331215;and Lot 1 DP87885, also known as 75 Mary Street, St Peters
4	Public Liability Insurance	\$20 million dollars
5	Notices Council Attention Address	General Manager Inner West Council General Manager 2-4 Fisher Street, PO Box 14 Petersham NSW 2049

	<p>Land Owner</p> <p>Attention:</p> <p>Address:</p> <p>Land Owner</p> <p>Attention</p> <p>Address</p>	<p>JVM Holdings Pty Limited as trustee for the JVM Family Trust ACN 108 640 642</p> <p>Proper Officer</p> <p>Suite 2.11, 75 Mary Street, St Peters</p> <p>Chalak Holdings Pty Ltd as trustee for the Chalak Family Trust ACN 108 830 084</p> <p>Proper Officer</p> <p>Suite 2.11, 75 Mary Street, St Peters</p>
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Schedule 2 – Requirements under section 7.4 (clause 2.2)

The Parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the Agreement complying with the Act.

Requirements under the Act	This agreement
Planning instrument and/or development application – (section 7.4(3)(b))	
The Land Owner has:	
(a) sought a change to an environmental planning instrument:	Yes
(b) made, or proposes to make, a development or project application:	Yes
(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies:	Yes
Description of land to which this Agreement applies – (section 7.4(3)(a))	See Schedule 1 Item 3
Description of change to the environmental planning instrument to which this Agreement applies – (section 7.4(3)(b))	As provided in the Amending LEP
The scope, timing and manner of delivery of contribution required by this Agreement – (section 7.4(3)(c))	See clause 4.1, 4.2, 4.3 and clause 6.4
Applicability of section 7.11 of the Act – (section 7.4(3)(d))	Not excluded
Applicability of section 7.12 of the Act – (section 7.4 (3)(d))	Not excluded
Applicability of section 7.24 of the Act – (section 7.4 (3)(d))	Not excluded.
Consideration of benefits under this Agreement if section 7.11 applies – (section 7.4(3)(e))	Yes
Mechanism for Dispute Resolution – (section 7.4(3)(f))	See clause 8
Enforcement of this Agreement – (section 7.4(3)(g))	See clauses 3 and , 4.3(k)
No obligation to grant consent or exercise functions – (section 7.4(3)(g))	See clause 13.13

Schedule 3 – Public Benefits Plan



Schedule 4 – Deed of Novation

DEED OF NOVATION

THIS DEED OF NOVATION is made on _____ between the following Parties:

JVM Holdings Pty Ltd ACN 108 640 642 as trustee for the JVM

Family Trust and

Chalak Holdings Pty Ltd ACN 108 830 084 as trustee for the Chalak Family Trust

(**“Outgoing Party”**), and

Inner West Council (ABN 194880179 87), Sydney, New South Wales (**“Council”**), and

[Insert Name, ACN and address] (“Incoming Party”).

BACKGROUND

- A. The Council and the Outgoing Party are Parties to the VPA.
- B. The VPA relates to the whole of the Land.
- C. The Outgoing Party wishes to transfer the Land to the Incoming Party.
- D. The Incoming Party agrees to perform the obligations and seeks to obtain the benefits of the Outgoing Party under the VPA.
- E. The Outgoing Party and the Incoming Party have agreed to enter into this Deed of Novation, in accordance with clause 12.2 of the VPA, at the request of the Council.

1. Definitions and Interpretation

Voluntary Agreement (‘VPA’) is the Agreement – 75 Mary Street entered into between the Council and the Outgoing Party.

1.1 Definitions

Words and expressions defined in the VPA have the same meaning in this Deed.

1.2 Headings

Headings do not affect the interpretation of this document.

2. Performance of Obligations

2.1 On and from the date of this Deed, the Incoming Party:

- (c) is substituted for the Outgoing Party as a party to the VPA and acknowledges itself to be bound by the provisions of the VPA, as if the Incoming Party had originally been named as the Outgoing Party in that VPA;

- (d) (without limiting the preceding paragraph (a)) must punctually carry out and perform all other obligations of the Outgoing Party under the VPA which are not performed at the date of this Deed; and
- (e) The Incoming Party will be:
 - (i) entitled to the benefit of the VPA; and
 - (ii) entitled to enforce the VPA against Council,
 as if the Incoming Party had originally been named as the Outgoing Party in that VPA.
- (f) The Council must address all notices and communications to be given or made by it to the Incoming Party under the VPA to the following address:

Incoming Party:

[Drafting Note: Insert Incoming Party address]

3. PERFORMANCE AFFECTED BY NOVATION

3.1 Performance by Outgoing Party

The Outgoing Party:

- (a) (subject to clause 3.3 of this Deed) releases and discharges Council from its obligations under the VPA and from all claims and demands in respect of the performance of and obligations under the VPA prior to the date of this Deed; and
- (b) warrants to the Council that it has properly performed its obligations under the VPA up to and including the date of this Deed, complying with all contractual requirements.

3.2 Performance by Incoming Party

The Incoming Party must perform all of the Land Owner's obligations under the VPA as if named as the Land Owner, whether or not the relevant obligations relate to works that were to be performed prior to the date of this Deed, including the delivery of all Public Benefits to Council.

3.3 Release by Council

Council releases and discharges the Outgoing Party from all of its obligations under the VPA and from all claims and demands in respect of the performance of and obligations under the VPA that arise.

[Drafting Note: insert if Incoming Purchaser is acting in a capacity as a trustee or custodian]

4. LIMITATION OF LIABILITY

- (a) The Incoming Party enters into the VPA only in their capacity as trustees (where and as specified) and in no other capacity.
- (b) A liability arising under or in connection with the VPA is limited to and can be enforced against the trustee only to the extent to which it can be satisfied out of property of the trust from which the trustee is indemnified for the liability. This limitation of the trustee's liability applies despite any other provision of this agreement and extends to all liabilities and obligations of the trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this VPA.
- (c) No party to the VPA or this Deed or any person claiming through or on behalf of them will be entitled to:
 - (iv) claim from or commence proceedings against the trustee in respect

of any liability in any capacity other than as trustee of the trust;

- (v) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the trustee, or provide in any liquidation, administration or arrangement of or affecting the trustee (except in relation to property of the trust); or
 - (vi) enforce or seek to enforce any judgment in respect of a liability under this agreement or otherwise against the trustee in any capacity other than as trustee for the trust.
- (d) This clause does not apply to any obligation or liability of the Land Owner to the extent to which there is, in respect of that obligation or liability, whether under the trust deed or by operation of law, a reduction in the extent of the Land Owner's indemnification, or loss of the Land Owner's right of indemnification, out of the assets of the trust as a result of the Land Owner's failure to properly perform its duties as trustee of the trust.
- (e) Nothing in clause shall make the trustee liable to any claim for an amount greater than the amount which the Council would have been able to claim and recover from the assets of the trust in relation to the relevant liability if the trustee's right of indemnification out of the assets of the trust had not been prejudiced by failure to properly perform its duties.
- (f) The trustee is not obliged to do or refrain from doing anything under the VPA or this Deed (including incur any liability) unless its liability is limited in the same manner as set out in clauses (a) to (f).
- (g) The trustee represents and warrants that it has the right to be fully indemnified out of the trust in respect of its obligations under this document and that right has not been restricted or limited in any way.

5. Governing Law

This deed is governed by the laws of New South Wales.

6. Further acts

Each party will take all steps, execute all deeds and do everything reasonably required by any other party to give effect to any of the actions contemplated by this deed.

7. Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

EXECUTED as a DEED

INNER WEST COUNCIL by its duly)
appointed attorney **[insert]** Power of)
Attorney registered number book in)
the presence of:)
)

Witness:

EXECUTED by **JVM Holdings Pty Ltd ACN 108 640 642** as trustee for the JVM Family Trust and **Chalak Holdings Pty Ltd ACN 108 830 084** as trustee for the Chalak Family Trust

in accordance with section 127 of the
Corporations Act 2001 (Cth)

Signature of director/secretary

Signature of director

[Insert Execution by Incoming Party]

Attorney

DEED OF NOVATION

[INSERT INCOMING PARTY NAME]

Schedule 5 – Section 88B Instrument

Plan:

Plan of subdivision of # covered by
Subdivision Certificate No.

Full Name and address
of the owner of the land:

JVM Holdings Pty Limited ACN 108 640
642 as trustee for the JVM Family Trust

Chalak Holdings Pty Ltd ACN 108 830 084
as trustee for the Chalak Family Trust

Part 1 (Creation)

Number of items shown in the intention panel on the plan	Identity of easement, profit a prendre, restriction or positive covenant to be created and referred to in the plan.	Burdened lot(s) or parcel(s)	Benefited lot(s), road(s), bodies or Prescribed Authorities
1	Positive Covenant for Maintenance	[[artist studios]	[adjoining land]
2	Restrictive Covenant	[artist studios]	[adjoining land]
3	Easement for public access variable width limited in height and depth to the ground level of the surface [#insert consistent with final plan]	[Roberts Street Open Space and Central Park Open Space]	Inner West Council

Part 2 (Terms)

1. Interpretation and general provisions

1.1 Definitions

The following are definitions in respect of defined words used in part 2 of this Instrument:

- (a) **Act** means the *Strata Schemes (Freehold Development) Act 1973* (NSW);
- (b) **Authorised Users** means any person authorised by the Grantee and includes for the purposes of any easement, right, covenant or restriction created by this Instruments:
 - (i) the Grantee's tenants, employees, agents, contractors, licensees and invitees and all occupants, residents and users of and other persons on the Lot Benefited (as applicable); and
 - (ii) if the Grantee is an Owners Corporation, each registered proprietor of a lot in that Strata Scheme, and any occupier or lessee of that lot as authorised by the Owners Corporation;

- (c) **Artist Studios** means artist studios [*Drafting Note:* identify as per subdivision plan but intent is it has a cumulative area (including shared toilet facilities) of approximately 239 m² located within the ground floor of the proposed Building marked on the Public Benefits Plan];
- (d) **Claim** includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation;
- (e) **Cost** includes any cost, loss, damage, expense or payment and includes fees payable to consultants and lawyers;
- (f) **Council** means Inner West Council;
- (g) **Easement Site** means in relation to an easement, positive covenant and restriction on use in this Instrument the site of an easement, positive covenant and restriction on use identified on the Plan;
- (h) **Emergency Situation** means any circumstance involving a need, for reasons of safety, for evacuation or egress from a building or other place, including fire, earthquake, flooding terrorist activity and any training or test of such evacuation or egress.
- (i) **Future Services** means any condenser units, air conditioning units, Pipes, poles, structures and equipment or other services, including water, recycled water, sewerage, drainage, gas, electricity, ventilation, exhaust, air, ducted air, security, fire, mechanical, conditioned air, telephone and other communications, television, television or radio impulses or signals service required for the operation of the Lot Benefited;
- (j) **Grantee** is for each easement, right, covenant or restriction referred to in Part 1 of this Instrument:
 - (i) the owner of an estate in fee simple of a Lot Benefited and includes any person deriving title under the Grantee and the Grantee's executors, administrators, successors and assigns; and
 - (ii) the bodies or prescribed authorities referred to referred to in Part 1 of this Instrument;
- (k) **Grantor** is for each easement, right, covenant or restriction referred to in Part 1 of this Instrument the owner of an estate in fee simple of a Lot Burdened and includes any person deriving title under the Grantor and the Grantor's executors, administrators, successors and assigns;
- (l) **Instrument** means this section 88B instrument;
- (m) **Land** means the land comprised in Lot 1 of the Plan;
- (n) **Lot Benefited** means the whole or any part of a lot in the Plan having the benefit of an easement, right or restriction;
- (o) **Lot Burdened** means the whole or any part of a lot in the Plan having the burden of an easement, right, covenant or restriction;
- (p) **Management Statement** means a building management statement or strata management statement registered according to the Act which applies to any lots in the Plan or such further strata plan;
- (q) **Owners Corporation** means an owners corporation created on registration of a Strata Plan;
- (r) **Plan** is the plan of subdivision to which this Instrument relates;
- (s) **Pipes** means wires, cables and conduits.
- (t) **Registration Date** means the date the Plan and this Instrument is

registered at the Land & Property Information NSW;

- (u) **Services** includes water, sewerage, stormwater, drainage, gas, electricity, ventilation, exhaust, conditioned air, ducted air, garbage, television, data, internet, digital services, telecommunications, or radio impulses or signals service and includes the conduits, structures, plant and equipment associated with such services;
- (v) **Shared Services** has the same meaning given in the Management Statement.
- (w) **Strata Plan** means a strata plan registered under the Act; and
- (x) **Strata Scheme** means a strata scheme created on registration of a Strata Plan.

1.2 Interpretation

The terms of this Instrument are covenants and agreements between each:

- (a) Grantee (for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Benefited or any part of it with which the right is capable of enjoyment); and
- (b) Grantor (for itself, its successors and every person who is entitled to an estate or interest in possession of the Lot Burdened or any part of it with which the right is capable of enjoyment)

to the intent that the benefit and burden of those covenants and agreements are annexed to and pass with the benefits and burdens of the easements, rights, covenants and restrictions in this Instrument.

1.3 Complying with this Instrument and the Management Statement

- (a) Each Grantee and Grantor must, as appropriate, comply with the terms of the easements, rights, covenants and restrictions in this Instrument.
- (b) For each easement, right, covenant and restriction in this Instrument, each Grantee must ensure that its Authorised Users comply with the terms of the Instrument when they exercise their rights or comply with their obligations under the Instrument.
- (c) For each easement, right, covenant and restriction in this Instrument, the Grantee must, if it is bound by a Management Statement according to its terms:
 - (i) comply with the Management Statement, including any architectural code and shared facilities code adopted according to the Management Statement; and
 - (ii) ensure that its Authorised Users comply with the Management Statement, including any architectural code and shared facilities code adopted according to the Strata Management Statement.
- (d) A Management Statement may include provisions in respect of the use, repair and maintenance of the Shared Facilities and for each easement, right, covenant and restriction in this Instrument.
- (e) A Management Statement may regulate the apportionment of costs in relation to each easement, right, covenant and restriction in this Instrument.
- (f) A Management Statement may include provisions in respect of the use, repair and maintenance of the Future Services, the Pipes and Easement Site.
- (g) Notwithstanding anything to the contrary in this Instrument or the Management Statement, no term in the Management Statement must be read or interpreted to affect the purpose or operation of an easement, right,

covenant and restriction in this Instrument.

1.4 Positive covenants and maintenance requirements

A requirement in an easement or right which requires a Grantee or Grantor to maintain or repair an Easement Site or anything in an Easement Site is a positive covenant according to section 88BA of the *Conveyancing Act 1919*.

2. Terms of Positive Covenant for Maintenance being Item 1 of Part 1 in the Plan

Council will maintain all assets within the Artist Studios, inclusive of Services that benefit the Burdened Land.

3. Terms of Restrictive Covenant being Item 2 of Part 1 in the Plan

The Grantee and its Authorised User must only use the Artist Studios as a publicly operated community space for artists or creative industries and the use of the Artist Studios must be for a purpose consistent with the use as a workroom of an artist for the practice of fine arts, performing arts or someone who uses the skills of art in their work such as a commercial artist.

4. Terms of Easement for Public Access being Item 3 in Part 1 in the Plan

- (a) Subject to clause (b) and (c), the Council and any member of the public has at all times a full, free and unimpeded right to enter, pass, repass and remain upon the Easement Site for the purpose of public passive recreation. The rights of access to, from and across the Easement Site may be exercised:
 - (i) on foot;
 - (ii) with wheelchairs or other disability mobility aids and prams or strollers; and
 - (iii) with animals (on leads or carried only).
- (b) The Grantor may temporarily suspend the access to the Easement Site, for the time and to the extent necessary, but only on reasonable grounds including:
 - (i) security;
 - (ii) an Emergency Situation;
 - (iii) safety; or
 - (iv) maintenance or improvements to the Easement Site or neighbouring sites.
- (c) The Grantor, acting reasonably, may remove (or refuse entry to) any person entitled to exercise a right under this clause (a) if that person behaves:
 - (i) in a manner which threatens their safety or the safety and security of people around them;
 - (ii) in a manner which is likely to result in damage to or have a negative impact on the Easement Site, or any property on the Easement Site;
 - (iii) in a manner which might put their or others' health and safety at risk;
 - (iv) in a manner which breaches the rules of the Easement Site as approved under clause (d);

- (v) in a manner which might cause a breach of the peace; or
 - (vi) unlawfully.
- (d) The Grantor may make rules regarding the use of the Easement Site subject to the prior consent of the Council (such consent not to be unreasonably withheld provided those rules are consistent with the rights of the Council and any member of the public under this instrument). The Council and members of the public must comply with such rules. The Grantor may erect signs which set out the rules which govern the use of the Easement Site.
- (e) The Grantor may erect temporary signage or barriers on the Easement Site to restrict temporarily access to the Easement Site by members of the public under this easement if either of them reasonably forms the view that such access is unsafe.
- (f) The Grantor must maintain the Easement Site in a sound structural and fully operational and working condition.

Schedule 6 – Studio Specifications

Internal Finishes (studios)	
Internal Walls	Painted Plasterboard
Internal Ceilings	Painted plasterboard
Floors	Carpet Tile
Kitchenette	Wall mounted Laminate kitchenette with double basin and cold / hot water supply.
Internal Finishes (Amenities)	
Walls & Floors	Vitrified Tile
Basins	Ceramic
Toilets	Ceramic
Lighting	Recessed LED
Toilet Partitions	Laminate
Services Provisions	
Power	1 central distribution board
Phone / Data	1 central telecommunications and data board
Lighting	Emergency & Exit lighting as per BCA
Gas	Gas supply provision terminated within lot
Cold Water	Cold water supply terminated to lot
Hot Water	Hot water supply to amenities and kitchenette
Mechanical	Provision for mechanical ventilation designed for open plan studio space

Signing page

SIGNED as a Deed

Signed sealed and delivered for and on behalf of the **Inner West Council** by a duly authorised officer who by their signature testifies that they are duly authorised to sign this instrument) in the presence of

Signature of Witness

Signature of Authorised Officer

Name of Witness
(please print)

Name of and position of Authorised Officer

Executed by Chalak Holdings Pty Ltd)
ACN 108 830 084 as trustee for the)
Chalak Family Trust in accordance with)
Section 127 of the Corporations Act 2001
(Cth)

Signature of director

Signature of director/company secretary*

Name of director
(BLOCK LETTERS)

Name of director/company secretary*
(BLOCK LETTERS)
Delete whichever does not apply

Executed by JVM Holdings Pty Ltd ACN)
108 640 642 as trustee for the JVM)
Family Trust in accordance with Section)
127 of the Corporations Act 2001 (Cth)

Signature of director

Signature of director/company secretary*

Name of director
(BLOCK LETTERS)

Name of director/company secretary*
(BLOCK LETTERS)
Delete whichever does not apply