

- 31.2 The provisions of this Agreement will be jointly and severally binding on, and enforceable against, the owner for the time being of:
- 31.2.1 the lots created by virtue of any such subdivision, or further subdivision, of the Land; and/or
- 31.2.2 the parts of the Land transferred to a third party,
- on which this Agreement remains registered as if that person had entered into this Agreement themselves.

32 Assignment, sale of Land, etc

- 32.1 Unless the preconditions specified in clause 32.2 are satisfied, the Developer must not:
- 32.1.1 transfer the Land or any part of it, other than a Final Lot, to any person; or
- 32.1.2 assign its rights or obligations under this Agreement, or novate this Agreement, to any person.
- 32.2 The preconditions to be satisfied under clause 32.1 are:
- 32.2.1 the Developer has, at no cost to the Council, procured the execution by the person to whom the Developer proposes to sell or transfer the Land, or to whom the Developer's rights or obligations under this Agreement are to be assigned or novated (**Third Party**), of an agreement in favour of the Council to the effect that the Third Party is bound as if a party to this Agreement;
- 32.2.2 prior to completion of a transfer under clause 32.1.1, this Agreement is registered on the title to the relevant part of the Land proposed to be transferred pursuant to clause 31; and
- 32.2.3 the Developer is not in breach of this Agreement.

Part 6 - Other provisions

33 Indemnity

- 33.1 Each Party indemnifies the other Party from and against all Claims that may be sustained, suffered, recovered or made against the other Party arising in connection with the performance of their obligations under this Agreement except if, and to the extent that, the Claim arises because of the other Party's negligence or default.

34 Insurance

- 34.1 This clause only applies if Landcom (t/a UrbanGrowth NSW) is the Developer under this Agreement.
- 34.2 The Developer warrants, and Council acknowledges, that:
- 34.2.1 the Developer is a member of the NSW Treasury Managed Fund (**Fund**),
- 34.2.2 the Fund provides the Developer with insurance cover against any liability arising from a breach by the Developer of its obligations under this Agreement.

35 Insurance when Developer other than Landcom

- 35.1 This clause only applies if Landcom (t/a UrbanGrowth NSW) is not the Developer under this Agreement.
- 35.2 The Developer is to take out and keep current to the satisfaction of the Council the following insurances in relation to Work required to be carried out by the Developer under this Deed, up until the time that the Work is taken to have been Completed in accordance with this Deed:
- 35.2.1 contract works insurance, noting the Council as an interested party, for the full replacement value of the Works (including the cost of demolition and removal of debris, consultants' fees and authorities' fees), to cover the Developer's liability in respect of damage to or destruction of the Works,
 - 35.2.2 public liability insurance for at least \$20,000,000.00 for a single occurrence or provided Landcom is not the Developer an additional amount requested by Council following an annual review, acting reasonably, which covers the Council, the Developer and any subcontractor of the Developer, for liability to any third party,
 - 35.2.3 workers compensation insurance as required by law, and
 - 35.2.4 any other insurance required by law.
- 35.3 If the Developer fails to comply with clause 35.2, the Council may effect and keep in force such insurances and pay such premiums as may be necessary for that purpose and the amount so paid shall be a debt due from the Developer to the Council and may be recovered by the Council as it deems appropriate, including:
- 35.3.1 by calling upon any Security provided by the Developer to the Council pursuant to clause 26, or
 - 35.3.2 recovery as a debt due in a court of competent jurisdiction.
- 35.4 The Developer is not to commence to carry out any Work unless it has first provided to the Council satisfactory written evidence of all of the insurances specified in clause 35.2.

36 Developer may Review Draft Determinations Relating to the Development

- 36.1 Not less than 14 days before determining a Development Application or an application under s96 of the Act relating to the Development, the Council must give to the Developer a copy of its proposed determination including, if applicable, the terms and conditions upon which any Development Consent or approval is proposed to be granted.
- 36.2 The Developer may, by notice in writing, not more than 14 days from receipt of the proposed determination under clause 36.1 request the Council to modify or abandon the proposed determination.
- 36.3 The Council must properly consider a request made by the Developer under clause 36.2 before it makes any further decision in relation to the determination.

37 Review of this Agreement

- 37.1 The Developer must provide the Council with a report every three years detailing the performance of its obligations under this Agreement.

- 37.2 The report is to be:
- 37.2.1 given no later than every three (3) years from the date on which this Agreement is entered into; and
 - 37.2.2 in the form and addressing the matters the Council notifies to the Developer from time to time.
- 37.3 The Parties are to review this Agreement every three (3) years, and otherwise if either Party considers that any change of circumstance has occurred, or is imminent, that materially affects the operation of this Agreement.
- 37.4 For the purposes of clause 37.3, the relevant changes include any change to a law that restricts or prohibits, or enables the Council or any other planning authority to restrict or prohibit, any aspect of the Development.
- 37.5 For the purposes of addressing any matter arising from a review of this Agreement referred to in clause 37.3, the Parties are to use all reasonable endeavours to agree on and implement appropriate amendments to this Agreement.
- 37.6 If this Agreement becomes illegal, unenforceable or invalid as a result of any change to a law, the Parties agree to do all things necessary to ensure that an enforceable agreement of the same or similar effect to this Agreement is entered into.
- 37.7 A Party's failure to agree to take action requested by the other Party as a consequence of a review referred to in clause 37.3 is not a dispute for the purposes of clauses 29 and 30, and is not a breach of this Agreement.

38 Confidentiality

- 38.1 The terms of this Agreement are not confidential and this Agreement may be treated as a public document and exhibited or reported without restriction by any Party.
- 38.2 The Parties acknowledge that:
- 38.2.1 confidential information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this Agreement; and
 - 38.2.2 the Parties may disclose to each other further confidential information in connection with the subject matter of this Agreement.
 - 38.2.3 subject to clauses 38.3 and 38.4, each Party agrees:
 - (a) not to disclose any confidential information received before or after the making of this Agreement to any person without the prior written consent of the Party who supplied the confidential information; or
 - (b) to take all reasonable steps to ensure all confidential information received before or after the making of this Agreement is kept confidential and protected against unauthorised use and access.
- 38.3 A Party may disclose confidential information in the following circumstances:
- 38.3.1 in order to comply with the law, or the requirements of any Authority; or
 - 38.3.2 to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees,

consultants, advisers, financiers or contractors undertake to keep the information confidential.

- 38.4 The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

39 Notices

- 39.1 A notice, consent, information, application or request (**Notification**) that must or may be given or made to a Party under this Agreement must only be given or made if it is in writing and sent in one of the following ways:
- 39.1.1 delivered or posted to that Party at its address set out in the Summary Sheet; or
 - 39.1.2 faxed to that Party at its fax number set out in the Summary Sheet; or
 - 39.1.3 emailed to that Party at its email address set out in the Summary Sheet.
- 39.2 A Party may change its address, fax number or email address by giving the other Party three (3) business days' notice of the change, in which case the new address, fax number or email address is treated as the address or number in the Summary Sheet.
- 39.3 A Notification is to be treated as given or made if it is:
- 39.3.1 delivered, when it is left at the relevant address;
 - 39.3.2 sent by post, two (2) business days after it is posted;
 - 39.3.3 sent by fax, as soon as the sender receives from the sender's fax machine a report of an error-free transmission to the correct fax number; or
 - 39.3.4 sent by email, and the sender does not receive a delivery failure message from the sender's internet service provider within a period of twenty four (24) hours of the email being sent.
- 39.4 If a Notification is delivered, or an error-free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 5pm on that day in the place of the Party to whom it is sent, it is to be treated as having been given or made at the beginning of the next business day.

40 Approvals and consent

- 40.1 In this clause, a reference to an approval or consent does not include a reference to a Development Consent.
- 40.2 Except as otherwise set out in this Agreement, and subject to any statutory obligations, a Party may give or withhold an approval or consent to be given under this Agreement in that Party's absolute discretion and subject to any conditions determined by the Party.
- 40.3 A Party must give its reasons for giving or withholding consent or for giving consent subject to conditions.

41 Legal Costs

- 41.1 The Developer agrees to:

- 41.1.1 pay or reimburse the legal costs and disbursements of Council of the negotiation, preparation, execution, and stamping of this Agreement up to an amount of no more than \$20,000.00 plus GST;
- 41.1.2 pay the reasonable legal costs and disbursements referred to in clause 41.1.1 within fourteen (14) days of receipt of a tax invoice from Council; and
- 41.1.3 pay or reimburse the legal costs and disbursements of Council arising from the ongoing administration and enforcement of this document including any breach or default by the Developer of its obligations under this Agreement.

42 Entire Agreement

- 42.1 This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with.
- 42.2 No Party can rely on an earlier document, or anything said or done by another Party, or by a director, officer, agent or employee of that Party, before this Agreement was executed, except as permitted by law.

43 Further acts

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

44 Governing law and jurisdiction

- 44.1 This Agreement is governed by the law of New South Wales.
- 44.2 The Parties submit to the non-exclusive jurisdiction of its courts, and are not to object to the exercise of jurisdiction by those courts on any basis.

45 Joint and individual liability and benefits

- 45.1 Except as otherwise set out in this Agreement:
 - 45.1.1 any agreement, covenant, representation or warranty under this Agreement by two (2) or more persons binds them jointly and each of them individually, and
 - 45.1.2 any benefit in favour of two (2) or more persons is for the benefit of them jointly and each of them individually.

46 Representations and warranties

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

47 Severability

- 47.1 If a clause or part of a clause can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way.

- 47.2 If any clause or part of a clause is illegal, unenforceable or invalid, that clause or part of it is to be treated as removed from this Agreement, but the rest of this Agreement is not affected.

48 Modification

- 48.1 No modification of this Agreement has any effect unless it is in writing and signed by the Parties.

49 Waiver

- 49.1 A Party does not waive any of the other Party's obligation or breach of obligation merely by failing to do, or delaying in doing, something under this Agreement.
- 49.2 A waiver by a Party is effective only if it is in writing.
- 49.3 A written waiver by a Party is effective only in relation to the particular obligation or breach for which it is given. It is not to be taken as an implied waiver of any other obligation or breach, or as an implied waiver of that obligation or breach in relation to any other occasion.

50 GST

- 50.1 In this clause:

Adjustment Note, Consideration, GST, GST Group, Margin Scheme, Money, Supply and Tax Invoice have the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable for the Taxable Supply.

GST Law has the same meaning as in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any other Act or regulation relating to the imposition or administration of the GST.

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Taxable Supply has the meaning given by the GST Law, excluding (except where expressly agreed otherwise) a supply for which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

- 50.2 Subject to clause 50.4, if GST is payable on a Taxable Supply made under, by reference to or in connection with this Agreement, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.
- 50.3 Clause 50.2 does not apply to the extent that the Consideration for the Taxable Supply is expressly stated in this Agreement to be GST inclusive.
- 50.4 No additional amount is payable by the Council under clause 50.2 unless, and only to the extent that, the Council (acting reasonably and in accordance with the GST Law) determines that it is entitled to an Input Tax Credit for its acquisition of the Taxable Supply giving rise to the liability to pay GST.

- 50.5 If there are Supplies for Consideration which is not Consideration expressed as an amount of Money under this Agreement by one Party to the other Party that are not subject to Division 82 of the *A New Tax System (Goods and Services Tax) Act 1999*, the Parties agree:
- 50.5.1 to negotiate in good faith to agree the GST inclusive market value of those Supplies before issuing Tax Invoices for those Supplies;
- 50.5.2 that any amounts payable by the Parties in accordance with clause 50.2 (as limited by clause 50.4) to each other for those Supplies will be set off against each other to the extent that they are equivalent in amount.
- 50.6 No payment of any amount under this clause 50, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided the recipient with a Tax Invoice or Adjustment Note as the case may be.
- 50.7 Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.
- 50.8 This clause continues to apply after expiration or termination of this Agreement.

51 Explanatory Note Relating to this Agreement

- 51.1 The Appendix contains the Explanatory Note relating to this Agreement required by clause 25E of the Regulation.
- 51.2 Under clause 25E(7) of the Regulation, the Parties agree that the Explanatory Note in the Appendix is not to be used to assist in construing this Agreement.