

Execution Version

Land Facilitation Agreement

The Corporation of the City of Adelaide

88 O'Connell Pty Ltd ACN 640 796 149

1.	DEFINITIONS AND INTERPRETATION	1
1.1	Definitions	1
1.1	Interpretation.....	14
1.2	Background.....	15
1.3	No Partnership.....	15
1.4	Order of Precedence.....	15
2.	PURPOSE AND ROLES	16
2.1	Purpose	16
2.2	Roles	16
2.3	Co-operation	16
3.	PROJECT CONDITIONS.....	17
3.1	Conditions precedent.....	17
3.2	Reasonable endeavours	17
3.3	Benefit and waiver	17
3.4	Notice	17
3.5	Termination.....	18
3.6	Construction commencement.....	18
4.	FEASIBILITY AND CONCEPT PLAN.....	18
4.1	Feasibility and Concept Plan generally	18
4.2	Required Outcomes.....	18
4.3	Revisions to Feasibility and Concept Plan	18
4.4	Concept Plan development approval.....	19
5.	SUSTAINABILITY AND WELLNESS	19
5.1	Sustainability rating targets	19
5.2	Wellness targets	20
6.	DEVELOPMENT APPROVAL.....	21
6.1	Development applications	21
6.2	Council updates	21
6.3	Public Value Principles.....	21
6.4	Community title	22
7.	FINANCING PROJECT.....	23
7.1	Obtaining Project Funding.....	23
7.2	Project Finance	23
7.3	Security.....	23
7.4	Finance costs.....	23
7.5	Financial close	23
7.6	Finance conditions	24
7.7	Termination.....	24
8.	LEASING AND APARTMENT SALES STRATEGIES	24
8.1	Marketing strategies.....	24
8.2	Leasing	24
8.3	Pre-sales/commitment	26
8.4	Branding	26
8.5	Activation	27
9.	CONTRACT FOR SALE	27
9.1	Liability and structure	27
9.2	Indemnity	28
9.3	Contract terms and conditions.....	28
9.4	Contract execution	29
10.	APPOINTMENT OF CONTRACTOR AND KEY PROJECT CONSULTANTS	30
10.1	Contractor and Consultants	30
10.2	Engagement of further consultants or changes in scope	30

10.3	Replacement of Contractor	30
11.	GENERAL RIGHTS AND RESPONSIBILITIES	30
11.1	Developer Obligation	30
11.2	Responsibility.....	30
11.3	Exclusivity	31
11.4	Developer's Obligations	31
11.5	Standard of performance	31
11.6	Practical Completion	31
11.7	Council obligations.....	31
12.	DESIGN DEVELOPMENT AND APPROVALS	32
12.1	Generally	32
12.2	Council consents to applications	32
12.3	Monthly Report on progress of Approvals	32
12.4	Design Documents.....	32
13.	CONSTRUCTION OF DEVELOPMENT WORKS	32
13.1	Construction Commencement and Program	32
13.2	Departure from Construction Program	33
13.3	Joint Inspection and co-ordination with Construction Contract	33
13.4	Deferred Items and Defects Liability Period	34
13.5	Inspections.....	34
13.6	In favour of purchasers	34
13.7	Assignment of Rights	35
13.8	Developer and Contractor	35
13.9	Inspections.....	35
14.	VARIATIONS	36
14.1	Details of variations.....	36
14.2	No Material Variation	37
15.	COMMUNITY TITLE DIVISIONS	37
15.1	Community divisions	37
15.2	Developer to prepare scheme documents.....	37
16.	LICENCE	38
16.1	Grant of licence.....	38
16.2	Terms of licence.....	38
16.3	Risk.....	38
16.4	Release and indemnity	39
16.5	No construction.....	39
16.6	Caveat	39
17.	ENVIRONMENT	39
17.1	Developer enquiries	39
17.2	Environmental compliance	39
17.3	Release and indemnity	39
18.	PROJECT PAYMENTS.....	40
18.1	Obligation to pay	40
18.2	Security.....	41
18.3	Payment	41
18.4	Refund of Initial Payment.....	41
18.5	Distribution Waterfall.....	42
18.6	Final Payment Amount.....	42
18.7	Final Payment Delay.....	42
19.	PROJECT CONTROL GROUP.....	43
19.1	Establishment	43
19.2	Monthly meeting to report	43
19.3	Attendance.....	44

19.4	Council's Representative	44
19.5	Developer's Representative	45
19.6	Construction Contract	45
19.7	Prohibition on dealings by the Council	45
20.	INSURANCES AND RISK	45
20.1	Insurances	45
20.2	Evidence of insurances	46
20.3	Insurance not to be voided	47
20.4	Full disclosure	47
20.5	Proceeds	47
20.6	Cancellation of Insurance	47
21.	DEVELOPER'S AND COUNCIL'S WARRANTIES	47
21.1	General warranties	47
21.2	Council's Warranty	48
21.3	Developer's capacity	49
21.4	Council's capacity	49
22.	TERM OF AGREEMENT	49
22.1	Term	49
22.2	Transfer	49
22.3	Holding and transfer costs	50
23.	DEFAULT AND TERMINATION	50
23.1	Notice of Default	50
23.2	Notice of Default	50
23.3	Termination for Breach	51
23.4	Dispute Resolution	51
23.5	Termination	51
23.6	Other rights	51
23.7	Rights upon Termination	51
23.8	Default interest	52
23.9	Acknowledgment	52
24.	DISPUTE RESOLUTION	52
24.1	Disputes	52
24.2	Notice of Dispute	52
24.3	Identity of Senior Executives and Chief Executives	53
24.4	Appointment of Expert	53
24.5	Determination	53
25.	CONFIDENTIALITY AND IP	54
25.1	Public Announcements	54
25.2	Confidential information	55
25.3	Project IP	55
25.4	Domain name	56
26.	NOTICES	56
26.1	Giving of notices	56
26.2	Time of delivery	57
26.3	Deemed delivery	57
27.	RIGHTS AND POWERS	57
27.1	Exercise of rights	57
27.2	Waiver and variation	57
27.3	Remedies cumulative	57
27.4	Prohibition on dealings	57
27.5	Further assurances	57
28.	GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS	58
28.1	Governing Law	58

28.2	Jurisdiction.....	58
28.3	Supervening legislation.....	58
28.4	Service of process	58
29.	GENERAL.....	58
29.1	Costs	58
29.2	Information and Notices	59
29.3	Copies	59
29.4	Enforceability and prohibition	59
29.5	Inconsistency	59
29.6	Reasonableness	59
29.7	Consents etc.....	60
29.8	Severability	60
29.9	Non-Merger.....	60
29.10	Counterparts	60
30.	GST	60
30.1	Definitions.....	60
30.2	Amounts exclusive of GST	60
30.3	Gross up by GST	61
30.4	Payment of GST component.....	61
30.5	Reimbursable Expenses	61
30.6	Tax invoices.....	61
30.7	Adjustment of GST payments	61
31.	DEVELOPER'S LIMITATION OF LIABILITY	61
31.1	Limited Capacity – the Developer	61
31.2	Limited right to sue – the Developer.....	62
31.3	Exceptions – the Developer	62
31.4	Limitation on authority – the Developer	62

ANNEXURE A	CONCEPT PLAN
ANNEXURE B	PUBLIC VALUE PRINCIPLES

DATE 16th December 2020

PARTIES

The Corporation of the City of Adelaide 20 903 762 572 of Town Hall, King William Street, Adelaide SA 5000 (**Council**)

88 O'Connell Pty Ltd ACN 640 796 149 as trustee for the 88 O'Connell Trust of Level 7, 2 King William Street, Adelaide SA 5000 (**Developer**).

BACKGROUND

- A. Council is the owner of the Land.
- B. Council has through the Engagement Process selected the Developer as the preferred proponent to develop the Land and has agreed to making the Land available to the Developer, for the purpose of the Developer undertaking and completing the Project, on the terms of this agreement.
- C. The Developer has committed to undertake the Project on the terms of this agreement.

AGREED TERMS

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this agreement:

Approvals means any approvals from all Authorities required for the carrying out of the Project Works or the use and occupation of the buildings following completion of all or any part of the Project.

Approved Development Plans means the plans as approved by the Relevant Authorities after completion of the processes in clause 6.

Approved Lease Variation means any variation to the lease which is required to give commercial efficacy to the requisite lease and its terms, as determined by the Developer acting reasonably, provided always that any such variation is consistent with the Intended Purpose and the principles enunciated in this agreement.

Architect means Woods Bagot Architects (or any other replacement architect appointed by the Developer in relation to the Project).

Authority includes any:

- (a) government department;
- (b) local government council (including Council in its separate capacity as a relevant Authority);

- (c) government or statutory authority; or
- (d) other person recognised as an authority under any law which has a right to impose a requirement or whose consent is required with respect to the Project Works.

Balance Payment Amount means the amounts totalling not less than eighteen million five hundred thousand dollars (\$18,500,000.00) (exclusive of GST) less any amounts deducted in accordance with clause 6.3.3.3 (if any).

Bank means a Bank as defined in the *Banking Act 1959 (Cwth)*.

Building Services means the services or systems of any nature from time to time supplied to the building including waste and storage areas, elevators, escalators, fire services, air conditioning, gas, water, drainage, fresh air, exhaust systems, electricity, sprinkler heads, heating and lighting and services or systems.

Business Day means a day on which banks are open for general banking business, not being a Saturday, Sunday or public holiday in South Australia.

Certificate of Occupancy means a permit issued by the appropriate Authority or certifier which is required under the *Development Act (SA) 1993* before the whole or part of the building may be occupied being either:

- (a) unconditional; or
- (b) conditional only on completing items which form part of the Deferred Items.

Change in Control means:

- (a) a person who has not previously Controlled another person, begins to Control them; or
- (b) a person who has previously Controlled another person, ceases to Control them.

Claim includes any debt, cause of action, claim, proceeding, suit or demand of any nature howsoever arising and whether present or future, fixed or unascertained, actual or contingent, whether at law, in equity, under statute or otherwise.

Commencement Date means the date of this agreement.

Community Scheme Documents means all documents required to create the Lots including scheme descriptions and by-laws (at various levels) and schedules of lot entitlements.

Community Plan means a plan of community division prepared under the *Community Titles Act (SA) 1996*.

Concept Plan means the concept plan for the Project set out in Annexure A as amended from time to time in the manner contemplated by this agreement.

Construction Commencement Date means 31 August 2022 or such earlier date as the parties may agree (acting reasonably).

Construction Contract means the construction contract to be entered into between the Developer and the Contractor.

Construction Program means the contract program as defined in the Construction Contract.

Contamination means the presence in, on or under land, air or water of a substance (solid, liquid or gel) or matter at a concentration or level above the concentration or level at which the substance or matter is normally present in, on or under land, air or water in the same locality being a presence that presents a risk of harm to human health or the Environment, or results in a non-compliance with or breach of any Environmental Law (and **contaminant**, **contaminated** and **contaminate** have a corresponding meaning).

Contractor means the builder to be engaged by the Developer in respect of the Project in accordance with a Construction Contract pursuant to clause 10.

Contractor's Side Deed means the form of document to be negotiated and agreed with the Council, the Developer, the Contractor and the Project Financier in respect of the Construction Contract so as to enable the Project Financier certain rights in respect of the Construction Contract.

Control of a corporation includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the corporation; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights, and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

Corporations Act means the *Corporations Act 2001 (Cth)* as amended from time to time.

Costs include:

- (a) costs, charges and expenses, including those incurred in connection with advisors, experts and consultants (including legal costs calculated on a solicitor and own client basis);
- (b) claims, damages, liability, losses and injury (actual or contingent) suffered or incurred by a party; and
- (c) fines, penalties, interest or anything similar imposed by legislation.

Council's Consultant means any person or persons appointed by, and at the cost of, the Council for the purpose of:

- (a) monitoring the progress of the Project;
- (b) providing advice and recommendations to the Council about compliance by the Developer with the Obligations under this agreement (including the state of completion of the Project Works);

- (c) identifying any Defects in the Project Works during the Defects Liability Period; and
- (d) providing advice and recommendations to the Council about the adequacy of any remedial actions or work undertaken by the Developer.

Council's Representative means the person or persons appointed by the Council for that role under this agreement being as at the date of this agreement Associate Director Property and Commercial and/or another delegate of Council.

Date of Practical Completion means the date on which the Superintendent certifies under the Construction Contract that Practical Completion was achieved.

Default Interest Rate means two per centum (2%) above the highest overdraft rate charged by the Commonwealth Bank of Australia for commercial loans greater than \$100,000.00 as at the date of payment of any moneys.

Defect has the meaning given in the Construction Contract.

Defects Liability Period means the period specified in the Construction Contract (which must be a minimum period of twelve (12) months).

Deferred Items means any items of the Project Works requiring rectification but which are minor omissions and which need not be completed in order for the Project Works to reach the state of Practical Completion.

Design Documents means the design documents, plans and materials prepared by the Contractor under the Construction Contract for the construction of the Project Works in accordance with the Approved Development Plans.

Developer Side Deed means the form of document to be negotiated and agreed with the Council, the Developer and the Project Financier in respect of this agreement so as to enable the Project Financier certain rights in respect of this agreement.

Developer's Financial Contribution means the Developer's financial contribution to the Project as provided in the Project Feasibility.

Developer's Material has the meaning given in clause 25.3.

Developer's Representative means the person or persons appointed by the Developer for that role under this agreement being Jamie McClurg as at the date of this agreement.

Distribution Waterfall means the description of the priority for payments of the Project Proceeds as set out in clause 18.

Engagement Process means the Council's processes of calling for expressions of interest and subsequent meetings to determine the Developer's appointment as preferred proponent to undertake the Project.

Environment includes:

- (a) land, air and water;

- (b) any organic or inorganic matter and any living organism; and
- (c) human made or modified structures and areas.

Environmental Condition of the Land means:

- (a) the condition of the Land as at the Commencement Date, including the presence of any Contaminant; and
- (b) the existence of any Aboriginal heritage items on the Land.

Environmental Law means any Statutory Requirement that deals with an aspect of the Environment or health whether made before or after the Commencement Date.

Expert means the person appointed as an expert under clause 23.

Final Completion means when:

- (a) the Project Works have reached Practical Completion;
- (b) the Defects Liability Period has expired and the Superintendent has certified that all Defects have been rectified; and
- (c) the Developer provides the Council with a copy of the unconditional Certificate of Occupancy for the whole of the building.

Financial Close has the meaning as set out in clause 7.5.

General Security Agreement means a general security agreement granted by the Developer and ranking second behind the Project Financier and registered on the PPSR.

Green Star Rating means a Green Star rating under the Green Star Rating Scheme (as applicable as at the date of this agreement) under the scheme administered nationally by the Green Building Council of Australia.

IFC Date means the date on which the issued for construction Design Documents are approved in accordance with the Construction Contract.

Initial Payment Amount means the amount of one million dollars (\$1,000,000.00) (exclusive of GST).

Insolvency Event means the happening of any of these events:

- (a) an order is made that a body corporate be wound up;
- (b) an order is made appointing a liquidator, provisional liquidator, in respect of a body corporate or one of them is appointed whether or not under an order;
- (c) a receiver or receiver and manager is appointed to the whole or substantially the whole of the assets, of a body corporate;
- (d) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the

benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them;

- (e) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms reasonably approved by the other parties or is otherwise wound up or dissolved; or
- (f) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator or voluntary administrator is appointed to a body corporate.

Intellectual Property means all intellectual property whether protectable by law or in equity including:

- (a) copyrights, designs, trade secrets, confidential information and other intellectual property at any time held by, or registered in the name of a party;
- (b) company, accounting and tax records, correspondence, advice, opinions and other written information produced; and
- (c) material commissioned or prepared in relation to the Project including drawings, plans, specifications, computations, applications and reports.

Intended Purpose means the intended purpose for the Project as a mixed use development consistent with the Concept Plan.

Key Project Consultants means duly qualified consultants as may from time to time be appointed by the Developer or by the Contractor in accordance with the Construction Contract (as the case may be).

Land means the whole of the land comprised in the following certificates of title:

- (a) CT vol 5311 folio 188;
- (b) CT vol 5409 folio 677
- (c) CT vol 5478 folio 644
- (d) CT vol 5486 folio 993;
- (e) CT vol 5486 folio 994;
- (f) CT vol 5486 folio 995;
- (g) CT vol 5486 folio 996;
- (h) CT vol 5486 folio 997;
- (i) CT vol 5486 folio 999;
- (j) CT vol 5487 folio 1;

- (k) CT vol 5487 folio 2;
- (l) CT vol 5496 folio 125;
- (m) CT vol 5612 folio 476;
- (n) CT vol 5823 folio 154;
- (o) CT vol 5861 folio 566;
- (p) CT vol 5861 folio 567;
- (q) CT vol 5861 folio 568;
- (r) CT vol 5861 folio 569;
- (s) CT vol 5861 folio 570;
- (t) CT vol 5861 folio 571;
- (u) CT vol 5861 folio 572;
- (v) CT vol 5861 folio 573;
- (w) CT vol 5861 folio 574;
- (x) CT vol 5861 folio 575;
- (y) CT vol 5861 folio 576;
- (z) CT vol 5861 folio 577; and
- (aa) CT vol 5861 folio 578.

Land Sale Contract means the contract of sale of the Lots prepared under clause 9.3.

Liability includes all liabilities (whether actual, contingent or prospective), of whatsoever nature or description irrespective of when the acts, events or things giving rise to the liability occurred.

Loss includes any damage, loss, cost, claim, Liability or expense (including legal costs and expenses).

Lot means a community lot to be created by the community title subdivision(s) of the Land for the Project including all residential, retail and commercial spaces within the Project.

Lot Proceeds means in respect of a particular Lot, the gross proceeds from the sale of that Lot (inclusive of the deposit) plus any applicable settlement adjustments paid by the Developer and received by the Council, less an amount equal to:

- (a) real estate agent's commission;
- (b) conveyance fees in connection with the sale of that Lot;

- (c) allowance or adjustments for Rates and Taxes; and
- (d) GST in respect of the supply of that Lot.

Marketing and Sales means the marketing, sales and leasing (as the case may be) of the Lots including development and implementation of marketing, sales and leasing strategies, developing the design of the sales suite and obtaining all pre-commitments to secure the viability of the Project.

Materially Amended Contract means:

- (a) a standard form contract of sale approved by the Council in accordance with clause 9.3.1; and/or
- (b) a standard form Agreement for Lease and/or Lease approved by the Council in accordance with clause 8.2.5,

that is proposed to be amended other than to incorporate;

- (c) Negotiated Outcomes;
- (d) Minor Land Sale Variation(s); and/or
- (e) Approved Lease Variation(s).

Minor Land Sale Contract Variation means a variation to the Land Sale Contract that relates to internal product selections or a variation which is required to give commercial efficacy to the requisite contract and its terms, as determined by the Developer acting reasonably, provided always that any such variation is consistent with the Intended Purpose and the principles enunciated in this agreement.

Material Revision means a revision which results in the following changes from the Concept Plan (in the form attached to this agreement):

- (a) a reduction of public carpark numbers;
- (b) the Project exceeding the maximum height of the development;
- (c) a decrease or increase in the net lettable area of the development of 10% or more;
- (d) a decrease or increase in the residential Lots by greater than 15%;
- (e) a decrease to the development's access points; and
- (f) a change to the setback of the development.

Material Variation means a variation of the Approved Development Plans after the IFC Date which results in:

- (a) a material adverse change that lowers the external appearance of the buildings in an overall sense below the quality represented in the Approved Development Plans;
- (b) a material adverse change that lowers the Building Services below any performance standards specified in the Design Documents;

- (c) a material adverse change that lowers the external finishes to the building below the relevant detail specified in the Design Documents;
- (d) a material adverse change to the external finishes to the building which takes a category of finishes as set out in the Design Documents in an overall sense below the standard for the relevant category of finishes set out in the Design Documents;
- (e) any reduction or increase in the approved gross floor area of the building of greater than 2% measured against the Approved Development Plans;
- (f) the Project not delivering the Required Elements; or
- (g) the Project not delivering the Sustainability Features or Wellness Features,

but noting that a Material Variation does not include any variation that is required for compliance with any Law, the requirements of any Authority and/or for safety reasons.

Minimum Rating Objectives means Sustainability Features that will support the targets described in clause 5.1.1.

NABERS means the National Australian Built Environment Rating System (as administered by the NSW Department of Planning, Industry and Environment) used to measure a building's energy efficiency.

NaTHERS means the Nationwide House Energy Rating Scheme (administered by the Department of Industry, Science, Energy and Resources (Cth)) that rates the energy efficiency of a home (based on design).

Negotiated Outcomes means each of the items required to be completed in the Schedule to the standard contract of sale and the standard form of lease developed in accordance with clauses 8 and 9.

Non-Permitted Use includes:

- (a) vape store;
- (b) adult shop;
- (c) large format retail of greater than 800sqm; and
- (d) chain food brands (excluding Liquor) which do not complement the Wellness Features of the Project.

Objection and **Object** means an objection in writing by the Council (acting reasonably) submitted to the Developer.

Objection Procedure means where an Objection has been notified by the Council to the Developer, the following procedure:

- (a) the Developer's Representative and the Council's Representative must meet as soon as practicable to discuss the Objection and act reasonably to negotiate a resolution of the Objection; and

- (b) if no resolution of the Objection is achieved within five (5) Business Days of such meeting, either the Developer or the Council may refer the matter in dispute to the Superintendent for determination who shall act as if appointed as an Expert under clause 23.9 and make a determination in keeping with the procedure under clause 24.5.

Obligations means all obligations and liabilities of whatsoever kind, undertaken or incurred by, or devolving on, a party under or in respect of this agreement or any deed, agreement or other instrument collateral to this agreement or given or entered into pursuant to this agreement.

PPSR means the Personal Property Securities Register maintained by the Australian Financial Security Authority.

Practical Completion will have the same meaning as in the Construction Contract.

Project means the construction of three (3) multi storey towers as a single stage development as shown in the Concept Plan comprising approximately 170 residential apartments, street level commercial/retail space and basement car parks and, subject to this agreement, incorporating the Required Elements.

Project Activities includes:

- (a) Marketing and Sales;
- (b) procuring Project Funding;
- (c) preparing all Design Documents;
- (d) procuring and obtaining all Approvals;
- (e) complying with the conditions of any Approvals;
- (f) conducting site investigations;
- (g) undertaking any remediation;
- (h) removing all rubbish and debris;
- (i) constructing the Project;
- (j) engaging contractors, consultants and professional advisors;
- (k) managing the Project;
- (l) undertaking all land divisions (including Community Scheme Document preparation);
- (m) payment of all Project Costs; and
- (n) anything incidental to the matters referred to above.

Project Control Group means the group to be established under clause 19.

Project Costs means all costs, expenses and liabilities paid, payable or necessarily incurred or to be incurred by the Developer in connection with the Project and the Project Activities including, without limitation:

- (a) the costs of applying for and obtaining all Approvals;
- (b) the costs of complying with all Approvals and complying with conditions imposed as part of the Approvals including without limitation the costs of any remediation of the Land so as to comply with the requirements of any Authority;
- (c) the costs of all works in connection with the Project Activities including the costs of complying with all Statutory Requirements;
- (d) the costs of Marketing and Sales;
- (e) the costs, fees and expenses payable to any consultants, managers, advisors and other persons engaged by the Developer in relation to the Project Activities including planning, design, engineering, survey, accounting, audit and valuation costs, expenses and fees;
- (f) all surveying, conveyancing and legal fees necessary to effect the deposit of plans of community divisions pursuant to the *Community Titles Act 1996* (SA) to enable creation of the Lots including the preparation of the plans of community division, scheme descriptions, by-laws, development contracts and the applications to deposit the plans of community division;
- (g) all payments made or payable by the Developer under any agreement entered into by the Developer in connection with the Project Activities;
- (h) all costs, expenses, fees and Obligations expended or incurred by the Developer in connection with constructing the Project (including expenses for energy consumption, garbage and waste removal and water usage);
- (i) all insurance premiums for insurances effected by or on behalf of the Developer in respect of the Project Activities and the Project;
- (j) any transaction duty, tax or charge which is assessed, levied, imposed or collected in respect of the execution, delivery, performance or enforcement of this agreement;
- (k) all Rates, Taxes and Levies and all Authority fees, building and application fees and Project approval fees of any kind associated with the Project Activities (including fines and penalties incurred by the Contractor);
- (l) any other costs, expenses, fees and Obligations which are stated to be Project Costs under this agreement or which the parties agree (in writing) between themselves will be Project Costs;
- (m) all costs, expenses and liabilities in connection with the acquisition of labour, materials and services for and in connection with the construction of any improvements on the Land by or on behalf of the Developer (other than any improvements procured by, or on behalf of, the Council);

- (n) all of the Developer's legal and associated expenses of the Project (excluding the preparation and execution of this agreement and any legal and accounting expenses incurred by a party in its own capacity) including completion of the Project, and procuring the Project Funding;
- (o) principal, interest, costs, fees, charges and any other money advanced or secured under the Project Funding and all costs and duties of establishing and operating the Project Funding facility(ies);
- (p) all bank charges and all accounting audit fees and disbursements incurred in maintaining bank accounts and preparing books of account in relation to the Project; and
- (q) all survey fees, valuation fees, architect fees, estate agent fees, accountancy costs and any other consultant's fees (incurred by the Developer) properly attributable and relating to the Project;

but expressly excluding any costs, expenses and liabilities paid, payable or necessarily incurred by Council for its own purposes (whether in respect of the Project or otherwise).

Project Feasibility means the Developer's financial feasibility for the Project, as reviewed and updated by the Developer from time to time.

Project Fee means the fee payable by Council to the Developer for undertaking the Project, being the sum of the following amounts:

- (a) an amount equal to the Lot Proceeds from the sale of each Lot; and
- (b) an amount equal to any income (including rental income) that becomes payable to the Developer under clause 2.2.3.

Project Financier means the (Bank) provider(s) of funding for the Project in accordance with this agreement.

Project Funding means the funding facility or facilities to be provided to the Developer by a Project Financier using the Project Rights as security to fund the Project including the payment of all Project Costs.

Project IP means all reports, data, plans, drawings and other technical specifications or other information relating to the design, approval and construction of the Project and all other tender submissions, reports, data, plans, drawings and other information prepared by or on behalf of the Developer in connection with the Land.

Project Licence means the terms and conditions upon which the Council grants the Developer access to the Land to carry out the Project Activities as set out in clause 16.

Project Proceeds means the aggregate of the Lot Proceeds for all Lots sold during the Term.

Project Rights means the rights, privileges and powers to undertake the Project on the Land under this agreement.

Project Works means the works in connection with the development of the Land being designed and constructed pursuant to the Construction Contract, subject to variations in accordance with this agreement.

Public Value Principles means the Council's principles for the delivery of public space set out in Annexure B.

Rates, Taxes and Levies includes statutory rates, assessments and other charges imposed by an Authority in connection with the ownership of the Land (but, subject to clause 22, excluding any local government rates in respect of the Land for so long as the Council is the registered proprietor) and any levies raised or declared by any community corporation.

Related Corporation is a body corporate which is a related body corporate under section 50 of the Corporations Act but also includes a body corporate which is a related body corporate of a body corporate described in paragraph (a) under section 50 of the Corporations Act.

Required Elements means the following features or elements:

- (a) delivery of a development that will comply with a minimum 15% affordable housing target policy;
- (b) basement car parking as detailed on the Concept Plan comprising 116 casual public (non-allocated) car parks, residential car parks and 30 commercial car parks; and
- (c) provision of appropriate retail, commercial and public realm components and elements which are consistent with the Concept Plan.

Second Payment Amount means the amount of six million dollars (\$6,000,000.00) (excluding GST).

Senior Executive means:

- (a) in relation to the Developer, Jamie McClurg; and
- (b) in relation to the Council, the Chief Executive Officer and his or her delegate.

Statutory Requirements includes:

- (a) any statute, regulation, ordinance, by-law or subordinate legislation in force from time to time, whether made by state, federal or local government (including by Council in its separate capacity as a relevant Authority); and
- (b) any other regulatory requirements;

applying to the Land or the Project Activities.

Superintendent means the person appointed from time to time to act in the capacity of a superintendent under the Construction Contract (which person must not be the Architect).

Sustainability Features includes elements and features in the building design and construction that are considered environmentally responsible and resource

efficient including features and criteria recognised by current building sustainability rating tools.

Target Completion Date means 31 March 2025 as extended by extensions of time directed by the Superintendent in accordance with the Construction Contract.

Term has that meaning ascribed to it in clause 22.1.

Timeframes means five (5) Business Days or such other reasonable timeframe as agreed between the parties in writing (having regard to the nature of the requested consent or approval).

Total Payment Amount means the amount of twenty five million five hundred thousand dollars (\$25,500,000.00) (exclusive of GST) less any amounts deducted in accordance with clause 6.3.3.

Transaction Documents means:

- (a) this agreement; and
- (b) any other agreements the parties agree is a Transaction Document for the purpose of this agreement.

Trust means any trust of which the Developer's interest in this agreement is an asset.

WELL Building Standards means the standards to measure the performance of a building that impact on the health and wellbeing environment.

Wellness Features includes the incorporation of amenities and initiatives that are designed to enhance the physical and mental health and wellbeing of owners, occupiers and visitors.

1.1 Interpretation

In this agreement, unless the context otherwise requires:

- 1.1.1 headings do not affect interpretation;
- 1.1.2 singular includes plural and plural includes singular;
- 1.1.3 words of one gender include any gender;
- 1.1.4 a reference to a party includes its executors, administrators, successors and permitted assigns;
- 1.1.5 a reference to a person includes a partnership, corporation, association, government body and any other entity;
- 1.1.6 a reference to this agreement includes any schedules and annexures to this agreement;
- 1.1.7 an agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;

- 1.1.8 an agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- 1.1.9 a reference to a document includes that document as varied, novated or replaced from time to time;
- 1.1.10 a reference to legislation includes any amendment to it, any legislation substituted for it, and any subordinate legislation made under it;
- 1.1.11 a provision is not construed against a party only because that party drafted it;
- 1.1.12 an unenforceable provision or part of a provision may be severed, and the remainder of this continues in force, unless this would materially change the intended effect of this;
- 1.1.13 the meaning of general words is not limited by specific examples introduced by 'including', 'for example' or similar expressions; and
- 1.1.14 an expression defined in the *Corporations Act 2001 (Cth)* has the meaning given by the Act at the date of this agreement.

1.2 **Background**

The Background forms part of this agreement and is correct.

1.3 **No Partnership**

This agreement does not constitute a partnership between the parties, nor does it constitute one party the agent of another party save as expressly provided in this agreement.

1.4 **Order of Precedence**

- 1.4.1 If there is any inconsistency or discrepancy regarding the various outcomes and requirements for the Project, then the following order of precedence of documents and other interpretation rules shall apply to resolve the same:
 - 1.4.1.1 the Design Documents;
 - 1.4.1.2 the Approved Development Plans;
 - 1.4.1.3 the Concept Plan; and
 - 1.4.1.4 the terms of this agreement.
- 1.4.2 Any requirement of an Authority must be complied with even if any other document does not require compliance or requires compliance to a different and lower standard or in a different manner or form.
- 1.4.3 Where any discrepancy or inconsistency involves figured dimensions and scaled dimensions then figured dimensions shall take precedence over scaled dimensions. Drawings made to larger scales and those showing particular parts of the Project Works shall take precedence

over drawings made to smaller scales and those for more general purposes.

2. PURPOSE AND ROLES

2.1 Purpose

The parties acknowledge and agree that the purpose of this agreement is to provide for the following:

- 2.1.1 the development and construction on the Land of a single stage mixed use development in accordance with the Concept Plan and delivering the Required Elements;
- 2.1.2 the Developer securing appropriate retail and commercial tenancies that substantially align with the Concept Plan for non-residential components of the Project (and the potential sale or transfer of those non-residential components); and
- 2.1.3 the sale on completion of the residential apartments.

2.2 Roles

- 2.2.1 The Council will remain the registered proprietor of the Land (and the Lots to be created) until such time as sold to third parties or otherwise transferred pursuant to this agreement.
- 2.2.2 The Developer is to procure the delivery of the Project and is responsible for all Project Costs.
- 2.2.3 From the earlier of Financial Close or the Construction Commencement Date, the Developer is entitled to all income and revenue generated from the use (including the sale, leasing and/or licencing) of the Land (excluding Council Statutory rates and charges) irrespective of whether the Council is the registered proprietor and the Council agrees to direct any such income and revenue to account(s) nominated by the Developer (from time to time).

2.3 Co-operation

From the date of this agreement the Council and Developer must (and must use all reasonable endeavours to procure their employees, consultants and contractors to):

- 2.3.1 co-operate with the other party in relation to the performance of its and the other party's Obligations, and the exercise of its and the other party's rights, under this agreement;
- 2.3.2 act in good faith towards each other in relation to all matters under this agreement;
- 2.3.3 promptly disclose to the other, any material information regarding the Project which comes into the possession of one but not both of them; and

- 2.3.4 take all reasonable steps (including the execution of documents) and do everything reasonably required to give effect to the transactions contemplated by this agreement.

2.4 Consideration

- 2.4.1 In consideration of the payment by the Developer of the Total Payment Amounts (as and when due under this agreement) the Council grants the Developer the right to develop the Land in accordance with this agreement.
- 2.4.2 In consideration of the payment by the Council of the Project Fee (as and when due under this agreement) the Developer agrees to undertake the Project on the Land in accordance with the terms of this agreement.

3. PROJECT CONDITIONS

3.1 Conditions precedent

This agreement is subject to and conditional upon development plan consent for the Project to proceed (on terms and conditions acceptable to the Developer in its sole discretion).

3.2 Reasonable endeavours

The Developer (with the Council assisting) must use reasonable endeavours to satisfy the condition in clause 3.1 as soon as practicable after the execution of this agreement. Nothing in this clause 3.2 fetters the Developer's discretion in respect of being satisfied with the terms and conditions of any proposed development plan consent.

3.3 Benefit and waiver

- 3.3.1 The Council and the Developer acknowledge and agree the condition precedent in clause 3.1 is for the benefit of the Developer.
- 3.3.2 The condition in clause 3.1 may only be waived in writing by the Developer as benefiting party.
- 3.3.3 Any waiver under clause 3.3.2 must be in writing.

3.4 Notice

- 3.4.1 The Developer must promptly notify the Council in writing as soon as it becomes aware that satisfaction of the condition:
 - 3.4.1.1 has been achieved;
 - 3.4.1.2 has been delayed; or
 - 3.4.1.3 has or will not be achieved.
- 3.4.2 The Developer's notice to the Council under clause 3.4.1 must provide detail regarding any delay or the reasons why the condition has or will not be achieved (including an explanation why the conditions of any

approval may not be satisfactory (if that is the reason for the condition not being achieved)).

3.5 Termination

- 3.5.1 If the condition under this clause 3 has not been satisfied (and not otherwise waived) by 1 September 2021, either party may end this agreement on not less than five (5) Business Days written notice to the other.
- 3.5.2 If this agreement is terminated under this clause 3.5 each party:
 - 3.5.2.1 subject to this clause 3.5, is released from its Obligations to continue performance under this agreement;
 - 3.5.2.2 retains the rights it has against the other party in respect of any past breach.
- 3.5.3 If this agreement is terminated under this clause 3.5, clause 25 (*Confidentiality and IP*) will survive and remain in full force and effect.

3.6 Construction commencement

Without limiting any other term of this agreement, commencement of construction is subject to and conditional upon Financial Close under clause 7.

4. FEASIBILITY AND CONCEPT PLAN

4.1 Feasibility and Concept Plan generally

The Council and the Developer acknowledge that as at the date of this agreement:

- 4.1.1 the Project Feasibility (attached to email dated 3 December 2020 from Tony Perrin to Rachel Tassone); and
- 4.1.2 the Concept Plan;

are current for the Project and are each confidential information of, and the property of, the Developer.

4.2 Required Outcomes

- 4.2.1 The Developer acknowledges and agrees it is a fundamental term of this agreement that the Developer ensures the Project incorporates and delivers the Required Elements.
- 4.2.2 Notwithstanding clause 4.2.1 the parties acknowledge and agree that a breach of clause 4.2.1 does not constitute a repudiation of this agreement for the purposes of clause 23 or otherwise.

4.3 Revisions to Feasibility and Concept Plan

- 4.3.1 The Developer may revise the Project Feasibility from time to time provided that it keeps the Council informed of any revision which may indicate the delivery of the Project in accordance with this agreement may not be achieved.

- 4.3.2 Council's approval (not to be unreasonably withheld) is required to any revision of the Concept Plan prior to the IFC Date except to the extent that revisions do not constitute a Material Revision, in which case Council's approval is not required.
- 4.3.3 The Council acknowledges and agrees that:
 - 4.3.3.1 Council must notify the Developer, in writing, whether or not it consents to a Material Revision within seven (7) Business Days of a written request for consent by the Developer.
 - 4.3.3.2 if Council fails to give notice within ten (10) Business Days, the Council will be deemed to have approved the Material Revision; and
 - 4.3.3.3 if Council does not approve a Material Revision under this paragraph 4.3, the Council must give detailed and written reasons for not approving the Material Revision as part of any objection notice given in accordance with clause 4.3.3.1.
- 4.3.4 The parties acknowledge and agree that after the IFC Date, Design Documents (including the Concept Plan) may be amended by, or on behalf of, the Developer without Council approval, unless the amendments to the Design Documents constitute a Material Variation in which case clause 14.2 will apply.

4.4 Concept Plan development approval

The parties acknowledge and agree:

- 4.4.1 the Concept Plan that is attached to this agreement is, as at the date of this agreement, the form of the plan to be lodged for Approval under clause 6;
- 4.4.2 in the event the Developer considers that a revision or amendment to the Concept Plan may be required before it is first presented as part of the development approval process under clause 6, the Developer must provide additional information required by Council to outline the basis for the revision or amendment to Council together with any drawings for Council's review.

5. SUSTAINABILITY AND WELLNESS

5.1 Sustainability rating targets

- 5.1.1 Subject to this clause 5.1, and based on the Concept Plan as at the date of this agreement, the Developer anticipates the Sustainability Features will support the following targets:
 - 5.1.1.1 equivalent energy performance for the commercial office component of the Project of 5.5 Star 'NABERS Energy for Office Buildings'
 - 5.1.1.2 initiatives consistent with 5 Star Green Star in respect of:
 - (a) building management;

- (b) Indoor Environmental Quality;
- (c) Energy;
- (d) Transport;
- (e) Water;
- (f) Materials;
- (g) emissions; and

5.1.1.3 a 6 star NaTHERS (being an average across all residential lots comprised in the Project).

5.1.2 Despite clause 5.1.1, the Developer acknowledges and agrees that the Developer will consider and where (in the Developer's opinion) appropriate and consistent with the Project Feasibility, adopt Sustainability Features that are higher than the Minimum Rating Targets.

5.1.3 The Developer must arrange to provide to Council reports prepared by an external sustainability expert defining in detail the means by which the Project can achieve the Minimum Rating Objectives.

5.1.4 The Developer must arrange a meeting with Council (within five (5) Business Days of providing the reports described in clause 5.1.3) to discuss the expert report(s) and the Developer agrees to take into account in finalising the Design Documents, Council's reasonable comments received at that meeting.

5.2 Wellness targets

5.2.1 The Developer acknowledges and agrees the Project will include Wellness Features which are consistent with the components of the WELL Building Standards including the incorporation of initiatives that relate to:

- 5.2.1.1 air;
- 5.2.1.2 water;
- 5.2.1.3 nourishment;
- 5.2.1.4 light;
- 5.2.1.5 movement;
- 5.2.1.6 thermal comfort;
- 5.2.1.7 sound;
- 5.2.1.8 materials;
- 5.2.1.9 mind; and
- 5.2.1.10 community.

- 5.2.2 The Developer will continue to engage with Council to ensure that Council is kept informed regarding the progress of initiatives and outcomes described in clause 5.2.1 and an opportunity for Council to provide comments and feedback.
- 5.2.3 Without limiting any other provision of this agreement, the Developer acknowledges and agrees that appropriate Wellness Features must, be referenced and incorporated into the Community Scheme Documents.

6. DEVELOPMENT APPROVAL

6.1 Development applications

- 6.1.1 Subject to clause 6.2, the Developer is responsible for obtaining at its cost all Approvals in relation to the Project.
- 6.1.2 Unless otherwise agreed, the Developer will use all reasonable endeavours to lodge the application for development plan approval (attaching the Concept Plan) on or before 23 April 2021.

6.2 Council updates

The Developer must ensure all prepared plans and materials (as lodged) are provided as part of the Project Control Group activities.

6.3 Public Value Principles

- 6.3.1 The Council acknowledges and agrees that the Concept Plan incorporates open space to be vested in Council and public accessible space which have been measured against the Public Value Principles.
- 6.3.2 The Council will:
 - 6.3.2.1 provide support to mitigate or remove any obligation of the Developer, and will advocate against any obligation being imposed on the Developer, to pay, make or otherwise allow to be levied, an open space contribution (**OSC**), as a condition of any Approval in respect of the Project; and
 - 6.3.2.2 sign all documents and do all such acts and things as reasonably required by the Developer to assist the Developer to achieve the objectives set out in clause 6.3.2.1.
- 6.3.3 If, the Developer is required to pay or otherwise make an open space contribution in respect of the Project (**OSC**):
 - 6.3.3.1 the Council must on written notice from the Developer, formally apply to the relevant Authority within 15 Business Days of the Developer's notice under this clause 6.3.3.1, and will use its reasonable endeavours, to seek remittance to Council of any OSC to be applied towards the Project (**OSC Application**).
 - 6.3.3.2 If the Council is successful in its OSC Application, the Council must, within 5 Business Days of receipt of any such

remittance, pay to the Developer an amount equivalent to the amount received by Council in connection with its OSC Application (**OSC Refund**).

- 6.3.3.3 The Total Payment Amount and the Balance Payment Amount will be reduced by an amount calculated as follows:

$$[\text{OSC} - \text{OR}] \times 0.5$$

Where:

OSC = The Open Space Contribution that the Developer is required to pay in respect of the Project (if any)

OR = an amount equal to the OSC Refund paid to the Developer by, or on behalf of the Council (if any).

- 6.3.4 The Developer acknowledges and agrees:

- 6.3.4.1 subject to clause 6.3.4, the area marked as open space on the Concept plan is to vest in the Council as open space; and

- 6.3.4.2 the areas marked as public accessible space on the Concept Plan are to be retained as public accessible space and the Developer must ensure this is secured as public accessible space to Council's reasonable satisfaction through the Project Activities (including the required Community Scheme Documents).

- 6.3.5 In respect of the open space area to be vested in Council, it is acknowledged and agreed by the Developer:

- 6.3.5.1 the relevant space is to be created as an air rights title;

- 6.3.5.2 all ground level surface treatments and any other built form either contained within or otherwise to be used to support the use of this area as vested public open space must be consistent with the Council's Public Value Principles (including public realm requirements approved by Council (acting reasonably)); and

- 6.3.5.3 the responsibility for the repair, maintenance or replacement of all surface level treatments and services (below, above or within the open space area) will be the obligation of the relevant community corporation and will be referenced in the Community Scheme Documents or any other supporting document to create the required rights to ensure that on the deposit of the required Community Plan this will not be or become the responsibility of Council.

6.4 Community title

Without limiting any other clause of this agreement, the Developer acknowledges and agrees that the required open space and public accessible spaces to be created and described in this clause must be incorporated into any Community Scheme Documents to be approved by Council.

7. FINANCING PROJECT

7.1 Obtaining Project Funding

- 7.1.1 The Developer is responsible to secure the Project Funding.
- 7.1.2 The Council acknowledges and agrees that the Developer will not be in breach of this agreement if the Developer is unable to secure Project Funding on terms acceptable to the Developer.
- 7.1.3 The Developer will apprise Council of any material change to the Project Funding which is inconsistent with the Project Feasibility.

7.2 Project Finance

- 7.2.1 The Council and the Developer will sign all documents and do all such acts and things as reasonably required by the other to assist the Developer to secure the Project Funding.
- 7.2.2 The Developer acknowledges and agrees that all finance provided must be used solely for the purpose of the Project and for no other purpose.

7.3 Security

- 7.3.1 The Council acknowledges and agrees the Developer intends to grant a mortgage over the Project Rights as security for the Project Funding.
- 7.3.2 The Council agrees to negotiate in good faith with the Project Financier to enter into the Contractor Side Deed, the Developer Side Deed and any other required side deed(s) reasonably required to ensure the Project Financier has step in rights to continue to undertake the Project on the terms of this agreement.
- 7.3.3 The Council is not required to grant a mortgage of the Land as security for the Project Funding and the Developer will not be required to provide any security outside of the Project and the General Security Agreement .

7.4 Finance costs

All costs associated with obtaining Project Funding (including any application fees, valuation costs and other charges) are the responsibility of the Developer.

7.5 Financial close

The Developer acknowledges and agrees that Financial Close will be achieved when:

- 7.5.1 the Developer has provided evidence to Council that the Developer's Financial Contribution is available;
- 7.5.2 all conditions or other requirements under the Project Finance are satisfied (including all pre-sale/commitment requirements) and the Project Finance is unconditionally available and may be drawn down by the Developer (subject to recurring draw down conditions being satisfied); and

- 7.5.3 the Developer has executed all Transaction Documents, including the Construction Contract.

7.6 Finance conditions

The Developer will not be in breach if it has not been able to secure Project Funding on terms satisfactory to the Developer and/or to satisfy the Project Financier's pre-sale/commitment condition.

7.7 Termination

- 7.7.1 If Financial Close has not been achieved by 28 February 2023 as a result of the pre-sale/commitment condition not being satisfied or otherwise, or the Developer otherwise not obtaining Project Finance on terms satisfactory to the Developer), either party may terminate this agreement on not less than five (5) Business Day's written notice to the other in which case:

7.7.1.1 each party:

- (a) subject to this clause 7.7, is released from its Obligations to continue performance under this agreement; and
- (b) retains the rights it has against the other party in respect of any past breach; and

- 7.7.1.2 Clause 25 (*Confidentiality and IP*) will survive and remain in full force and effect.

8. LEASING AND APARTMENT SALES STRATEGIES

8.1 Marketing strategies

- 8.1.1 The Developer is responsible for all Marketing and Sales.
- 8.1.2 The Developer acknowledges and agrees it must provide for Council's review and comment details of the Developer's sale and retail/commercial strategies for the Project including:
- 8.1.2.1 details of proposed resourcing including external sale or retail advisors and proposed selling or leasing agents; and
 - 8.1.2.2 marketing materials or collateral (including proposed timing for preparation and release).

8.2 Leasing

- 8.2.1 The Developer acknowledges and agrees that it will use reasonable endeavours (having regard to market conditions as determined by the Developer) to ensure the retail and commercial outcomes of the Project are consistent with and respond to the Concept Plan and other requirements of this agreement.
- 8.2.2 Subject to clause 8.2.7, the Developer will not lease or offer to lease any premises for any Non-Permitted Use without the Council's prior written consent (which may be withheld in the Council's discretion).

- 8.2.3 Without limiting clause 8.1, the Developer further acknowledges it must, at PCG meetings:
- 8.2.3.1 ensure any proposed fitouts or shop front designs are presented to Council for review and comment; and
 - 8.2.3.2 provide updates on the strategies for the leasing of the commercial spaces and the technology hub uses (including target occupiers and operators).
- 8.2.4 The Council acknowledges and agrees that for the purposes of leasing premises, the Developer will, in its own capacity and/or nominee, enter into agreements for lease with prospective tenants.
- 8.2.5 The Developer will:
- 8.2.5.1 in consultation with the Council prepare a standard form of agreement for lease and lease for approval by the Council and to be provided to any prospective tenant; and
 - 8.2.5.2 deliver a final version of the standard form agreement for lease to the Council's Representative for approval and the Council must ensure that within 14 days the Council's Representative either, by written notice:
 - (a) approves the standard form agreement for lease and lease; or
 - (b) provides reasonably detailed comments or suggested amendments on the form of the draft agreement for lease and lease on the basis only that the standard form agreement for lease or lease is inconsistent with the Intended Purpose, whereupon the Developer must amend the standard form agreement for lease or lease (as the case may be) to attain such consistency with the Intended Purpose (as determined by the Developer, acting reasonably), following which the amended agreement for lease and/or lease will be the approved standard forms.
- 8.2.6 If the Council does not deliver a notice in accordance with, and within the time set out in, this clause 8.2.5, the standard form agreement for lease issued by the Developer in accordance with clause 8.2.5.2 will be deemed approved by the Council.
- 8.2.7 Subject to clause 8.2.8, the Developer must not provide an agreement for lease or lease to a prospective tenant unless it is in the approved form other than in respect of Negotiated Outcomes and/or Approved Lease Variation(s).
- 8.2.8 Notwithstanding any other provision of this agreement:
- 8.2.8.1 the Developer may:
 - (a) include in any lease Negotiated Outcomes which do not need to be approved by Council; and

- (b) otherwise amend the approved form of agreement for lease and/or lease provided it is an Approved Lease Variation; and

8.2.8.2 the Developer will not require the Council's approval, and the Council has no basis to refuse, to enter into and execute any form of agreement for lease or lease with a prospective tenant at any time after the payment of the Balance Payment Amount to the Council in accordance with this agreement.

8.2.9 If at the commencement of any lease:

8.2.9.1 the Developer is not the registered proprietor of the land subject to that particular lease; and

8.2.9.2 the lease is in approved form or the lease is not in the approved form but the Balance Payment Amount has been paid to Council at that time,

the Developer will, under any agreement for lease, nominate the Council to enter into that lease as landlord and the Council agrees to promptly execute the relevant lease once presented by the Developer.

8.2.10 The Council agrees to enter into agreements for lease as a party, together with the Developer, provided any such agreement to lease is in a form approved in accordance with this clause 8 or the agreement for lease is not in the form approved by Council in accordance with clause 8 but the Balance Payment Amount has been paid to Council at that time.

8.3 Pre-sales/commitment

8.3.1 The Council and the Developer acknowledge that a condition of any Project Funding will include a requirement that the Developer secure a percentage of pre-sales of the apartments and pre-commitments (in the form of sales or qualifying tenancies) in respect of the retail/commercial lots.

8.3.2 The Developer must obtain the Council's approval to the terms of the Project Financier's pre-sale/commitment condition and will not request the Project Financier vary that approved pre-sale/commitment condition without the Council's consent.

8.3.3 The Developer must through the PGC meetings keep the Council informed as to progress of pre-sales/commitments.

8.4 Branding

The Developer:

8.4.1 acknowledges and agrees that any branding of the Project will include an acknowledgment of the Council's role in the Project; and

8.4.2 will consult with and take into account reasonable requests in respect of such branding received from the Council from time to time.

8.5 Activation

8.5.1 The Developer acknowledges and agrees that:

8.5.1.1 Council intends to continue to use parts of the Land for the period to the earlier of Financial Close and August 2022 to promote site activation and other commercial and social objectives of Council; and

8.5.1.2 the Developer will cooperate with Council to assist with achieving these objectives.

8.5.2 Notwithstanding clauses 8.5.1, the parties acknowledge and agree that:

8.5.2.1 subject to obtaining all approvals from any Authority, under the licence in clause 16 the Developer will be entitled to install a sales and information centre with associated car parking with a total footprint of approximately 750 square metres (being approximately 250 to 350 square metres for the sales centre) on the south western corner of the Land; and

8.5.2.2 the design of the sales and information centre will be co-ordinated with any Council activation.

8.5.3 If the Developer does not achieve Financial Close, then at the Developer's costs all improvements installed by the Developer (other than any early activation improvements installed at the Council's request) must be removed and the Land re-instated (to the extent required as a result of the Developer's improvements) to Council's reasonable satisfaction to the condition as at the Commencement Date.

9. CONTRACT FOR SALE

9.1 Liability and structure

9.1.1 The Developer acknowledges and agrees the Council's liability to any prospective purchaser of a Lot is to be limited to providing clear freehold title to that party as the purchaser.

9.1.2 The Developer retains Liability and is responsible to the prospective purchaser for delivery of the Project Works including:

9.1.2.1 the quality and standard of construction;

9.1.2.2 achieving Practical Completion; and

9.1.2.3 ensuring all Defects are remedied (either as set out in this agreement or in accordance with each purchaser's sale contract (as the case may be)).

9.2 Indemnity

Without limiting any other term of this agreement, the Developer must indemnify and keep the Council indemnified against any Claim for any Loss suffered or incurred by Council in connection with the Project Works including:

- 9.2.1 in connection with the sale and transfer of any Lots under a Land Sale Contract; and
- 9.2.2 the Developer failing to comply with its Obligations under this agreement;

except to the extent any Claim relates to or Loss was caused or contributed to be the negligence of Council or any breach by Council of its Obligations under this agreement.

9.3 Contract terms and conditions

9.3.1 The Developer:

- 9.3.1.1 will in consultation with the Council prepare a standard form of contract for approval by the Council which must:

- (a) have regard to the requirements of this clause 9; and
- (b) include the Developer as a party to the contract.

- 9.3.1.2 must deliver a final version of the standard form of contract to the Council's Representative for approval and the Council must ensure that within 14 days the Council's Representative either, by written notice:

- (a) approves the standard form of Contract; or
- (b) (acting reasonably) provides reasonably detailed comments or suggested amendments on the form of the draft contract on the basis only that the standard form contract is inconsistent with the Intended Purpose, whereupon the Developer must amend the standard form contract to attain such consistency with the Intended Purpose (as determined by the Developer, acting reasonably), following which the amended contract will be the approved standard forms.

- 9.3.1.3 must deliver a final version of each Materially Amended Contract to the Council's Representative for approval and the Council must ensure that within 24 hours the Council's Representative either, by written notice:

- (a) approves the Materially Amended Contract; or
- (b) provides reasonably detailed comments or suggested amendments to the Materially Amended Contract on the basis only that the Materially Amended Contract is inconsistent with the Intended Purpose, whereupon the Developer must amend the Materially Amended

Contract to attain such consistency with the Intended Purpose (as determined by the Developer, acting reasonably), following which the Materially Amended Contract will be deemed to have been approved by the Council.

If the Council does not deliver a notice in accordance with, and within the times set out in, clauses 9.3.1.2 or 9.3.1.3(as the case may be), the standard form contract or the Materially Amended Contract (as the case may be) issued by the Developer will be deemed approved by the Council.

- 9.3.2 Subject to clause 9.3.3, the Developer must not provide any form of contract for sale to a prospective purchaser unless it is in the approved form.
- 9.3.3 Notwithstanding any other provision of this agreement:
 - 9.3.3.1 the Developer may amend the approved form of contract for sale provided it is a Minor Land Sale Contract Variation;
 - 9.3.3.2 any Negotiated Outcomes do not need to be approved by Council; and
 - 9.3.3.3 the Developer will not require the Council's approval, and the Council has no basis to refuse, to enter into and execute any form of contract for sale with a prospective purchaser at any time after the payment of the Balance Payment Amount to the Council in accordance with this agreement.

9.4 **Contract execution**

- 9.4.1 Despite any other provision in this document, the Developer will not require the Council's approval, and the Council has no basis to refuse, to enter into and execute any form of residential contract for sale with a prospective purchaser if that contract of sale is in the approved form (including any Negotiated Outcomes and/or Minor Land Sale Contract Variations, if applicable) and not more than 5% below the price range set out in the Project Feasibility for that particular Lot.
- 9.4.2 The Council will cooperate with the reasonable directions of the Developer to arrange the prompt execution of any sale contracts with prospective purchaser of any Lots between the hours of 9.00am and 5.00pm on any given Business Day.
- 9.4.3 The Council proposes within ninety (90) days from the date of this agreement to establish an internal process to coordinate with the Developer the execution of residential sale contracts which, subject to clause 9.4.4 may include a limited form of delegated authority to allow for execution by the Developer (or an agreed nominee of the Developer) on behalf of Council to manage execution on weekends and public holidays.
- 9.4.4 Until the arrangements in clause 9.4.3 are formally established, the Council will make administrative arrangements for a person with the necessary authority to be available between the hours of 4.00pm and

5.00pm on each Saturday and Sunday (except for those deemed public holidays in South Australia) for the purposes of executing any contracts for sale with prospective purchasers of any Lots.

10. APPOINTMENT OF CONTRACTOR AND KEY PROJECT CONSULTANTS

10.1 Contractor and Consultants

- 10.1.1 The Council acknowledges that the Contractor and other Key Project Consultants have been or propose to be engaged to assist in completing the design of the Project Works.
- 10.1.2 The Developer will ensure that the Construction Contract will be on usual commercial terms for a project of this scale and nature (including appropriate security for performance) and will have regard to the Project Feasibility and will not be inconsistent with the Developer's Obligations under this agreement.

10.2 Engagement of further consultants or changes in scope

The Developer and the Contractor have complete discretion to negotiate with the Key Project Consultants in relation to the terms on which they will provide design services in relation to the Project Works.

10.3 Replacement of Contractor

The Developer must, if it terminates the Construction Contract (or any other contract for the Project Works) or consents to the Contractor terminating the appointment of any of the Key Project Consultants, promptly engage another builder or, in the case of Key Project Consultants, cause the Contractor to promptly engage a replacement consultant with appropriate qualifications and experience.

11. GENERAL RIGHTS AND RESPONSIBILITIES

11.1 Developer Obligation

- 11.1.1 The Developer agrees to procure the carrying out of the Project Works by the Contractor in accordance with the provisions of this agreement.
- 11.1.2 The Developer acknowledges and agrees that the Developer will procure the carrying out of the Project Works in a manner which:
 - 11.1.2.1 requires the Contractor to use all reasonable endeavours to achieve Practical Completion by the Target Completion Date; and
 - 11.1.2.2 complies and remains consistent with the Concept Plan.
- 11.1.3 The Developer must not do anything which would constitute or lead to a breach of the Construction Contract by the Developer.

11.2 Responsibility

The Developer must control, co-ordinate, administer and direct all other activities necessary for the completion of the Project Works including:

- 11.2.1 by way of ensuring that an appropriately experienced person continues to act at all material times as the Superintendent;
- 11.2.2 the obtaining and maintaining of the Approvals; and
- 11.2.3 the convening of monthly meetings to report to the Council on the Project Works.

11.3 Exclusivity

The Council agrees that for so long as this agreement has not been terminated, the Council will not enter into or permit or cause to be entered into an agreement or arrangement with any other person for the carrying out of the Project or otherwise grant any rights or interests which are inconsistent with the Developer's rights and interests under this agreement.

11.4 Developer's Obligations

The Developer must ensure that the Approvals are maintained to enable the Project Works to be carried out in accordance with this agreement.

11.5 Standard of performance

The Developer must procure that all of the Obligations are performed by the Contractor with the degree of professional skill, care, competence and diligence in accordance with the methods, practices and standards of diligence and care reasonably exercised by other duly qualified persons performing the same or similar obligations and in an efficient, proper and workman like manner. The Council acknowledges and agrees that the Contractor and/or the Superintendent may be a related party of the Developer.

11.6 Practical Completion

The Developer must use reasonable endeavours to procure that the Contractor (having regard to the Construction Contract) achieves Practical Completion on or before the Target Completion Date.

11.7 Council obligations

- 11.7.1 Without limiting any other clause of this agreement the Council acknowledges that upon request by the Developer the Council must comply with all Obligations it has agreed to perform or undertake as provided in this agreement.
- 11.7.2 Except as expressly provided in this agreement, the Council must not:
 - 11.7.2.1 do or permit to be done anything which may derogate from the Developer's interest under this agreement; or
 - 11.7.2.2 assign, charge, mortgage, transfer, grant any rights or interest in the Land or otherwise dispose of any interest in the Land except as otherwise agreed or provided in this agreement; or
 - 11.7.2.3 access the Land or authorise any person to access the Land on and from the earlier of Financial Close or the Construction Commencement Date.

12. DESIGN DEVELOPMENT AND APPROVALS

12.1 Generally

The Developer must ensure:

- 12.1.1 that the Contractor complies with all necessary Approvals in relation to the Project Works; and
- 12.1.2 all Design Documents prepared under the Construction Contract are consistent with the Approved Development Plans and the relevant terms of this agreement.

12.2 Council consents to applications

- 12.2.1 The Developer must not apply to make any change to the Approvals to the extent the change will or is likely to delay the Project Works beyond the Target Completion Date for more than three (3) months without the prior written approval of the Council.
- 12.2.2 Subject to clauses 4, 6 and 14 the Council authorises the Developer to do all things necessary and execute all such instruments as may be required (as determined by the Developer) in order to progress the Approvals and conduct such negotiations with any Authority with respect to them as may be necessary or desirable for the Project Works.

12.3 Monthly Report on progress of Approvals

The Developer must as part of the monthly meetings of the Project Control Group provide the Council with copies of:

- 12.3.1 any correspondence from or to the Authorities that concerns any action, decision or request by the Developer or that may or will negate or materially modify any Approval; and
- 12.3.2 any Approval issued after the date of this agreement for the Project Works.

12.4 Design Documents

The Project Works must be constructed in accordance with the Design Documents.

13. CONSTRUCTION OF DEVELOPMENT WORKS

13.1 Construction Commencement and Program

- 13.1.1 The Developer must use all reasonable endeavours:
 - 13.1.1.1 subject to clause 7, to commence construction under the Construction Contract by the Construction Commencement Date; and
 - 13.1.1.2 to procure that the Contractor (having regard to the Construction Contract) achieves Practical Completion by the Target Completion Date.

- 13.1.2 The Construction Program shall be used as a benchmark for measuring the progress of the Project Works and to assess any extensions of time to the Target Completion Date.

13.2 Departure from Construction Program

If an event occurs that causes a change to the Construction Program, which in the Developer's reasonable opinion, will or might delay the Target Completion Date by more than three (3) months, the Developer must:

- 13.2.1 provide the Council notice of the event; and
- 13.2.2 procure from the Contractor and submit to the Council for its information the Construction Program (and any updated construction program) as required under the Construction Contract.

13.3 Joint Inspection and co-ordination with Construction Contract

- 13.3.1 The Council and the Council's Consultants:

- 13.3.1.1 may, subject to clause 13.9, progressively inspect the various sections of the Project Works as they near Practical Completion as and when the Superintendent carries out inspections under the Construction Contract; and
- 13.3.1.2 in doing so must at all times exercise due care and comply with all reasonable directions of the Superintendent.

- 13.3.2 The Developer must ensure that the Superintendent arranges a joint inspection of the Project Works three (3) months prior to the Target Completion Date (and in any event before certifying that the Project Works have reached the state of Practical Completion) so as to

- 13.3.2.1 allow the Council and the Council's Consultants to inspect the Project Works; and
- 13.3.2.2 permit the Council's Consultants to submit (not less than (2) months prior to the Target Completion Date) written submissions about any matters which in the reasonable opinion of the Council's Consultants impact on Practical Completion.

- 13.3.3 The Developer will ensure that the Superintendent, prior to certifying that the Project Works have reached the state of Practical Completion responds to the matters raised in any report provided under, and within the time specified in clause 13.3.2.2. by providing written reasons to the Council as to why the Superintendent considers that the Project Works should be certified as having reached the state of Practical Completion.

- 13.3.4 The Council acknowledges and agrees that in complying with the process and procedure outlined in clauses 13.3.2 and 13.3.3 the Superintendent may set strict timeframes for inspections, the provision of written submissions from the Council's Consultants and any consultation to ensure that any certificate or notices concerning Practical Completion to be issued under the Construction Contract are

issued within the timeframes prescribed under the Construction Contract.

- 13.3.5 Subject to the Superintendent, (having regard to the terms of the Construction Contract), complying with the process and procedure outlined in clauses 13.3.2 and 13.3.3 honestly, fairly, impartially and reasonably the Superintendent may proceed to issue a certificate of Practical Completion under the Construction Contract on terms that the Superintendent deems appropriate including by way of identifying any Deferred Items.
- 13.3.6 The issuing of a certificate of Practical Completion under the Construction Contract shall be determinative of the rights and obligations of the Developer and Council in respect of achieving Practical Completion of the Project Works under this agreement.

13.4 **Deferred Items and Defects Liability Period**

The Developer shall procure that the Contractor:

- 13.4.1 promptly makes good any Defects which appear in the Project Works during the Defects Liability Period in keeping with the Contractor's defect liability obligations under the Construction Contract; and
- 13.4.2 makes good or completes any Deferred Items as soon as practicable after Practical Completion.

13.5 **Inspections**

- 13.5.1 The Council may arrange with the Superintendent to inspect the Project Works at not more than three (3) monthly intervals during the Defects Liability Period so that the Council and the Council's Consultants may inspect the Project Works with the Superintendent and the Contractor for the purpose of identifying what Defects (if any) in the Project Works are required to be made good by the Contractor.
- 13.5.2 The Developer must ensure that the Superintendent gives notice (**DLP Expiry Notification**) in writing to the Council no less than thirty (30) days prior to the end of the Defects Liability Period confirming whether all Defects identified and notified by the Superintendent have been made good by the Contractor and if not, what outstanding Defects are still to be remedied.
- 13.5.3 If the Council Objects to the DLP Expiry Notification, by way of a written and detailed Council Objection notice delivered to the Developer within five (5) Business Days of receipt of the DLP Expiry Notice, the Developer must arrange for the Superintendent to arrange another inspection to allow the Council to identify that all Defects have been remedied and the Contractor's obligations in respect of Defects Liability Period satisfied.

13.6 **In favour of purchasers**

- 13.6.1 As soon as practicable after the Date of Practical Completion (but in any event within ninety (90) days after the Date of Practical Completion), the Developer must procure that the Contractor obtain all warranties from subcontractors, suppliers, manufacturers and

consultants as required under the Construction Contract (or any other building contract for the Project Works) and relating to the Project in favour of the purchasers or, where that is not possible under the Construction Contract, in favour of the Developer, in which case the Developer shall advise the purchasers of that fact and clause 13.7 will then apply in relation to those warranties).

- 13.6.2 Without limiting clause 13.7, the Developer must ensure that any warranties obtained by the Contractor in favour of the purchasers pursuant to clause 13.6.1 are delivered up to the purchasers within fourteen (14) days of the Contractor receiving the same.

13.7 Assignment of Rights

- 13.7.1 At Final Completion, or in keeping with the Construction Contract, the Developer must:

13.7.1.1 assign to the purchasers of any Lots (at no cost to the purchasers) all of the Developer's right, title, interest and benefit in any warranties obtained by the Contractor in favour of the purchasers pursuant to clause 13.6.1; and

13.7.1.2 execute in favour of the purchasers any document necessary to give effect to the assignments referred to in clause 13.7.1.1.

- 13.7.2 If any document referred to in clause 13.7.1 is not capable of assignment or if an assignment is not permitted or is ineffective at law or in equity the Developer must hold the right, title, interest and benefit of the Developer under the documents referred to in clause 13.7.1.1 on trust and for the benefit of the purchasers.

13.8 Developer and Contractor

- 13.8.1 Without limiting anything else in this clause 13, during the course of the Project Works and the Defects Liability Period, the Developer is responsible for monitoring the Project Works for Defects which are the subject of warranties from the Contractor or the Key Project Consultants and enforcing its rights against the Contractor and the Key Project Consultants under their respective agreements.

- 13.8.2 The Developer must keep the Council informed of any action taken in accordance with clause 13.8.

13.9 Inspections

- 13.9.1 At any time during the course of construction of the Project Works (excluding the Defects Liability Period where inspection rights are set out in clause 13.5.1), the Council's Representative may request, by written notice to the Developer (**Inspection Notice**) to have the Council and the Council's Consultants inspect the Project Works. Any Inspection Notice must set out:

13.9.1.1 the date range that an inspection is sought;

13.9.1.2 the names and titles of each person who will attend the inspection (**Nominated Attendees**); and

- 13.9.1.3 the purpose of the inspection which must be consistent with the Council's rights under this agreement.
- 13.9.2 The Developer must respond to an Inspection Notice advising what dates and times the Council may inspect the Project Works in which case the Council's Nominated Attendees may attend the Land on the date and at the time nominated by the Developer provided all Nominated Attendees:
 - 13.9.2.1 have first attended any site induction requirements that the Contractor and/or the Developer may require to be completed;
 - 13.9.2.2 at all times while on the Land, remain in the presence of an authorised Developer or Contractor representative; and
 - 13.9.2.3 comply with all directions of the Developer's, and/or the Contractor's authorised representative.

14. VARIATIONS

14.1 Details of variations

- 14.1.1 The Council acknowledges and agrees variations to the Project and the Project Works (measured against the Approved Development Plans) may be proposed or required:
 - 14.1.1.1 through the development of the Design Documents; and
 - 14.1.1.2 throughout the Construction Program.
- 14.1.2 Without limiting any other provision of this agreement, the Developer acknowledges and agrees that no proposed variation may be made, without the prior consent of the Council's Representative, if it is a Material Variation.
- 14.1.3 At the meetings of the Project Control Group, the Developer must provide a list of all proposed variations and identify which variations are Material Variations.
- 14.1.4 If the Council (acting reasonably) believes that any variation is a Material Variation to which its consent should be, and has not been, obtained under this clause 14, then:
 - 14.1.4.1 the Council's Representative must deliver to the Developer's Representative, within three (3) days of the PCG at which the proposed variation was tabled, a written notice setting out:
 - (a) that it is a variation objection notice under this clause 14.1.4;
 - (b) details of the proposed variation and a detailed explanation of why the Council believes that the proposed variation constitutes a Material Variation; and

- (c) the reasons, which must be reasonable, as to why the Council is objecting to that Proposed Variation.

14.1.4.2 The Developer must, within seven (7) days of receipt of a notice under clause 14.1.4.1 respond to the Council's notice including;

- (a) any further changes to the relevant proposed variation; and/or
- (b) reasons why the variation is not a Material Variation.

14.1.5 If the Council maintains the variation is a Material Variation after the Developer responds in accordance with clause 14.1.4.2 then:

14.1.5.1 the Council may within five (5) days of the Developer's response under clause 14.1.4.2 refer the matter to an Expert under clause 24;

14.1.5.2 the Expert will be engaged within seven (7) days of the initial referral at the Council's sole cost; and

14.1.5.3 the Expert's determination on the issue of the Material Variation must be finalised within fourteen (14) days from engagement of the Expert.

14.2 No Material Variation

14.2.1 The Developer may not make a Material Variation without the consent in writing of the Council which must not be unreasonably withheld.

14.2.2 The Council must notify the Developer, in writing, whether or not it consents to a Material Variation within seven (7) days of a written request for consent by the Developer.

14.2.3 If the Council fails to give written notice within ten (10) days the Council will be deemed to have approved the Material Variation.

14.2.4 If the Council does not approve a Material Variation under this clause 14.2, the Council must give detailed and written reasons for not approving the Material Variation as part of any objection notice given in accordance with clause 14.2.2.

15. COMMUNITY TITLE DIVISIONS

15.1 Community divisions

The Council and the Developer acknowledge and agree the Project includes the division of the Land to create the Lots for sale and/or lease.

15.2 Developer to prepare scheme documents

15.2.1 The Developer as part of the Project Activities is responsible to coordinate all land division functions including the preparation of all Community Scheme Documents.

15.2.2 The Developer acknowledges and agrees that all Community Scheme Documents must be prepared having regard to the Concept Plan and the requirements of this agreement.

15.2.3 Without limiting any other term of this agreement, the Developer must:

15.2.3.1 submit any drafts or revisions of the Community Scheme Documents to Council for review and approval; and

15.2.3.2 not lodge any Community Scheme Documents at the Lands Titles Office without the approval of Council,

noting that the Council's approval under this clause 15.2.3 can only be withheld if the Community Scheme Documents are inconsistent with the requirements set out in this agreement.

15.2.4 If the Council fails to give written approval under clause 15.2.3 within fourteen (14) days, the Council will be deemed to have approved the Community Scheme Documents.

16. LICENCE

16.1 Grant of licence

For the purpose of enabling the Developer to undertake the Project on the Land in accordance with this agreement, the Council grants to the Developer a licence for the Term to enable the Developer, together with its agents, employees, consultants and contractors to enter upon and remain upon the Land on the terms of this agreement. The licence under this clause 16 will be exclusive on and from the earlier of Financial Close or the Construction Commencement Date.

16.2 Terms of licence

By the terms of the licence, the Developer:

16.2.1 may enter and remain upon the Land;

16.2.2 alter the Land as reasonably necessary to advance the Project;

16.2.3 must use reasonable endeavours to prevent any unreasonable nuisance or annoyance to adjoining properties or anything which might cause damage to adjoining properties;

16.2.4 may leave plant, equipment, machinery, construction materials and the like on the Land;

16.2.5 must comply with all Approvals and other Statutory Requirements; and

16.2.6 may sublicense to the Contractor or other Key Project Consultants.

16.3 Risk

Without limiting any other term of this agreement, the Developer acknowledges and agrees it uses and occupies the Land under the licence in this clause 16 at the Developer's risk.

16.4 Release and indemnity

- 16.4.1 The Developer releases Council from all Claims which the Developer may have against Council for any Loss suffered by the Developer or any of its employees, agents or contractors on or about the Land, except to the extent caused or contributed to by the negligence or default of Council, Council's employees, contractors, invitees or its agents.
- 16.4.2 The Developer must indemnify Council against any Loss it may suffer or incur in consequence of any personal injury, property loss or damage occurring on or about the Land arising from the Developer's use and access to the Land or any employee or subcontractor of the Developer using or accessing the Land except to the extent any loss damage or injury is caused or contributed to by any act or omission of Council, Council's employees, contractors, invitees or its agents.

16.5 No construction

Subject to clause 8.5.2, the Developer must not commence construction on the Land under this licence before Financial Close.

16.6 Caveat

The Council acknowledges and agrees that if required by the Project Financier the Council will consent to the lodgement of a permissive caveat to note the Developer's interests under this agreement.

17. ENVIRONMENT

17.1 Developer enquiries

The Developer acknowledges and agrees it has entered into this agreement after making its own enquiries (including in relation to the Environmental Condition of the Land) and it has not, other than in respect of the Council's warranty in clause 21.2) relied upon any representation made by Council in entering into this agreement.

17.2 Environmental compliance

- 17.2.1 Subject to the Council warranty in clause 21.2, the Developer accepts the Environmental Condition of the Land.
- 17.2.2 The Developer is responsible at the Developer's costs to undertake any remediation, make good or other works required by any Authority in respect of any Contamination in order for the Project to proceed (and the costs of such works are Project Costs).
- 17.2.3 Subject to clause 21.2, the Developer must not make any Claim against the Council for any reason in connection with the Environmental Condition of the Land.

17.3 Release and indemnity

- 17.3.1 The Project (including the undertaking of any remediation works) is in all respects the risk of the Developer.

- 17.3.2 Subject to clause 21.2, the Developer releases the Council from all Claims for any Loss in connection with Developer's use and occupation of the Land and the Environmental Condition of the Land, except to the extent any Loss is caused or contributed to by any act or omission of Council, Council's employees, contractors, invitees or its agents.
- 17.3.3 Subject to clause 17.3.2, the Developer is not required to indemnify the Council in connection with any Claim for any Loss in connection with the Environmental Condition of the Land.
- 17.3.4 The Developer must indemnify and keep Council indemnified against all third party Claims for any Loss in connection with any Contamination to the extent caused by the Developer, the Contractor or anyone under the Developer's control, in connection with the Project except to the extent any Loss is caused or contributed to by any act or omission (including any breach of clause 21.2) of Council, Council's employees, contractors, invitees or its agents.

18. PROJECT PAYMENTS

18.1 Obligation to pay

The parties acknowledge and agree that:

- 18.1.1 it is a condition of this agreement that the Developer pays the Total Payment Amount to the Council in accordance with this agreement;
- 18.1.2 in consideration of the undertaking of the Project by the Developer in accordance with this agreement, the Council must:
 - 18.1.2.1 pay to the Developer (or as the Developer may otherwise direct) the Project Fee within twenty one (21) days of receipt of the requisite invoice which must be issued on (and not earlier than) the last day of each month in which settlement for a Lot has been effected; and
 - 18.1.2.2 pay, on behalf of, and as directed by the Developer, all real estate agent's commissions and conveyance fees in connection with the sale of each Lot, utilising the gross proceeds from the sale of that Lot.
- 18.1.3 the Project Financier may require the payment and/or direction of all Lot Proceeds, and other income generated from the Land (including rental and lease payments) into a project account from which Project Fees and other associated costs will be paid and the Council agrees to comply with any such requirements which will be documented in an appropriate side deed with the Project Financier; and
- 18.1.4 all amounts deducted from the gross proceeds from the sale of each Lot including:
 - 18.1.4.1 real estate agent's commission;
 - 18.1.4.2 conveyance fees in connection with the sale of that Lot;
 - 18.1.4.3 allowance or adjustments for rates and taxes; and

18.1.4.4 GST in respect of the supply of that Lot,

are deemed to have been paid by the Council to the Developer in respect of the Developer's entitlement to any Project Fee in respect of those amounts;

- 18.1.5 within seven (7) days of the date of issue of each invoice (in respect of the Project Fee) (**Relevant Invoice**) the Developer will provide a written payment direction to the Council in respect of the Project Fee for the month to which the Relevant Invoice relates. The Council must ensure that:

18.1.5.1 the amounts set out in each payment direction are paid to the relevant payee by electronic funds transfer to the account details set out in the payment direction, no later than twenty one (21) days from the date of each Relevant Invoice; and

18.1.5.2 formal remittance of each payment amount made in accordance with clause 18.1.5.1 is delivered to the Developer no later than twenty one (21) days of each Relevant Invoice.

18.2 Security

18.2.1 The Developer must ensure at all times during the Term the Council is a secured creditor (subordinate only to the Project Financier) in respect of the Total Payment Amount.

18.2.2 The Developer will grant in favour of the Council a General Security Agreement as security for the Total Payment Amount.

18.3 Payment

The Developer must pay the Total Payment Amount to Council by the following payments:

18.3.1 payment of the Initial Payment Amount within five (5) Business Days of the later of satisfaction of the condition precedent in clause 3.1 and receipt of a tax invoice from Council in respect of that amount;

18.3.2 payment of the Second Payment Amount within five (5) Business Days of the later of Financial Close and receipt of a tax invoice from Council in respect of that amount; and

18.3.3 payment of the Balance Payment Amount under the Distribution Waterfall and within five (5) Business Days of receipt of a tax invoice from Council in respect of the relevant amount.

18.4 Refund of Initial Payment

The Council and the Developer acknowledge and agree the Initial Payment Amount is to be refunded to the Developer within five (5) Business Days of either party issuing a notice to terminate under clause 7.7.

18.5 Distribution Waterfall

18.5.1 Unless otherwise agreed, the Lot Proceeds will be applied as follows:

18.5.1.1 first, to the Project Financier;

18.5.1.2 secondly, to the Council; and

18.5.1.3 thirdly, to the Developer (or such other party as the Developer directs in writing).

18.5.2 For the avoidance of doubt, the Council acknowledges and agrees that it will not receive any of the Lot Proceeds as contribution towards the Balance Payment Amount until the Project Funding has been repaid to the Project Financier.

18.6 Final Payment Amount

18.6.1 The Parties acknowledge and agree that in relation to the Final Payment Amount:

18.6.1.1 the parties will jointly appoint an escrow agent and will direct all Lot Proceeds after the Project Financier has been repaid to be paid into an account held and managed by the appointed escrow agent;

18.6.1.2 the escrow agent will be directed to release funds from the escrow account only in accordance with a written direction signed by an authorised representative of the Council and authorised representative of the Developer;

18.6.1.3 the Developer will continue to issue to Council invoices for Project Fees in accordance with clause 18.1.2; and

18.6.1.4 the Council will invoice the Developer for part payment of the Balance Payment Amount up to an amount equal to the Lot Proceeds the subject of each Lot sold and settled in the relevant month.

18.6.2 The Developer must use all reasonable endeavours to complete the Project such that the Balance Payment Amount is received in full by the Council, in accordance with this agreement before 30 June 2025.

18.7 Final Payment Delay

If the Balance Payment Amount has not been received in full by Council on or before 30 June 2025 the Developer must deliver to the Council a detailed cure plan which includes:

18.7.1 the reasons why the Balance Payment Amount has been delayed;

18.7.2 the actions or other steps the Developer is taking to achieve the Balance Payment Amount; and

18.7.3 (to the extent applicable) copies of any correspondence or other equivalent documents submitted to the Project Financier detailing the

time frames and other outstanding actions required to complete the Project.

19. PROJECT CONTROL GROUP

19.1 Establishment

The Council and the Developer must establish a Project Control Group.

19.2 Monthly meeting to report

19.2.1 On a monthly basis commencing no later than one (1) month after the date of this agreement and independently of any other meetings under this agreement, the Developer must convene a meeting of the Project Control Group and report at each meeting to the Council on the progress of the Project, including:

19.2.1.1 communication strategies and engagement in relation to the Project;

19.2.1.2 any matter which requires an approval, consent or a direction;

19.2.1.3 the progress of any applications for Approvals including any objection or appeal against conditions imposed on a consent to any Approval;

19.2.1.4 the status of Marketing and Sales activities;

19.2.1.5 the status and progress of the Project Funding;

19.2.1.6 the status of any disputes with the Contractor or Key Project Consultants;

19.2.1.7 the progress of the Project Works constructed during the preceding month and whether the construction of the Project Works is proceeding according to the Construction Program and, if not, in which respects it varies;

19.2.1.8 any proposed variations or amendment including any matter which may impact on the Project Feasibility;

19.2.1.9 any likely causes of delay to the Target Completion Date;

19.2.1.10 copies of any reports or certificates obtained by the Developer from the Key Project Consultants or the Contractor under the relevant agreements as to whether the relevant part of the Project Works constructed have been constructed:

(a) in a proper and workmanlike manner;

(b) in accordance with the Construction Program as the case may be; and

(c) to meet all Statutory Requirements; and

19.2.1.11 any other matter reasonably requested by the Council.

19.2.2 The Developer must keep minutes of each meeting and a copy of minutes must be given to the Council as soon as practicable after the meeting but in any event within ten (10) Business Days.

19.3 Attendance

19.3.1 The attendees for the Project Control Group are:

19.3.1.1 the Council's Representative;

19.3.1.2 the Developer's Representative;

19.3.1.3 following the entry into the Construction Contract, the Contractor and Key Project Consultants, if required, by the Developer or Council; and

19.3.1.4 any Council's Consultants.

19.3.2 The Council must ensure that the Council's Representative and the Developer must ensure that the Developer's Representative attend the meetings convened under clause 19.1 and the Council and the Developer must use reasonable endeavours to ensure that the other attendees attend the meeting convened under clause 19.1.

19.4 Council's Representative

19.4.1 Within five (5) Business Days of the date of this agreement, the Council will appoint and notify the Developer in writing of the appointment of the Council's Representative to act on behalf of the Council in relation to this agreement including to give any approval, consent or direction or be involved in any consultation, inspection or meetings.

19.4.2 The Developer may rely upon an approval, consent, direction, notice or other item given by the Council's Representative as if that approval, consent, direction, notice or other item had been given by the Council and the Council is bound by that approval, consent, direction and other items.

19.4.3 If the Developer is required to obtain the consent or approval of the Council or liaise or consult with the Council under this agreement, then the Council's Representative is the person to whom the Developer should initially apply or liaise or consult.

19.4.4 The Council may change the identity of the Council's Representative at any time but must first notify the Developer in writing of the change.

19.4.5 For the avoidance of all doubt, an approval, consent, direction or other item given by the Council's Representative and relied upon by the Developer shall not be deemed to be invalid should the Council later notify the Council's Representative acted outside of his or her authority.



19.5 Developer's Representative

- 19.5.1 The Developer appoints the Developer's Representative to act on behalf of the Developer in relation this agreement, including to give any approval, consent or direction or be involved in any consultation, inspection or meetings.
- 19.5.2 The Council may rely upon an approval, consent, direction or other item given by the Developer's Representative as if that approval, consent, direction or other item had been given by the Developer and the Developer is bound by that approval, consent, direction and other items.
- 19.5.3 If the Council is required to obtain the consent or approval of the Developer or liaise or consult with the Developer under this agreement, then the Developer's Representative is the person to whom the Council should apply or liaise or consult.
- 19.5.4 The Developer may change the identity of the Developer's Representative at any time but must first notify the Council in writing of the change occurring.

19.6 Construction Contract

The meetings and procedures in this clause 19 shall be undertaken wherever possible in conformity and jointly with any similar meetings and proceedings under the Construction Contract so far as is practicable so as to prevent duplication.

19.7 Prohibition on dealings by the Council

The Council may not assign (or permit the assignment of) its rights or Obligations under this agreement or otherwise dispose of or deal (or permit the disposal or dealing) with its rights or Obligations under this agreement unless the assignment, disposal or other dealing is with the prior written consent of the Developer (which may be given or withheld in the Developer's absolute discretion) and is to a transferee of the freehold interest in the Land and that transferee enters into a binding agreement with the Developer under which the transferee agrees with the Developer to be bound by and observe all the terms of this agreement imposed on Council.

20. INSURANCES AND RISK

20.1 Insurances

The Developer must procure that either the Developer or the Contractor (as the case may be) has in place:

- 20.1.1 from the Commencement Date until the Construction Commencement Date public liability insurance for not less than \$10 million for any one claim noting the interests of the Council;
- 20.1.2 from the Construction Commencement Date until Practical Completion, public liability insurance for not less than \$20 million for any one claim noting the interests of the Council;

20.1.3 from the commencement of construction of the Project Works, a contract works policy or other form of contract works insurance noting as a class of insured:

20.1.3.1 the Developer, the Council and the Contractor; and

20.1.3.2 and any sub-contractors and all other contractors appointed by the Developer carrying out works in the Project Works for their physical activities on the Land only;

which must cover the whole of the Project Works and all associated temporary works (including materials incorporated or to be incorporated in the Project Works the property of the Developer, or for which they are responsible whilst on or adjacent to the Land) in respect of loss, destruction or damage of or to the Project Works insured arising from any cause normally covered by such a policy for the full cost of the works under the Construction Contract but increased to allow for any increased costs during the construction period together with a reasonable additional amount for fees payable to architects, engineers, quantity surveyors and other consultants engaged in the reinstatement of the Project Works and a further reasonable additional amount to cover the cost of all necessary demolition, temporary repairs and removal of debris;

20.1.4 insurances which are required by law including insurance under the *Workers Rehabilitation and Compensation Act 1986* for an employer's full liability under that act; and

20.1.5 professional indemnity insurance in respect of the Contractor's obligations under the Construction Contract against damage, loss or injury of any nature suffered by the Council arising from breach of professional duty by the Contractor.

20.2 Evidence of insurances

In respect of the insurances required by clause 20 the Developer must procure the Contractor to:

20.2.1 provide the Council with certificates of currency of insurance annually and at such other time upon the reasonable request of the Council;

20.2.2 pay each premium on the due date;

20.2.3 immediately rectify anything which might prejudice any insurance and reinstate the insurance if it lapses; and

20.2.4 notify the Council immediately the Developer becomes aware when:

20.2.4.1 an event occurs which gives rise to a claim (for an amount greater than \$1,000,000.00) which could prejudice the validity of a policy of insurance; or

20.2.4.2 any policy of insurance is cancelled.

20.3 Insurance not to be voided

The Developer must not itself and the Developer must use all reasonable endeavours to ensure the Contractor does not at any time during the term of this agreement omit to do, do or permit anything to be omitted or done which may:

- 20.3.1 vitiate or render void or voidable any insurance policy required under this agreement; or
- 20.3.2 increase the rate of the premium for any insurance policy required under this agreement unless the Developer pays or procures the Contractor to pay all additional premiums required on account of the additional risks.

20.4 Full disclosure

The Developer must, or where appropriate procure the Contractor to, ensure that complete and true information is given to its insurers of all matters and things the non disclosure of which may in any way prejudice or affect any policy required to be effected by the Developer under this agreement.

20.5 Proceeds

Unless otherwise determined by the Council the proceeds of any claim under any policy of insurance effected under clause 20 arising from loss or damage to or destruction of:

- 20.5.1 the Project Works; or
- 20.5.2 the materials or goods incorporated, or to be incorporated, in the Project Works,

shall be expended by the Developer or the Contractor (as the case may be) in rebuilding or repairing the Project Works and to replace or repair the materials or goods destroyed or damaged. Any shortfall will be paid by the Developer or the Contractor (as the case may be).

20.6 Cancellation of Insurance

The Developer must immediately notify the Council if it becomes aware that a policy of insurance effected in accordance with this clause 20 is cancelled.

21. DEVELOPER'S AND COUNCIL'S WARRANTIES

21.1 General warranties

The Developer warrants to the Council that:

- 21.1.1 it has entered into this agreement based on its own reasonable investigations, examinations and determinations;
- 21.1.2 it will ensure that:
 - 21.1.2.1 at all material times a suitably qualified and experienced persons are engaged by the Developer to perform the duties

and functions under this agreement and the Construction Contract;

- 21.1.2.2 the Contractor is made aware of all requirements of an Authority relating to the Project Works;
- 21.1.2.3 the Superintendent is contractually bound to perform all duties and functions referred to in this agreement and in the Construction Contract honestly, fairly, impartially and reasonably; and
- 21.1.2.4 the Developer will not (either by way of act or omission) compromise the independence of the Superintendent (noting that the Superintendent may be a related party of the Developer) or otherwise preclude the Superintendent from performing the duties and functions assigned to the Superintendent both under this agreement and the Construction Contract honestly, fairly, impartially and reasonably;
- 21.1.3 the Project Works will be carried out by the Contractor in a proper and workmanlike manner;
- 21.1.4 the Developer will perform, or procure the performance of services so that the Project Works are carried out to the standard required by this agreement and the Design Documents;
- 21.1.5 the Developer will procure that the Contractor complies with the requirements of the Construction Contract such that the Project Works comply with applicable laws and that all the terms, conditions and provisions of all permits, licences, consents and approvals are fully complied with to the satisfaction of all relevant Authorities;
- 21.1.6 the Project Works will be constructed in keeping with the requirements of this agreement;
- 21.1.7 the Developer will not enter into any other agreement to develop any other land during the Term; and
- 21.1.8 the Project Works will, when complete, be fit for their Intended Purpose.

21.2 Council's Warranty

The Council warrants to the Developer that to the best of Council's knowledge, information and belief:

- 21.2.1 there are no unregistered rights, estates or interests subsisting in relation to the Land (or any part thereof); and
- 21.2.2 the Council has disclosed to the Developer all information in the Council's possession (in its capacity as owner of the Land) in respect to the Environmental Condition of the Land.

21.3 Developer's capacity

The execution and performances of this agreement by the Developer:

- 21.3.1 is within the Developer's powers;
- 21.3.2 has been duly authorised by all necessary corporate actions and is not a breach of trust under the Trust;
- 21.3.3 does not contravene any law or its constitution; and
- 21.3.4 constitutes a valid legal and binding obligation on the Developer enforceable against the Developer in accordance with its terms.

21.4 Council's capacity

The execution and performances of this agreement by the Council:

- 21.4.1 is within the Council's powers;
- 21.4.2 has been duly authorised by all necessary resolutions;
- 21.4.3 does not contravene any law or its constitution; and
- 21.4.4 constitutes a valid legal and binding obligation on the Council enforceable against the Council in accordance with its terms

22. TERM OF AGREEMENT

22.1 Term

This agreement will commence on the Commencement Date and will, unless terminated earlier under clause 3, 7 or 23, end on:

- 22.1.1 receipt by Council of the Total Payment Amount; and
- 22.1.2 the transfer of all remaining unsold Lots (if any) under pursuant to clause 22.2 to the Developer and/or a nominee of the Developer,

(Term).

22.2 Transfer

22.2.1 The Council acknowledges and agrees that subject to the Council receiving the Total Payment Amount, the Council will, for no additional monetary consideration, transfer to the Developer and/or any other person nominated (in writing) by the Developer (**Transferee**), and the Developer must accept, or procure that the Transferee must accept (as the case may be), a transfer of the freehold in the balance of any Lots not otherwise sold (including an assignment of any rights and obligations in respect of any leased Lots) on the earlier of:

- 22.2.1.1 the date requested by written notice from the Developer; and
- 22.2.1.2 the date that is no later than five (5) years from the Date of Practical Completion.

- 22.2.2 The Developer will either through PCG meetings or other agreed arrangements keep the Council regularly informed on the progress of the sale of any remaining unsold Lots and the anticipated timing of any sales or transfers.

22.3 Holding and transfer costs

- 22.3.1 The Developer acknowledges and agrees the Developer:

22.3.1.1 In addition to remaining responsible to pay any Rates, Taxes and Levies that may be assessed or charged in respect of any unsold commercial and/or retail Lots the Developer is responsible to pay any local government rates to the extent those lots may be assessed or charged after Practical Completion in accordance with the Council's usual rating policy which, as at the date of this agreement, is on and from the date that Lots are first occupied; and

22.3.1.2 must, subject to clause 22.3.2, pay any and all other costs associated with effecting and registering the transfers including Council's reasonable legal costs, stamp duty and registration fees.

- 22.3.2 The Council and the Developer will agree schedule of fees for effecting the transfers contemplated by this clause 22 having regard to the number and nature of remaining Lots to be transferred and the respective functions and roles of both parties to complete.

23. DEFAULT AND TERMINATION

23.1 Notice of Default

If:

23.1.1 the Council or Developer has committed breaches of this agreement which constitute a repudiation; or

23.1.2 an Insolvency Event occurs in relation to the Developer,

then the Council (if the breach or Insolvency Event occurs in relation to the Developer) or the Developer (if the breach occurs in relation to the Council) may give to the other a written notice under clause 23.2.

23.2 Notice of Default

A written notice under this clause must:

23.2.1 state that it is a notice under this clause 23.2; and

23.2.2 specify the alleged breach or breaches or other relevant events; and

23.2.3 give the party in breach a reasonable period to rectify the breach or breaches or other relevant events; and

23.2.4 if the notice relates to a breach or breaches and if, the breach or breaches are capable of remedy by payment of compensation, contain a reasonable claim for compensation for the breach or breaches.

23.3 Termination for Breach

If the party served with the notice under clause 23.2 does not rectify the breach or breaches or other relevant events within the period specified in clause 23.2.3 and/or pay the compensation referred to in clause 23.2.4 (as applicable), the other party may by written notice terminate this agreement.

23.4 Dispute Resolution

Without limiting the application of clause 23.9 and despite clause 23.3, if there is a dispute in relation to the operation of clauses 23.1, 23.2 or 23.3, including the breach or breaches, the period to rectify a breach or breaches or the compensation, then the matter must be referred for resolution under clause 24 and neither party may exercise a right of termination until the expert under clause 24 has made a decision and the relevant party has had a reasonable opportunity to take the action required by the expert.

23.5 Termination

If this agreement is terminated under this clause 23, then the termination is without prejudice to any rights or claims for damages which may have accrued to any party prior to that termination.

23.6 Other rights

Other than in accordance with clause 23.1, neither the Council nor the Developer may terminate this agreement for any reason or under any right at common law or otherwise, including the exercise of any common law right of termination due to repudiation or breach of an obligation.

23.7 Rights upon Termination

23.7.1 If this agreement is terminated in accordance with this clause 23:

23.7.1.1 by the Council, due to the default of the Developer, the Developer must:

- (a) cease being involved in the execution of the Project Works within the time stipulated by the Council;
- (b) de-mobilize from the Land;
- (c) ensure that the Contractor is in control of the Land such that the Land is in a safe condition and the Project Works are properly secured;
- (d) hand over all Design Documents and all other documents and information in its possession or control relating to the development of the Property to the Council packed and indexed;
- (e) do all things reasonably necessary to permit the Council or any financier to the Project to exercise step-in rights provided for under the Contractor's Side Deed; and

- (f) indemnify the Council from and against any loss suffered by or claim made against the Council arising from the circumstances giving rise to the written notice under clause 23.3 except to the extent that any such loss was caused or contributed to by the Council.

23.7.1.2 by the Developer, due to the default of the Council, then the Developer must only:

- (a) cease being involved in the execution of the Project Works within the time stipulated by the Council; and
- (b) de-mobilize from the Land.

23.8 Default interest

Default interest is payable by the defaulting party to the non-defaulting party on demand by the non-defaulting party on any moneys which the defaulting party has failed to pay by the due date at the Default Interest Rate calculated on a daily basis from the due date to the date of payment.

23.9 Acknowledgment

The parties acknowledge and agree that, except in the circumstances set out in clause 23.1 to 23.3, payment of damages will be the Council's sole remedy for any breach of the Developer's Obligations under this agreement and any such breach will not give rise to a right to terminate this agreement or to make any other Claim against the Developer.

24. DISPUTE RESOLUTION

24.1 Disputes

If a dispute arises between the Council and the Developer in connection with this agreement (other than an Objection in respect of which the Objection Procedure is to first apply) then that dispute must be dealt with in accordance with this clause but this clause does not prevent the Council or the Developer commencing court proceedings at any time seeking urgent interlocutory relief. Despite the existence of a dispute, the Council and the Developer must continue to perform their Obligations under this agreement.

24.2 Notice of Dispute

If:

- 24.2.1 the Council or the Developer has given to the other party notice of a dispute in connection with this agreement; and
- 24.2.2 the Senior Executives are unable in good faith to settle the dispute within seven (7) days after notice under clause 24.2.1 has been received by the other party,

then the dispute must be submitted for expert determination in accordance with clause 24.4.

24.3 Identity of Senior Executives and Chief Executives

The Council and the Developer may replace their Senior Executives by notice in writing to the other party.

24.4 Appointment of Expert

24.4.1 If a dispute has not been settled under clause 24.2:

24.4.1.1 within a further seven (7) days the Council and Developer first must attempt to agree on the appointment of an appropriate person to determine the dispute ("**Expert**"); and

24.4.1.2 then if the Council and Developer cannot agree on an Expert within those 7 days, either the Developer or the Council may request that the person mentioned in clause 24.4.2 appoint the Expert.

24.4.2 The institutions or associations from which the Expert may be appointed are:

24.4.2.1 if an architect: by the President for the time being of the Royal Australian Institute of Architects, South Australian Chapter; or

24.4.2.2 if a Valuer: by the President for the time being of the Australian Property Institute, South Australia; or

24.4.2.3 if an expert in insurance: by the President for the time being of the Insurance Institute of South Australia; or

24.4.2.4 if a quantity surveyor: by the President for the time being of the Australian Institute of Quantity Surveyors, South Australian Division; or

24.4.2.5 if a barrister: by the President for the time being of the Bar Association of South Australia; or

24.4.2.6 if an accountant: by the President for the time being of the Institute of Chartered Accountants, South Australia Division.

24.4.3 The decision of the person determining who the Expert is shall be final and binding on the Council and the Developer.

24.4.4 Upon the Expert being appointed under this clause 24.4 and accepting the appointment, the Council and the Developer must direct the Expert to make a determination in relation to the dispute put before the Expert within fourteen (14) days of the appointment.

24.5 Determination

24.5.1 The Expert is to act and make a decision as an expert and not as an arbitrator and in accordance with the law of South Australia.

24.5.2 Both the Council and the Developer are entitled to make written submissions to the Expert so appointed upon the matter the subject of

the dispute. The Expert is entitled to appoint other persons to assist in the determination.

- 24.5.3 When any dispute or difference referred to in this clause has been referred for determination the Council and Developer will each use their best endeavours to make available to the expert all facts and circumstances which the Expert may require in order to settle or determine such dispute or difference and shall ensure that their respective employees, agents or consultants are available to appear at any hearing or enquiry called for by the Expert. Both the Council and Developer are entitled to be legally represented at any hearing or enquiry called for by the Expert.
- 24.5.4 The Expert's decision is final and binding upon the Council and Developer (except in the case of manifest error) and the cost of the Expert's decision will be borne by the Council and Developer in such shares as the Expert may determine.
- 24.5.5 The Council and Developer must sign all documents and do all things reasonably necessary to effect the appointment of the Expert and to give effect to the intention of clause 24.4 and this clause 24.5.

25. **CONFIDENTIALITY AND IP**

25.1 **Public Announcements**

25.1.1 The parties acknowledge and agree:

- 25.1.1.1 to jointly document a joint announcement to be made by Council and the Developer to be made on 16 December 2020 (**Joint Announcement**);
 - 25.1.1.2 that Council will facilitate a community information session in respect of the Project (anticipated to be on or around 1 March 2021 and no later than 16 April 2021) and must ensure that the Developer receives reasonable notice of that session and must procure the Developer's prior consent to all nominated speakers for that session and all information that is planned to be provided at that session.
- 25.1.1 Other than in respect of the Joint Announcement and the community information session described in clause 25.1.1, the parties acknowledge and agree that:
- 25.1.1.1 the Council must not initiate any formal public announcements or distribute any material or written content in relation to the Project without the prior written consent of the Developer's Representative; and
 - 25.1.1.2 the Developer will, after the Joint Announcement has been made, be entitled to:
 - (a) make any public announcement about the Project; and
 - (b) produce, publish and/or distribute any Marketing and Sales material or collateral;

provided that the Developer continue to consult with Council on the content of any Marketing and Sale material or collateral to the extent it references the involvement of the Council before being produced, published and/or distributed.

- 25.1.2 The Council and the Developer will continue to cooperate with the other in relation to any ongoing communication strategy and supporting protocol in relation to the Project having regard to the following key responsibilities and outcomes:

25.1.2.1 the Developer will be primarily responsible for public announcements for the Project (including the production, publication and distribution of Marketing and Sales material and collateral); and

25.1.2.2 the Developer will keep the Council regularly informed regarding the marketing and communication strategies.

25.2 Confidential information

- 25.2.1 The parties acknowledge that by virtue of this agreement, each may be afforded access to, and acquire knowledge of the other party's proprietary information of a confidential nature (including, in respect of the Developer, the Project Feasibility and the Design Documents). The party receiving that information agrees that that confidential information will not be disclosed to others or independently use without proper authorisation from the disclosing party.

- 25.2.2 Without limiting clause 24.1, the parties agree that except to the extent required by law the release or disclosure of any information (including public announcements) in relation to the terms of this agreement may only be done for the purposes of Project Funding or otherwise in consultation with and the approval of the other parties (as the case may be).

25.3 Project IP

- 25.3.1 The parties acknowledge and agree that all material (including Project IP) provided to the Council by or on behalf of C&G (including all Project IP prepared by Woods Bagot and other consultants under instruction from C & G) and all Intellectual Property Rights in that material (**Developer's Material**) is and will remain the property of the Developer.

- 25.3.2 On the expiry or earlier termination of this agreement the Council must promptly deliver to the Developer:

25.3.2.1 all of the Developer's Material; and

25.3.2.2 any other Project IP;

provided by, or on behalf of the Developer, to the Council (or at the Developer's election, otherwise destroy same to the satisfaction of the Developer).

25.4 Domain name

The Council agrees:

- 25.4.1 to grant to the Developer, on and from the date of this agreement, an exclusive licence to use the domain name www.88oconnell.com.au and to ensure that any view of that domain name is immediately redirected to the Developer's website in respect of the Project; and
- 25.4.2 to do all things and execute all documents necessary to transfer the Domain Name to the ownership of the Developer on Practical Completion.

26. NOTICES

26.1 Giving of notices

- 26.1.1 A notice, approval, consent or other communication in connection with this agreement:

- 26.1.1.1 must be in writing; and

- 26.1.1.2 must be marked for the attention of the addressee; and

- 26.1.1.3 may be left at the address of the addressee or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee which is specified in this agreement for a party or if the addressee notifies another address or facsimile number then to that address or facsimile number.

- 26.1.2 A document is sufficiently served for the purpose of this agreement if the document is sent by email to the appropriate party. If a document is served by email, then service is taken to have taken place when the email (including any attachment) is sent to the receiving party at that email address, unless:

- 26.1.2.1 the sending party receives a notification of delivery failure within 24 hours of the email being sent; or

- 26.1.2.2 the time of dispatch:

- (a) is a bank or public holiday or a Saturday or Sunday in the place to which the document is sent; or

- (b) is at or after 5.00 pm (local time in the place to which the document is sent) on a day that is not a bank or public holiday or a Saturday or Sunday in the place to which the document is sent,

in which case the document is taken to be received at 9.00 am on the next day that is not a bank or public holiday or a Saturday or Sunday in the place to which the document is sent.

26.2 Time of delivery

Subject to clause 26.1.2, unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.

26.3 Deemed delivery

A letter or facsimile is taken to be received:

26.3.1 in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting; and

26.3.2 in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause.

27. RIGHTS AND POWERS

27.1 Exercise of rights

A party may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by a party does not prevent a further exercise of that or of any other right, power or remedy. Failure by a party to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

27.2 Waiver and variation

A provision of or a right created under this agreement may not be:

27.2.1 waived except in writing signed by the party granting the waiver; or

27.2.2 varied except in writing signed by the parties.

27.3 Remedies cumulative

The rights, powers and remedies provided in this agreement are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this agreement.

27.4 Prohibition on dealings

Except to the extent otherwise provided in this agreement the Developer may not assign its rights or Obligations under this agreement or otherwise dispose of or deal with its rights or Obligations under this agreement unless it obtains the prior written consent of the Council (which must not be unreasonably withheld).

27.5 Further assurances

Each party agrees, at its own expense, on the request of another party, to do everything reasonably necessary to give effect to this agreement and the transactions contemplated by it, including, but not limited to, the execution of documents.

28. GOVERNING LAW, JURISDICTION AND SERVICE OF PROCESS

28.1 Governing Law

This agreement is governed by the law in force in South Australia.

28.2 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of the jurisdiction specified in clause 28.1 and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

28.3 Supervening legislation

Any present or future legislation which operates to vary an obligation or right, power or remedy of a person in connection with this agreement is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

28.4 Service of process

28.4.1 Without preventing any other mode of service, any document in an action (including any writ of summons or other originating process or any third or other party notice) may be served on the Council by being delivered to the following person at the address set out below, whom the Council undertakes to irrevocably designate, appoint and empower immediately following the execution of this agreement as its agent for service of process in the State of South Australia in any proceeding including, without limitation, any order or judgment of the Courts of the State of South Australia.

Attention: Tom McCready

Address: 1st Floor, 25 Pirie Street, Adelaide SA 5000 or
T.McCready@cityofadelaide.com.au

28.4.2 The Council agrees for the benefit of the Developer that such service of process shall become effective upon the date that such process is delivered in accordance with clause 28.4.1.

28.4.3 Nothing in this clause 28.3 shall affect the right of either party to serve any process in any proceedings in any other manner permitted by the Rules of Court or laws of the State of South Australia.

29. GENERAL

29.1 Costs

29.1.1 The parties to this agreement must pay their respective legal costs and disbursements associated with the preparation, negotiation and execution of this agreement, and any variation hereof.

29.1.2 The Developer must pay all stamp duty (if any) payable on this agreement or any transaction required or contemplated by this agreement.

29.2 Information and Notices

The Developer must, to the extent that such information is not already held by the Council, promptly provide to the Council on written request by the Council, such request specifying the particular information which the Council requires, copies of all assessments, demands, notices and other documents of any kind received by the Developer in relation to the Land and all other information and material reasonably necessary to enable the Council to perform its Obligations under this agreement.

29.3 Copies

The Council must, to the extent that such information is not already held by the Developer, promptly provide the Developer with copies of all assessments, demands, notices and other documents of any kind received by or on behalf of the Council in relation to the Land and all other information and material reasonably necessary to enable the Developer to perform its Obligations under this agreement.

29.4 Enforceability and prohibition

29.4.1 A provision of, or the application of a provision of this agreement that is prohibited in a jurisdiction is in that jurisdiction ineffective only to the extent of that prohibition.

29.4.2 A provision of, or the application of a provision of this agreement that is void, illegal or unenforceable in a jurisdiction does not affect the validity, legality or enforceability of that provision in any other jurisdiction or of the remaining provisions in that or any other jurisdiction.

29.5 Inconsistency

If there is any inconsistency between the provisions of this agreement and the provisions of the schedules to this agreement, the provisions of this agreement shall take precedence over the schedules.

29.6 Reasonableness

Unless this agreement expressly provides otherwise:

29.6.1 the Developer and the Council must act;

29.6.2 the Council must ensure that the Council's Representative acts; and

29.6.3 the Developer must ensure that the Developer's Representative act;

at all times reasonably and within the Timeframes in relation to:

29.6.4 consultation;

29.6.5 giving or withholding any approval or consent;

29.6.6 placing conditions on any approval or consent; and

29.6.7 giving any direction.

29.7 Consents etc

Without limiting any other clause of this agreement and subject to any express provision to the contrary, the Council must (at the reasonable cost of the Developer and within the Timeframes) do all things and sign all consents, applications, documents and other documents or items as requested by the Developer and which are reasonably necessary for the Developer to comply with its Obligations or exercise its rights under this agreement.

29.8 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

29.9 Non-Merger

A provision of this agreement remaining to be performed or capable of having effect after the Date of Practical Completion (or any other date) shall remain in full force and effect until such provision has been performed or is no longer capable of effect.

29.10 Counterparts

This agreement may be executed in counterparts. All counterparts, taken together, constitute one instrument. A party to this agreement may execute this agreement by signing any counterpart. A party may execute this agreement, or any counterpart, by facsimile and a facsimile shall be accepted as an original.

30. GST

30.1 Definitions

In this clause 30:

30.1.1 the expressions "adjustment note", "consideration", "GST", "input tax credit", "supply", "tax invoice", "recipient" and "taxable supply" have the meanings given to those expressions in the *A New Tax System (Goods and Services Tax) Act 1999*.

30.1.2 "Document" means this agreement and all other documents referred to herein.

30.1.3 Sums exclude GST.

30.2 Amounts exclusive of GST

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

30.3 **Gross up by GST**

Despite any other provision in this document, if GST is payable on any supply made under a Document, the recipient must pay to the supplier an amount equal to the GST payable on the taxable supply.

30.4 **Payment of GST component**

The recipient must pay the amount referred to in clause 30.3 in addition to and within thirty (30) days upon the receipt of a tax invoice referred to in clause 30.6 in addition to payment for the taxable supply if required to be made under this document.

30.5 **Reimbursable Expenses**

If this document requires a party to reimburse any other party for any expense, loss or outgoing ("**reimbursable expense**") incurred by the other party, the amount required to be reimbursed by the first party will be the sum of:

30.5.1 the amount of the reimbursable expense net of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense; and

30.5.2 if the other party's recovery from the first party is a taxable supply, any GST payable in respect of that supply.

30.6 **Tax invoices**

If a supply is made under this document in respect of which GST is payable or is varied, the supplier must provide the recipient of the supply a valid tax invoice or adjustment note as the case may be at or before the time of payment or variation.

30.7 **Adjustment of GST payments**

If the amount of GST payable by the supplier on any supply made under a document differs from the amount of GST paid by the recipient pursuant to clause 30.3 where the Commissioner of Taxation lawfully adjusts the value of the taxable supply for the purpose of calculating GST, then the amount of GST paid by the recipient will be adjusted accordingly by a further payment by the recipient to the supplier or by the supplier to the recipient, as the case requires.

31. **DEVELOPER'S LIMITATION OF LIABILITY**

31.1 **Limited Capacity – the Developer**

The Developer enters into this deed only in its capacity as trustee of 88 O'Connell Trust (**Developer Trust**) and in no other capacity. A liability arising under or in connection with this deed is limited to, and can be enforced against the Developer only to the extent to which the Developer is entitled to be indemnified out of the assets of the Developer Trust. Subject to clause 31.2, this limitation of the Developer's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Developer in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed. If any party makes a Claim against the Developer, the Developer must seek and make all reasonable

endeavours to obtain indemnification out of the assets of the Developer Trust in respect of that Claim.

31.2 Limited right to sue – the Developer

Subject to clause 31.3, no party may sue the Developer in any capacity other than as trustee of the Developer Trust, including seeking the appointment of a receiver (except in relation to property of the Developer Trust), a liquidator, an administrator, or any similar person to the Developer or prove in any liquidation, administration or arrangement of or affecting the Developer (except in relation to property of the Developer Trust).

31.3 Exceptions – the Developer

The provisions of clauses 31.1 and 31.2 do not apply to any obligation or liability of the Developer to the extent that it is not satisfied because under the deed governing the Developer Trust, or by operation of law, there is a reduction in the extent of the Developer's indemnification out of the assets of the Developer Trust, as a result of the Developer's fraud, dishonesty, gross negligence or wilful breach of trust.

31.4 Limitation on authority – the Developer

No attorney, agent, receiver or receiver and manager appointed in accordance with this deed has authority to act on behalf of the Developer in a way which exposes the Developer to any personal liability, and no act or omission of any such person will be considered fraud, negligence or breach of trust for the purpose of clause 31.3.

EXECUTED as an agreement

The common seal of The Corporation of the City of Adelaide was affixed in the presence of:



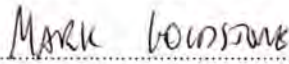
Signature of Mayor



Signature of Chief Executive Officer
(Please delete as applicable)



Name of Mayor (print)



Name of Chief Executive (print)



Executed by 88 O'Connell Pty Ltd in accordance with section 127(1) of the Corporations Act by the authority of its director:



Sole Director/Sole Company Secretary

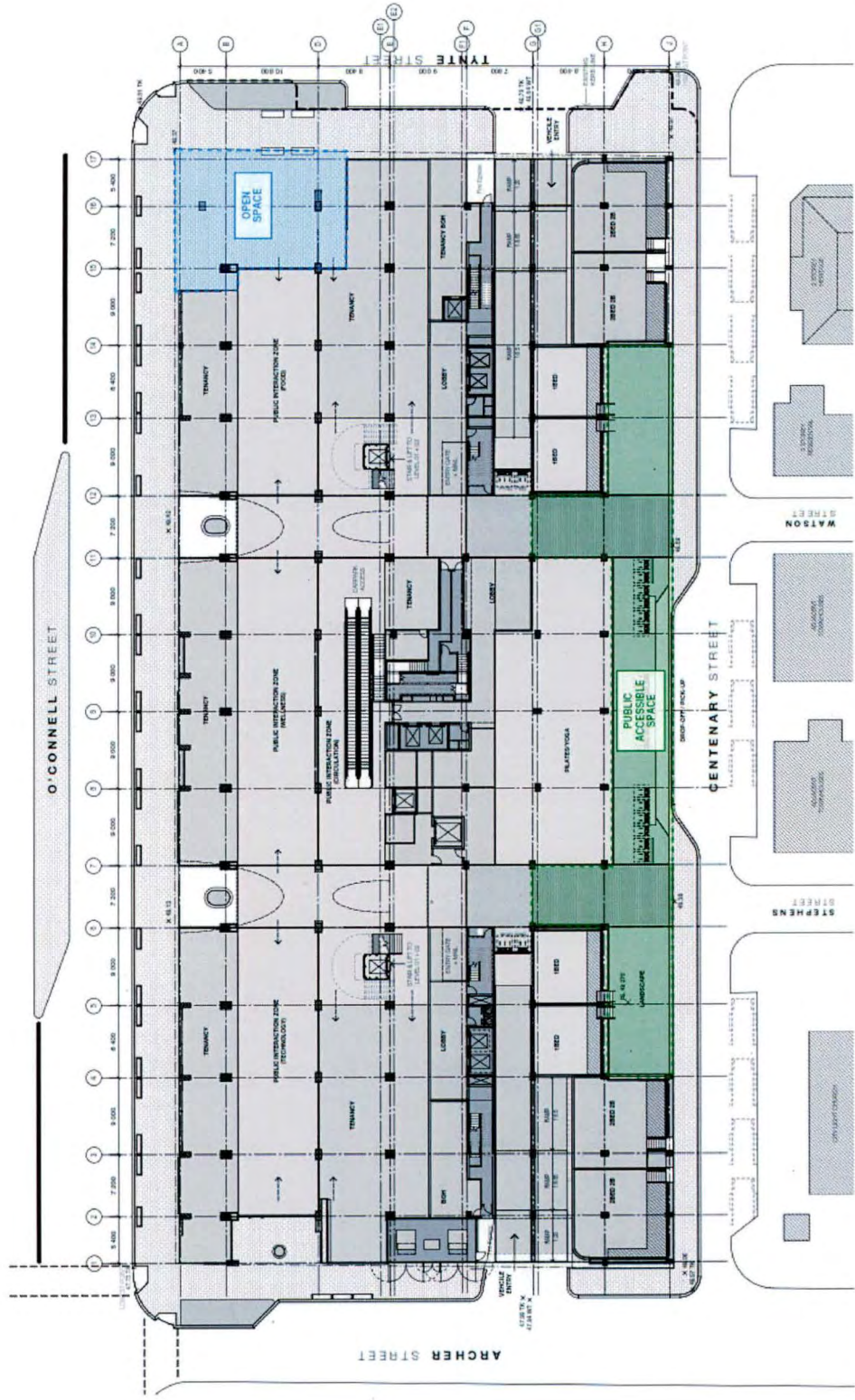


Print name Sole Director/Sole Company Secretary

Annexure A Concept Plan

88 O'Connell Street Concept Plan

PART A – DRAWINGS

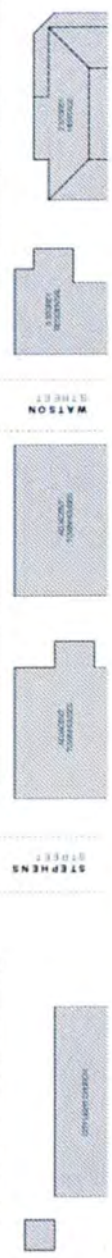


WOODS BAGOT

Client: **Commercial & General** Project: **88 O'Connell Street** Street title: **Ground Floor**

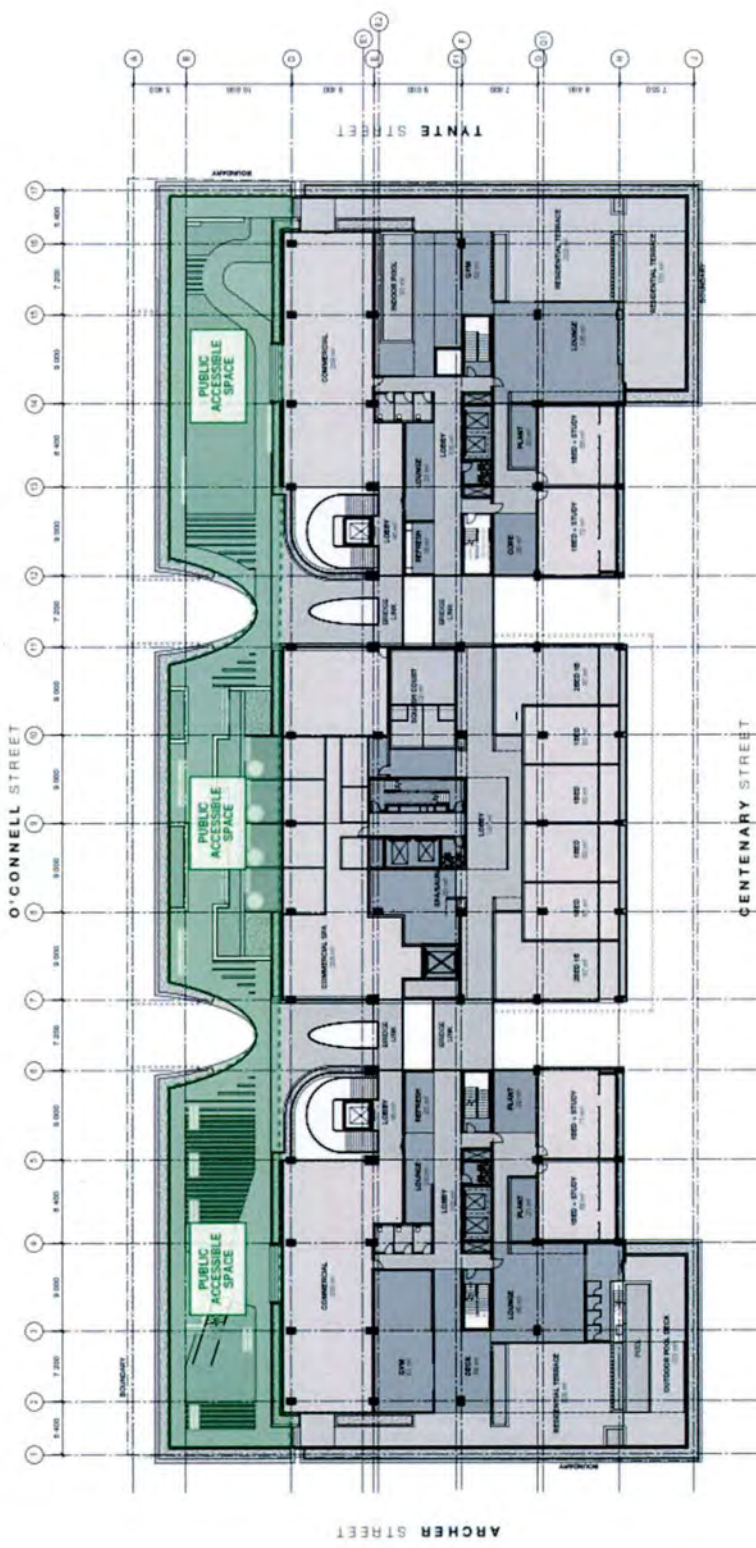
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Client
Commercial & General

**WOODS
BAGOT**



WOODS BAGOT
Commercial & General

88 O'Connell Street

2nd Floor

Project Number: 146447
Sheet Number: SA 1002

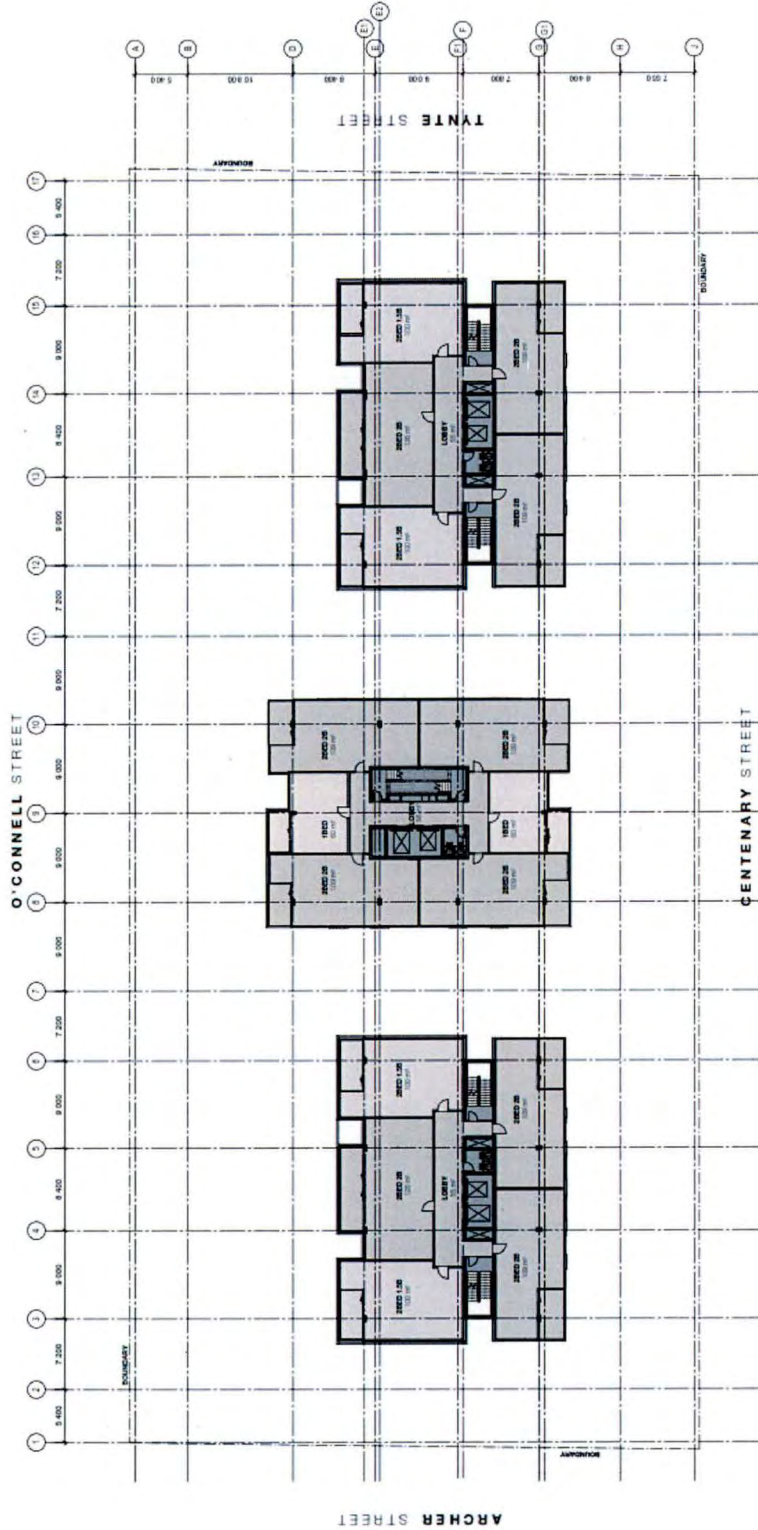
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Drawn: A1
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Date: 02/12/20

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**WOODS
BAGOT**

Client
Commercial & General

Project
88 O'Connell Street

Sheet title
5th Floor (5th-10th Floors Similar)

Project number
140417

Scale
1:200

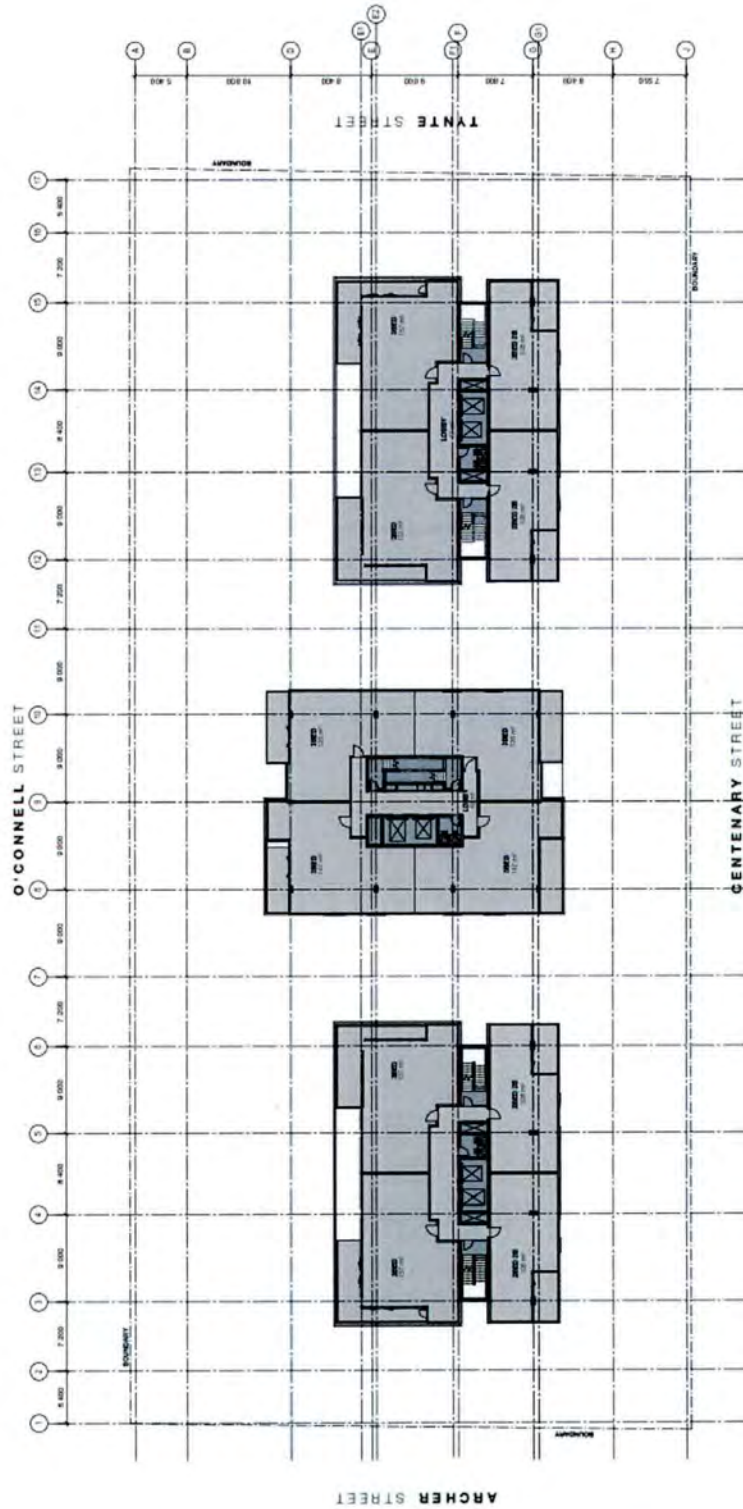
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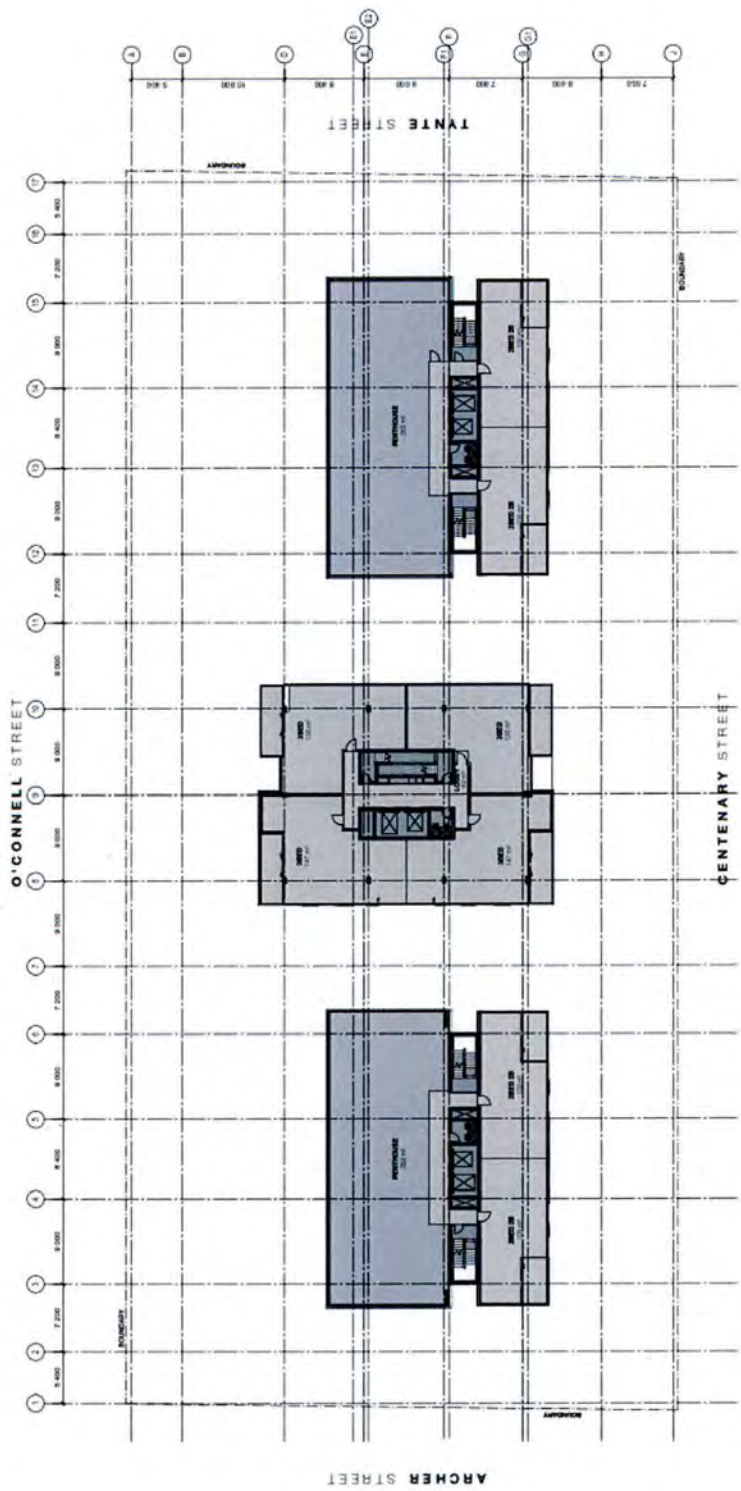
Revision
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Sheet size
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Date
03/12/20

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**WOODS
BAGOT™**
Client
Commercial & General

Project
88 O'Connell Street

Sheet title
12th Floor

Project number
140447

Sheet number
SK 1212

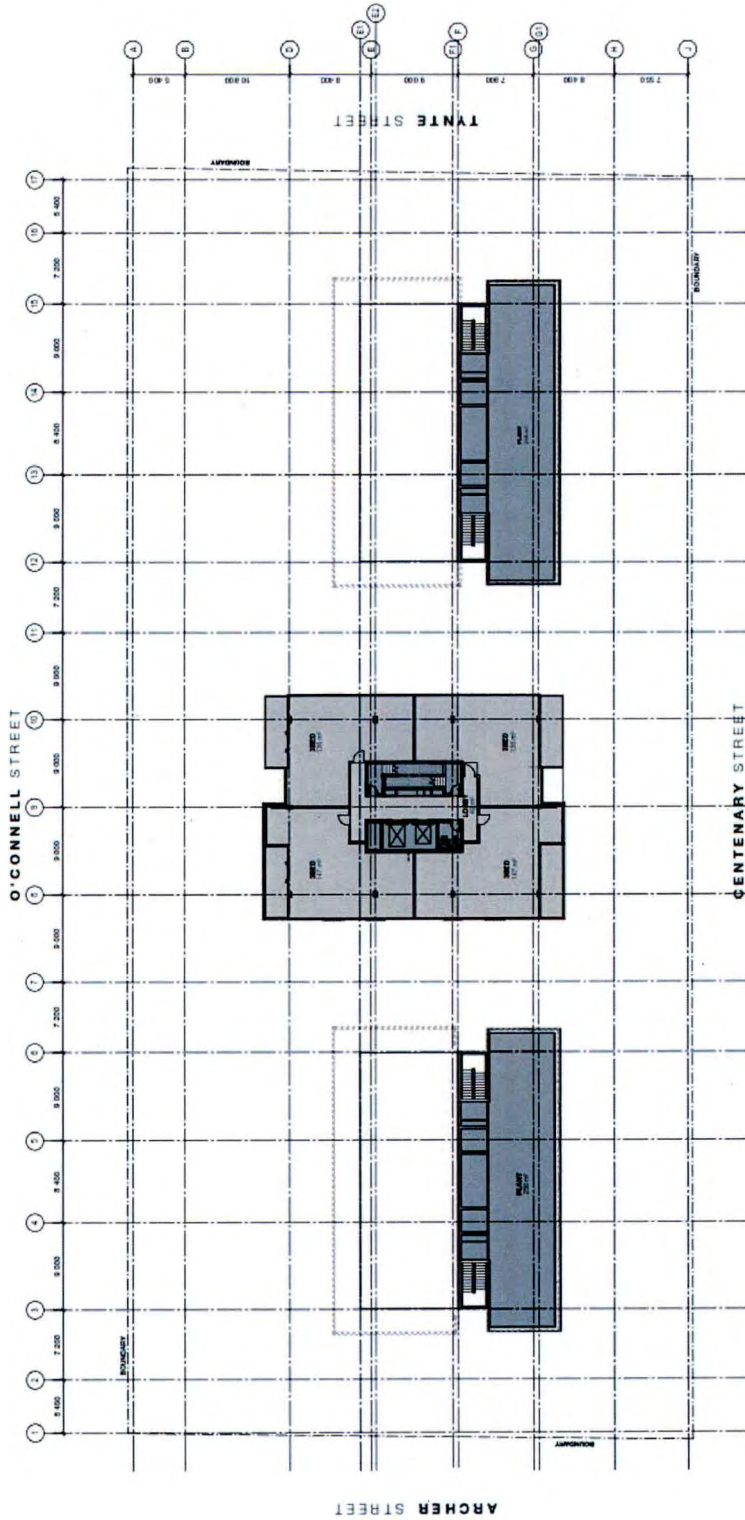
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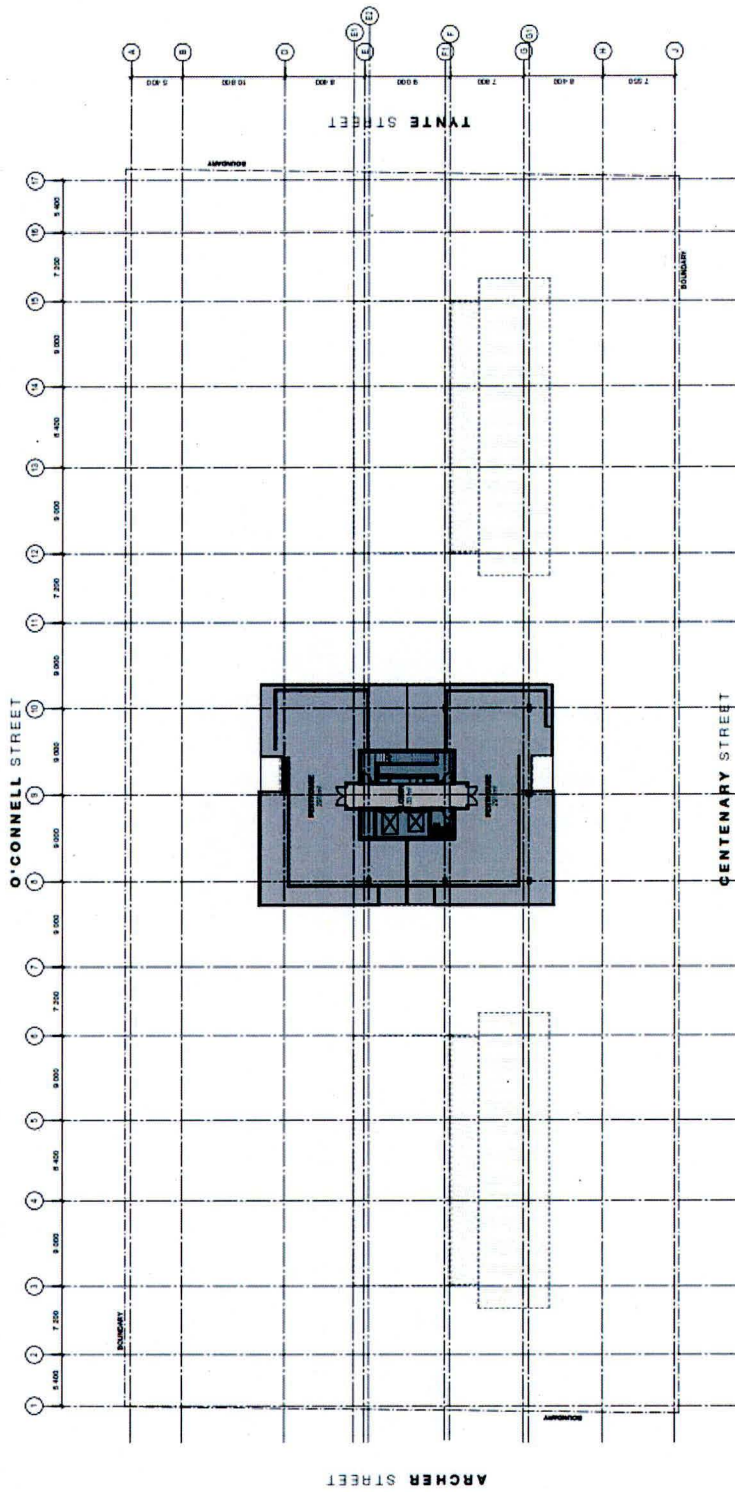
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Date
02/12/20

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WOODS BAGOT
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 Project: 88 O'Connell Street
 Sheet title: 13th Floor
 Project number: 140447
 Sheet number: BK 1213
 Scale: 1:300
 Revision: 0
 Sheet size: A1
 Date: 02/12/20
 Woods Bagot



**WOODS
BAGOT**

Client: **Commercial & General**

Project: **88 O'Connell Street**

Drawn by: **14th Floor**

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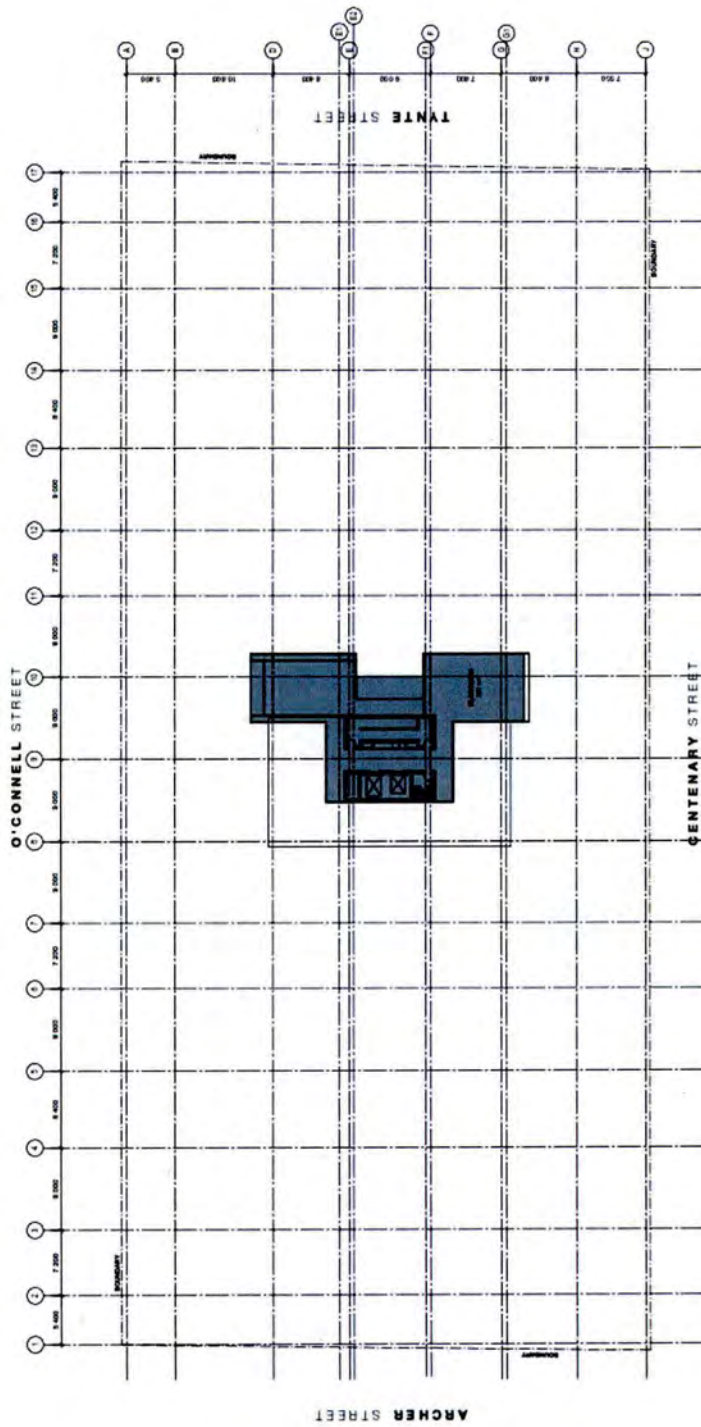
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Date: **02/12/20**

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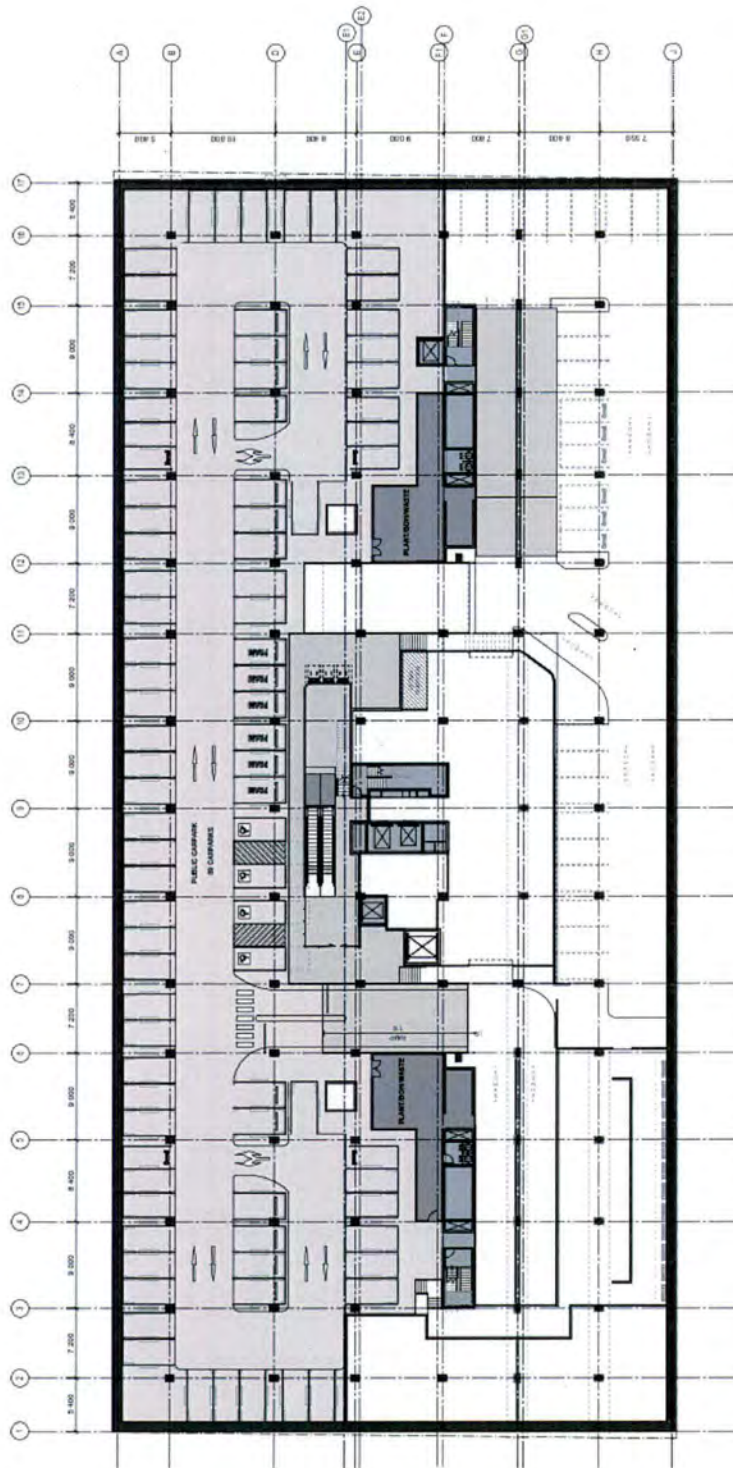


WOODS BAGOT

Client: **Commercial & General** Project: **88 O'Connell Street** Scale: **1:200** Sheet Size: **A1** Date: **02/12/20**

Project Number: **1213** Revision: **C** © Woods Bagot

15th Floor



**WOODS
BAGOT**

Client
Commercial & General

Project
88 O'Connell Street

Drawn by
Basement 01 Upper

Project number
149447

Sheet number
1381

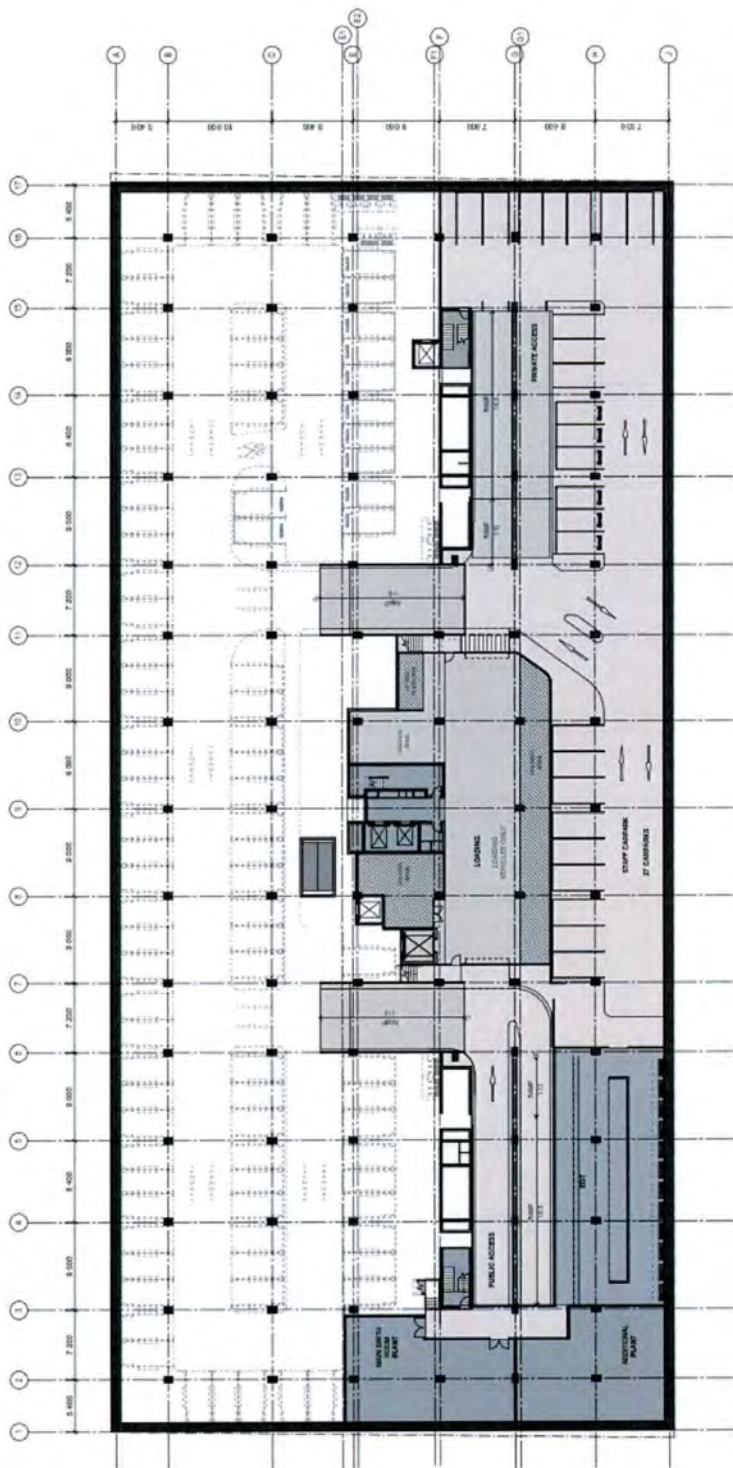
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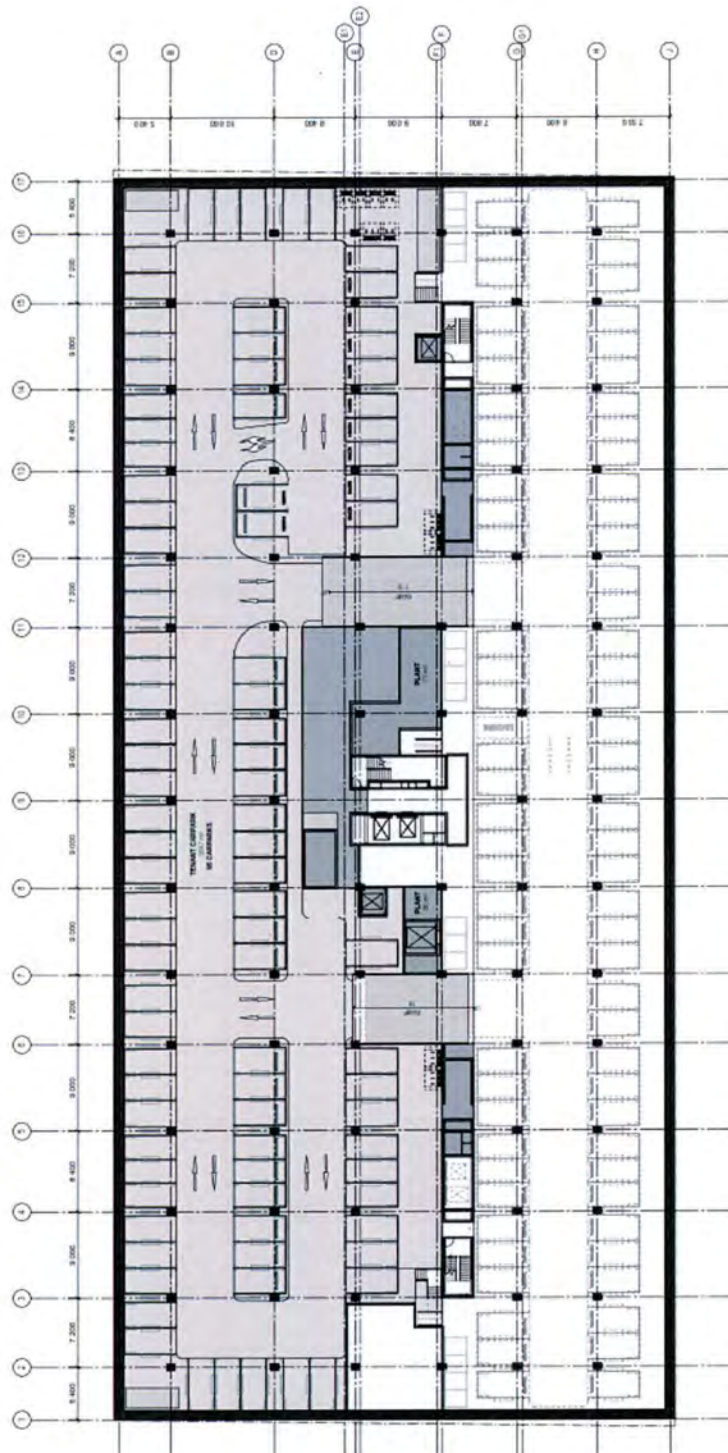
Revision
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Sheet size
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Date
02/12/20

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WOODS
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Client

Commercial & General

Project

88 O'Connell Street

Street Name

Basement 02 Upper

Sheet Name

Project Number
140447

Scale
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Sheet Number
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Revision
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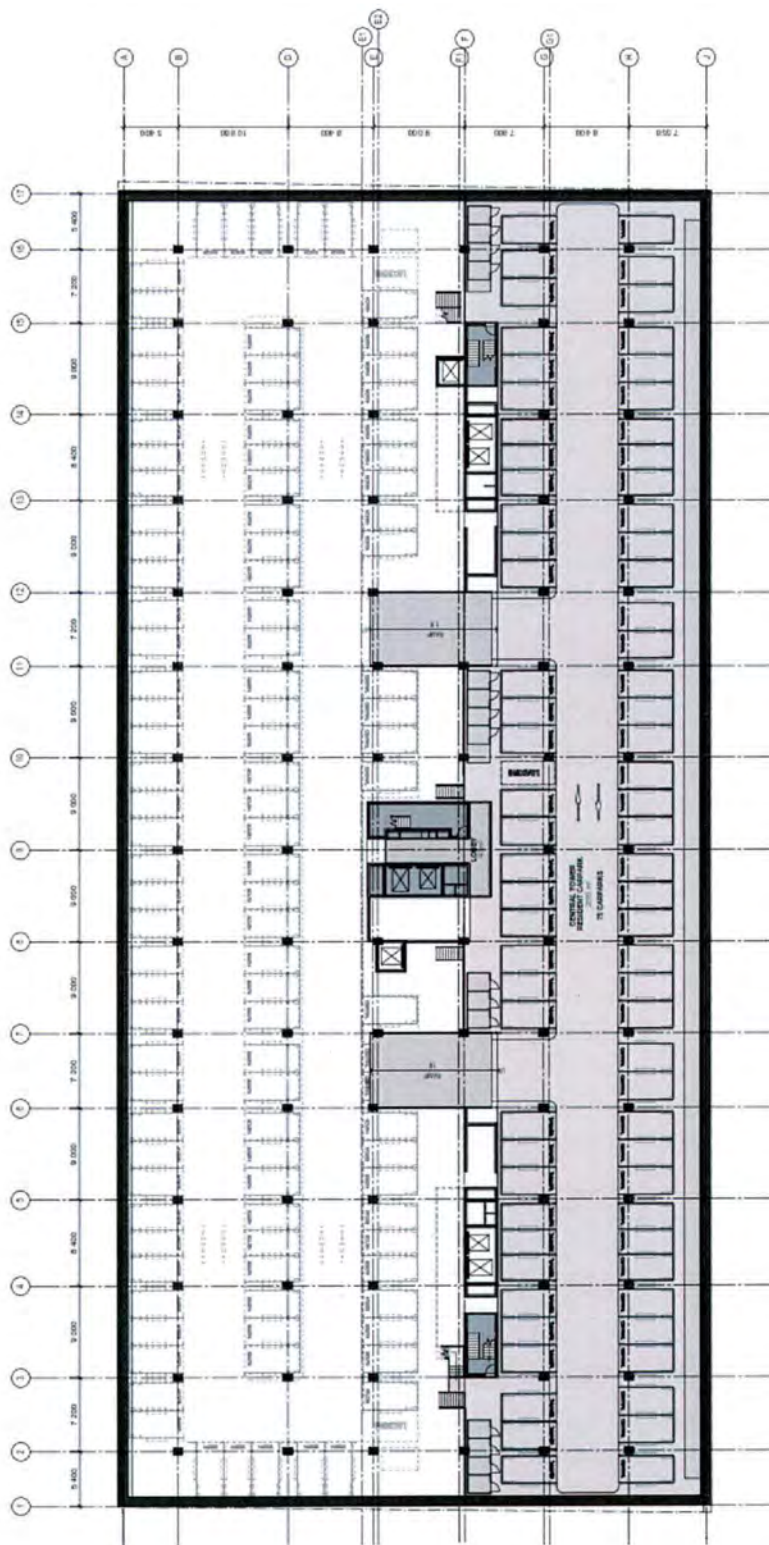
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Date
02/12/20

Date

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Sheet Size
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**WOODS
BAGOT**

Client: **Commercial & General**

Project: **88 O'Connell Street**

Street view: **Basement 02 Lower**

Project number:
149447

Scale:
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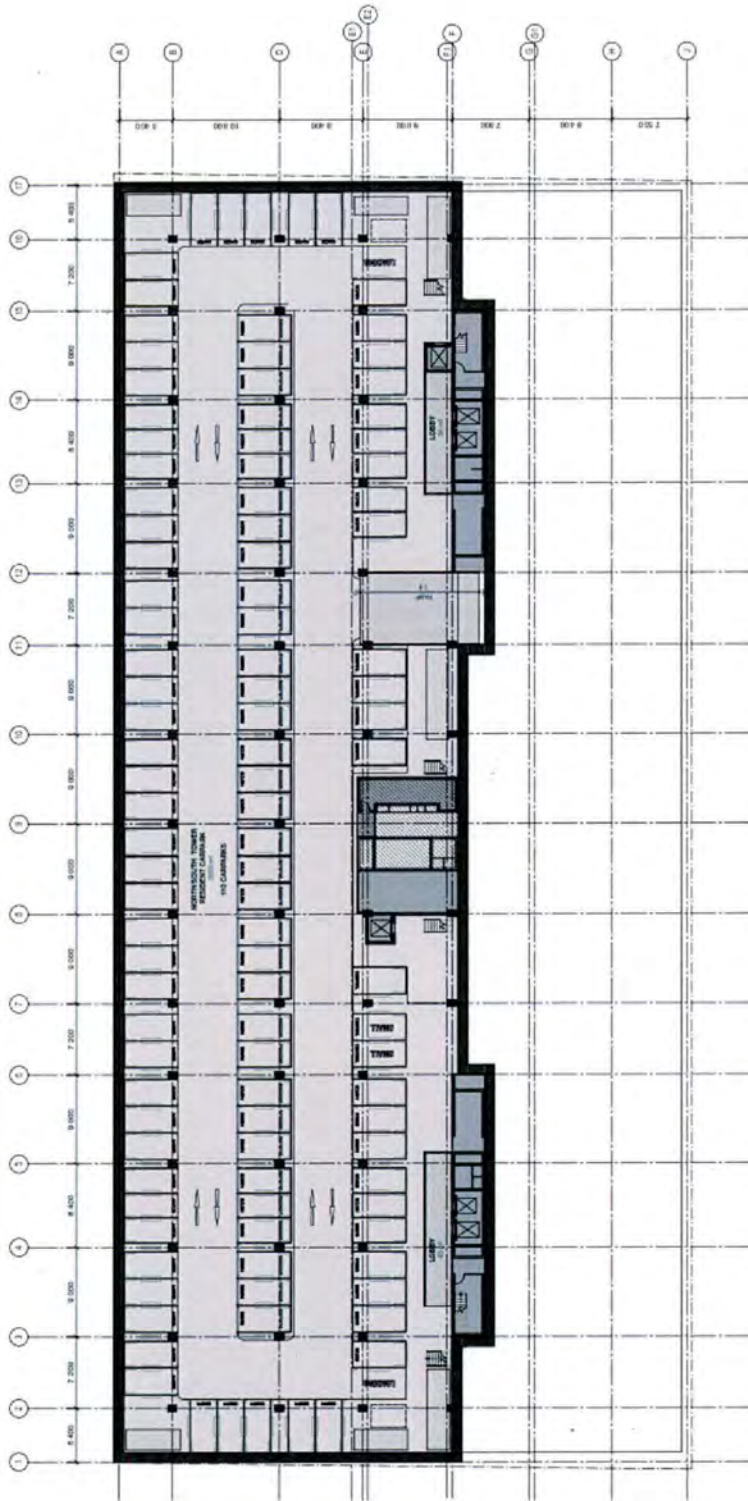
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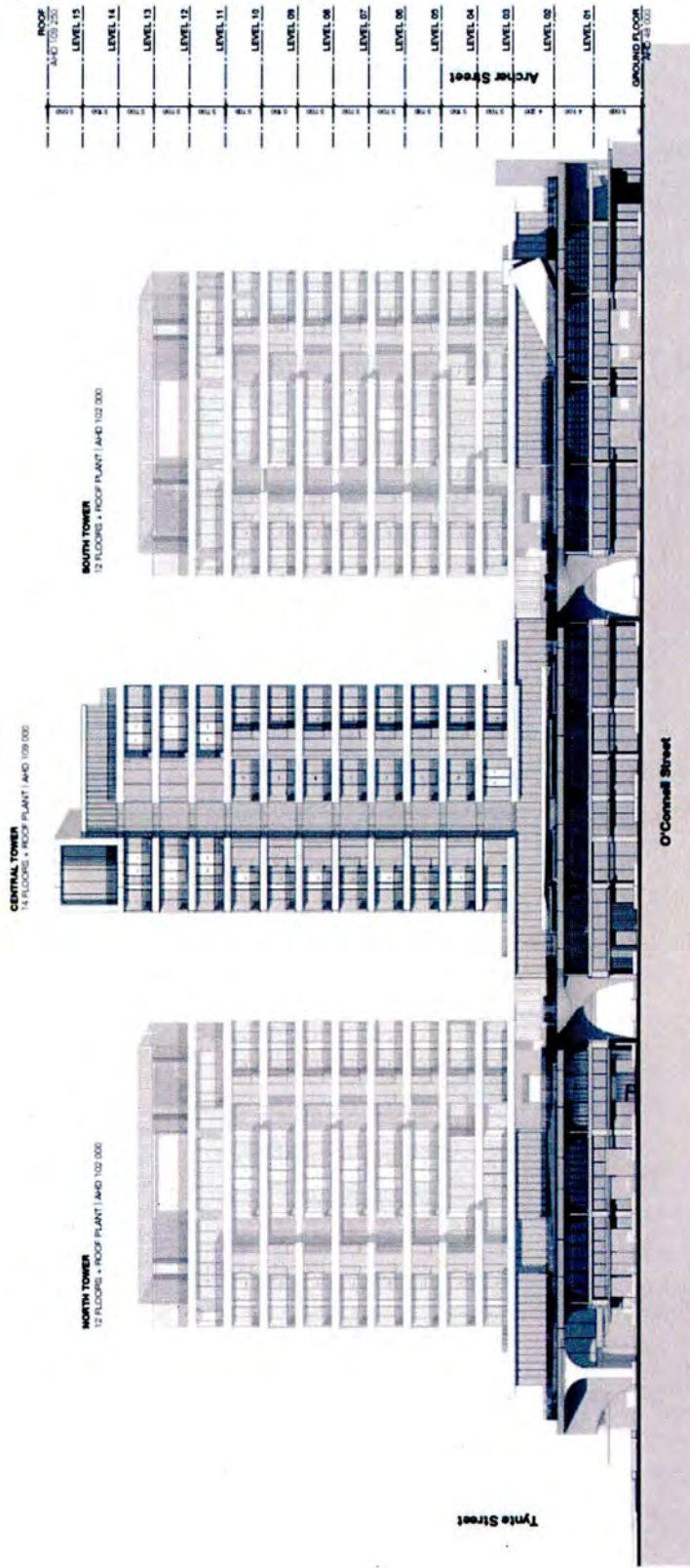
Date:
02/12/20

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OLD HEIGHT LIMIT
45' 10"



WOODS
BAGOT

Client
Commercial & General

Project
88 O'Connell Street

Street name
West Elevation

Project number
100447

Sheet number
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Scale
1 : 200

Revision
A

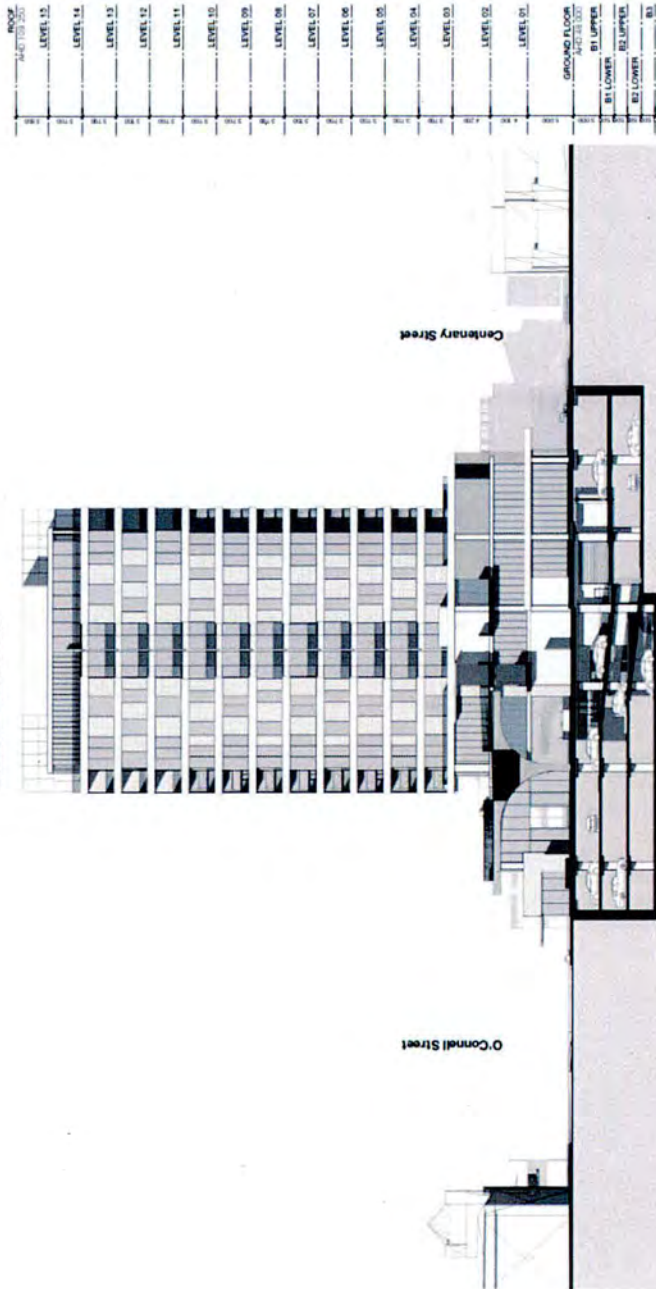
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Date
05/12/20

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OLD MIDLAND LANE

CENTRAL TOWER
14 FLOORS + ROOF PLANT AND TERRACE



WOODS BAGOT
Scale 1:100

WOODS
BAGOT

Client: Commercial & General

Project: 88 O'Connell Street

Section: Cross Section

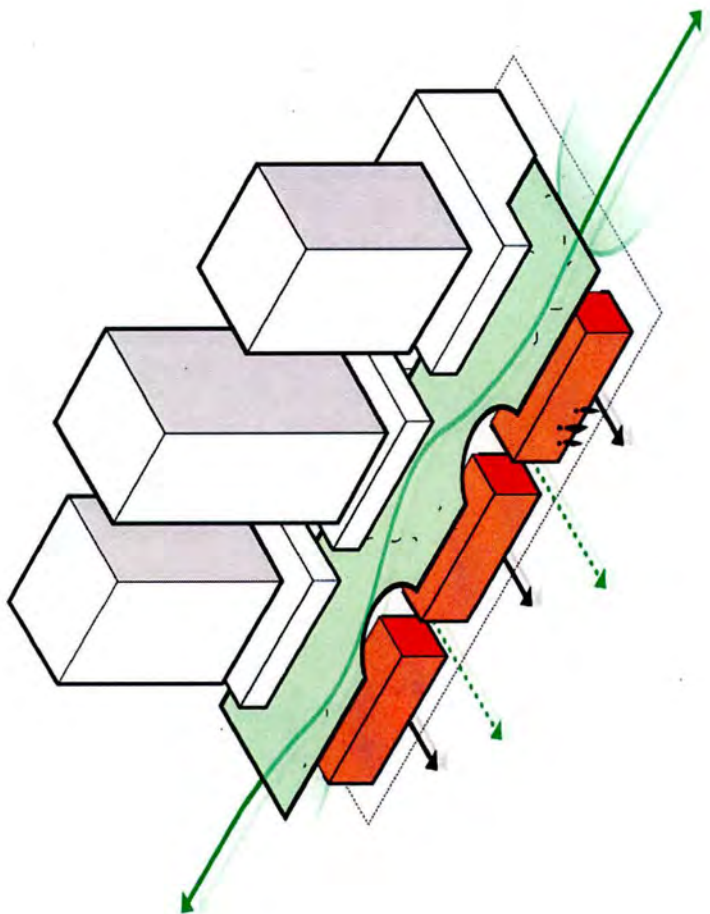
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Woods Bagot

88 O'Connell Street Concept Plan

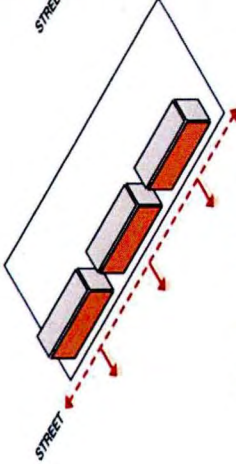
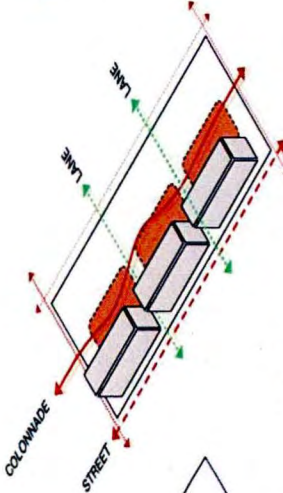
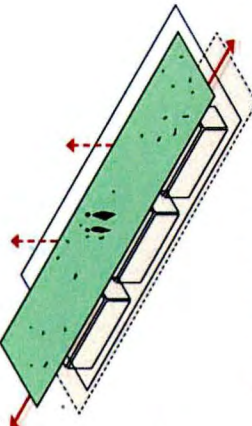
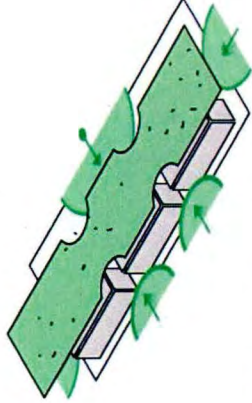
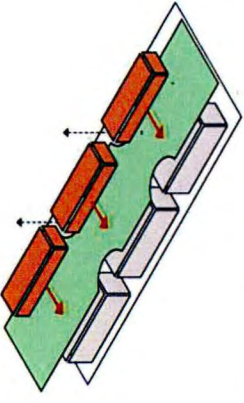
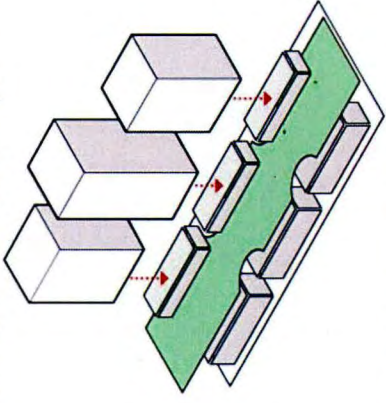
PART B – DESIGN APPROACH

Live.Work. Play. A Connected Community



WOODS BAIROT

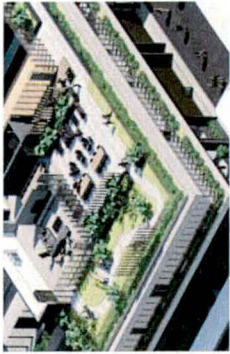
Design Moves

- 
- 01** Hold the street edge and maximise O'Connell Street Activation
- 
- 02** Reinforce a permeable urban network that brings people through the site and extends the east-west links
- 
- 03** Acknowledge the importance of maintaining flexible outdoor space with enhanced accessibility
- 
- 04** Create legible gateways characterised by the use of landscape
- 
- 05** Ensure the roof terrace remains activated and programmed
- 
- 05** Carefully insert a living community into the precinct; adhering to setbacks and reducing overshadowing

WOODS BAGOT

Key Design Items

The areas outlined below will work together to form the identity of 88 O'Connell. Detailed design and curation of these 'moments' forms the basis of our Schematic Design proposal.



Residential Amenity Decks

Level 02
The Residential Amenity Decks as associated internal spaces are located on Level 02 - at the base of each residential tower. These areas will form the common spaces for residents, offering a range of common facilities such as pools, gardens, gyms, bookable dining areas and much more.



Residential Towers

North + Central + South
Design of the three residential towers will heavily inform 88 O'Connell's precinct identity at a city scale.

Private



O'Connell Street Frontage

Ground Level + Level 01 and 02
The low-scale pavilions to will work to activate and nod the O'Connell Street frontage, housing a mix of Retail and Food + Beverage offerings.



Colonnade + Entry Forecourts

Ground Level + Level 01 and 02 Interface
The Colonnade and associated Entry Forecourts will form the key public offering at street level - providing a flexible, mixed use space that forms a natural extension to O'Connell Street.



Centenary Street Interface

Ground Level + Level 01 and 02
The Centenary Street interface is key in ensuring that the precinct is best integrated into the surrounding residential context. A range of programs will form onto Centenary Street and a key focus will be placed on street level integration through detailed design of the 'Lanes', Drop-Off/Pick-Up area and public green space.



Roof Terrace

Level 02
Pleached atop the O'Connell Street Colonnade, the Roof Terrace will provide a curated and elevated publicly accessible space that is well integrated with the associated podium functions. The terrace will form a key destination and point of respite.

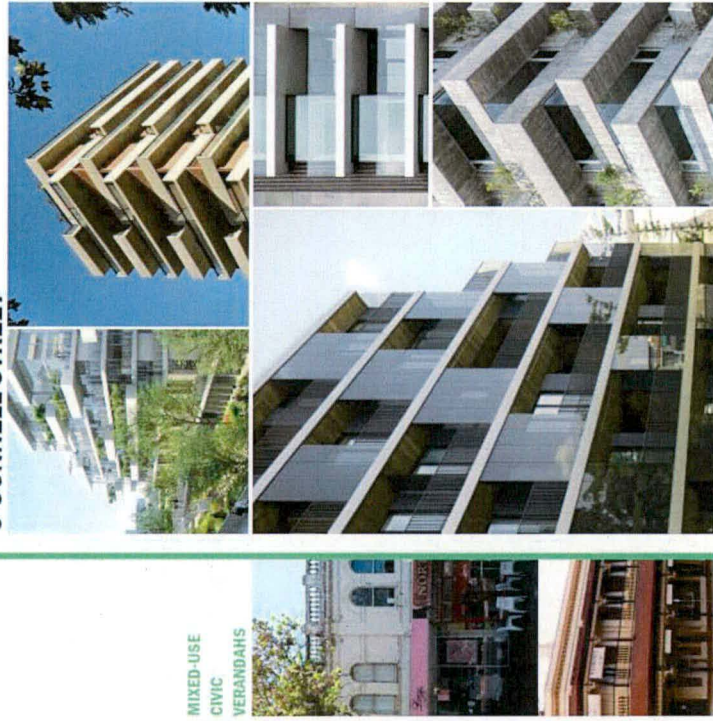
Publicly Accessible

RESIDENTIAL TOWER FACADES DESIGN APPROACH

CENTENARY STREET



O'CONNELL STREET



CONTEXT + POINT OF DIFFERENCE

RESIDENTIAL LIVING



HUMAN SCALE



GREENED



DIVERSE



SOCIAL



LIGHT + VENTILATION



LIVING WELL

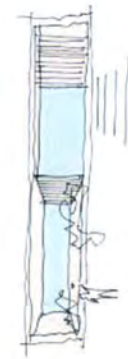
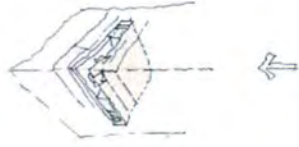


ELEVATED QUALITY





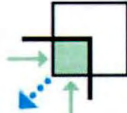











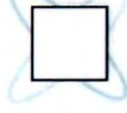

ACTIVATED 24/7

Houses in the Sky'



DESIGN PRINCIPLES

LIVEABLE APARTMENTS

		CROSS VENTILATION
		CORNER LIVING
		FUNCTIONAL TERRACES
		INTEGRATED INDOOR / OUTDOOR LIVING
		DIRECT VIEWS OUT
		NATURAL MATERIALS WITH LOW TOXICITY
		PLANTS AND NATURE
		INTEGRATED TECHNOLOGY



Concept Visualisation - O'Connell Street Elevation





Public Value Principles

At its meeting on 11 September 2018, Council resolved that a review of the provision of open spaces and the range of delivery mechanisms available, including where developers seek to vest land in Council ownership as part of Open Space Levy contributions was required as there is no Council Policy that guides Council in its decision making when a developer seeks to vest to Council open space created as part of a new development or proposed improvement to an existing open space.

It is recommended that the following principles be adopted by Council as a guide for decision making on future requests when open space is proposed to be vested to Council:

1. Places that are located to improve movement and contribute to the wider recreation network
2. Places that are integrated into the existing urban context
3. Places that are attractive and used by people of all ages
4. Places that are designed to promote public safety at all times
5. Places for people to meet and socialise
6. Places that incorporate fit for purpose infrastructure
7. Places accessible to the public without restriction and without above or underground encroachments
8. Places designed for formal and informal recreation and which can be used for a variety of events and functions
9. Use materials, designs and landscaping that are financially sustainable
10. Places that are comfortable and enjoyable throughout the year through the provision of natural and man-made shelter, furniture and landscaping
11. Places that are adaptable to climate change and lower the heat island effect
12. Places that are built to withstand wear and tear and minimise maintenance costs for the community
13. Places that are easy to use and navigate through
14. Places that ensure accessibility for all people through Universal Design



CITY OF ADELAIDE

Shaping Streets & Green Spaces in the City