

Voluntary Planning Agreement

NORTH SYDNEY COUNCIL

AND

WINTEN (NO. 16) PTY LTD

AND

PALUMA PTY LIMITED and YURI BOLOTIN and RAE BOLOTIN

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PLANNING AGREEMENT

PARTIES

NORTH SYDNEY COUNCIL of 200 Miller Street, North Sydney, NSW, 2060 (“**Council**”)

AND

WINTEN (NO. 16) PTY LTD ACN 092 479 644 of Level 10, 61 Lavender Street, Milsons Point, NSW, 2061 (“**Developer**”)

AND

PALUMA PTY LIMITED ACN 164 017 412 C/- Kellaway Cridland, Level 18, 9 Hunter Street, Sydney, NSW, 2001 and **YURI BOLOTIN** and **RAE BOLOTIN** of 17 Cogan Place, Lane Cove, NSW, 2066 (“**Landowners**”)

BACKGROUND

- A. At the time of executing this Agreement, Paluma Pty Limited is the registered proprietor of Lot 41 Section 4 DP 2872 and Yuri and Rae Bolotin are the registered proprietors of Lot 1 DP 572479.
- B. At the time of executing this Agreement, the Developer has entered into Contracts for Sale to purchase the Land.
- C. The Developer proposes to carry out the Development on the Land. To this extent, the Developer proposes to make a development application to Council for the Development.
- D. Clause 4.3(2) of LEP 2013 provides that a building is not to exceed the maximum height shown for the land on the Height of Buildings Map. The map relating to clause 4.3(2) provides a height limit of 13 metres for the Land.
- E. Clause 4.4(2) of LEP 2013 provides that the maximum floor space ratio for a building on any land is not to exceed the floor space ratio shown for the land on the Floor Space Ratio Map. The map relating to clause 4.4(2) shows no maximum floor space ratio for the Land.
- F. Council has adopted the St Leonards Crow’s Nest Planning Study – Precinct 1 which makes provision for an increase in building heights in the area. The Study also recommends a whole of building floor space ratio be applied to sites seeking to increase the building height control. The Land is located within the area the subject of the Planning Study.
- G. The Developer and the Landowners have sought:
 - a. a change to the Height of Buildings Map referred to in clause 4.3(2) of LEP 2013 to allow a maximum building height of 26 metres for the Land as defined in LEP 2013; and
 - b. a change to the Floor Space Ratio Map to introduce a maximum floor space ratio of 4.27:1 for the Land.

- H. The Developer has offered to enter into a Planning Agreement with Council for the provision of Development Contributions in connection with the Instrument Change. The Landowners have consented to the arrangement offered by the Developer. The Parties wish to formalise that arrangement by entering into this Agreement in accordance with section 93F of the Act.

OPERATIVE PROVISIONS

1 Planning agreement under the Act

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

2 Application of this Agreement

This Agreement applies to:

- (a) the Land,
- (b) the Instrument Change, and
- (c) the Development.

3 Operation of this Agreement

The parties each agree that this Agreement operates on and from the date of this Agreement.

4 Definitions and interpretation

4.1 In this Agreement the following definitions apply:

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

Bolotins means Yuri and Rae Bolotin.

Construction Certificate means a construction certificate as defined under s109C of the Act.

CPI means the All Groups Consumer Price Index applicable to Sydney published by the Australian Bureau of Statistics.

Dealing, in relation to the Land, means, without limitation, selling, transferring, assigning, mortgaging, charging, encumbering or otherwise dealing with the Land.

Development means the proposed mixed use development on the Land including a building having a height of up to 26 metres, adopting the definition of "height" contained in LEP 2013.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means a monetary contribution, the dedication of land free of cost or the provision of a material public benefit.

GST has the same meaning as in the GST Law.

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

Insolvent means the occurrence of any of the following:

- (a) a Party is liquidated, whether compulsorily or voluntarily (other than for the purpose of amalgamation or reconstruction whilst solvent);
- (b) a Party becomes unable to pay its debts as they fall due;
- (c) a Party enters into any arrangement with creditors;
- (d) a Party becomes subject to external administration within the meaning of Chapter 5 of the *Corporations Act 2001* (Cth), including having a receiver or administrator appointed over all or any part of its assets; or
- (e) anything analogous (such as analogous bankruptcy processes) or having a substantially similar effect to the events specified in clauses (a) to (d) above occurs in relation to a party, including the court appointment of a receiver.

Instrument Change means a change to LEP 2013 to provide for a maximum building height of 26 m and maximum floor space ratio of 4.27:1 for the Land.

Land means Lot 1 in DP572479 and Lot 41 of Section 4 in DP2872, known as 31 and 33 Albany Street, St Leonards.

LEP 2013 means North Sydney Local Environmental Plan 2013.

Modification means the grant of any Modification Application under s96 of the Act.

Modification Application means an application to modify a Development Consent under s96 of the Act.

Monetary Contribution means the monetary contribution to be paid by the Developer and the Landowner to the Council in accordance with clause 5(a) of this Agreement.

Occupation Certificate means an occupation certificate as defined under section 109C of the Act, including an interim occupation certificate or a final occupation certificate.

Paluma means Paluma Pty Limited ACN 164 017 412.

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

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

Regulation means the Environmental Planning and Assessment Regulation 2000.

Setback Area means the area of the Land created by the set back of any future building from Hume Lane, as required by clause 5(c) of this Agreement.

- 4.2 In the interpretation of this Agreement, the following provisions apply unless the context otherwise requires:
- (a) Headings are inserted for convenience only and do not affect the interpretation of this Agreement.
 - (b) A reference in this Agreement to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in Sydney.
 - (c) If the day on which any act, matter or thing is to be done under this Agreement is not a business day, the act, matter or thing must be done on the next business day.
 - (d) A reference in this Agreement to dollars or \$ means Australian dollars and all amount payable under this Agreement are payable in Australian dollars.
 - (e) A reference in this Agreement to any law, legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision.
 - (f) A reference in this Agreement to any agreement, deed or document is to that agreement, deed or document as amended, novated, supplemented or replaced.
 - (g) A reference to a clause, part, schedule or attachment is a reference to a clause, part, schedule or attachment of or to this Agreement.
 - (h) An expression importing a natural person includes any company, trust, partnership, joint venture, association, body corporate or governmental agency.
 - (i) Where a word or phrase is given a defined meaning, another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.
 - (j) A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
 - (k) References to the word 'include' or 'including' are to be construed without limitation.
 - (l) A reference to this Agreement includes the agreement recorded in this Agreement.
 - (m) A reference to a party to this Agreement includes a reference to the servants, agents and contractors of the party, and the party's successors and assigns.
 - (n) Any schedules and attachments form part of this Agreement.

5 Development Contributions to be made under this Agreement

- (a) The Developer will for the purpose of increasing the amount of Public Open Space in the North Sydney Local Government Area provide a monetary contribution in an amount calculated in accordance with clause 5(b) by way of a bank cheque in favour of North Sydney Council prior to the issue of any Construction Certificate that applies to or with respect to any future building or development on the Land.
- (b) The monetary contribution referred to in clause 5(a) will be \$1,150,000.00 or an amount determined in accordance with the following formula, whichever is the greater, at the time of actual payment of the monetary contribution:
- $$\$1,150,000.00 \times \frac{\text{The CPI at the time of payment}}{\text{The CPI that applied at the date of this Agreement}}$$
- (c) The Developer and Landowners acknowledge and agrees that:
- (i) any future building on the Land will be set back 3 metres from the Hume Lane frontage of the Land, excluding structures approved by Council for the purposes of enhancing public domain areas; and
- (ii) any future Development Consent for, or Modification relating to, a building on the Land may require development of the Setback Area so described in clause 5(c)(i) so that it is consistent with the public domain and establishes a functioning publicly accessible footpath area.
- (d) Prior to the issue of any Construction Certificate for any building on the Land, the Developer and the Landowners must register a covenant against the title to the Land prohibiting any building or development within the Setback Area, other than structures approved by Council for the purposes of enhancing public domain areas.
- (e) Prior to the issue of any Occupation Certificate for any building on the Land, the Developer will design and construct the Setback Areas in accordance with the technical requirements for footpaths in *North Sydney Development Control Plan 2013* and Council's Public Domain Style Manual and Design Code and any Development Consent granted for those works.
- (f) The Developer and the Landowners agree and acknowledge that prior to the issue of any Occupation Certificate for any building on the Land, an easement in gross in favour of the Council permitting public access to the Setback Area must be registered against the title to the Land at no cost to the Council.
- (g) The easement in gross referred to in clause 5(e) will:
- (i) require the owner of the Setback Area to:

- (A) maintain and repair the land to the satisfaction of the Council,
 - (B) maintain sufficient public liability insurance,
 - (C) ensure that no buildings or structures are erected on the setback area at ground level or above other than structures approved by the Council for the purposes of enhancing public domain areas, and
 - (D) ensure that any rules made by an Owner's Corporation relating to the Setback Area are approved by the Council; and
- (ii) allow the owner of the Setback Area to, with the consent of Council and subject to providing adequate access;
 - (A) carry out works in the Setback Area for the purposes of enhancing the Setback Area;
 - (B) install or erect works of art, street furniture, tables and chairs associated with ground floor commercial premises, or any other similar improvements at ground level of the Setback Area, and
 - (C) use the Setback Area in a manner that is consistent with the Council's "Outdoor Dining and Goods on Footpath Policy" and associated Guidelines or any instrument replacing that policy.
 - (h) The Developer and the Landowners agree and acknowledge that the obligation to maintain the Setback Area under clause 5(c) of this Agreement is a relevant consideration for the Council or any other consent authority when determining any future Development Application or Modification Application and that a failure to comply with that obligation or any inconsistency with the requirements of this clause 5 may constitute a reason for refusal of any such application.

6 Application of the Development Contributions

- (a) The Council must upon receipt of the Monetary Contribution paid by the Developer in accordance with clause 5 of this Agreement and within a reasonable time after the date of this Agreement use that contribution as it sees fit to:
 - (i) acquire land for the provision of Public Open Space;
 - (ii) attend to the embellishment of the land so acquired for open space; or
 - (iii) care for and maintain the said open space.
- (b) In the event the Council determines not to acquire land for the purposes of establishing new open space areas, the Council agrees that the contributions made under this Agreement will be applied towards the

embellishment and maintenance of other land for the purposes of public open space and recreation with the North Sydney Local Government Area.

- (c) For the avoidance of doubt, nothing in this Agreement requires the Council to:
 - (i) spend the contributions made under this Agreement by a particular date; or
 - (ii) refund to the Developer any contributions made under this Agreement.

7 Application of s94, s94A and s94EF of the Act to the Development

- (a) Sections 94, 94A and 94EF of the Act will apply to any future development of the Land.
- (b) Benefits under this planning agreement are excluded from being taken into consideration under s94(6) of the Act and its application to any future development of the Land.

8 Registration of this Agreement

8.1 Requirement to Register

- (a) The Developer agrees that it will procure the registration of this Agreement, under the *Real Property Act 1900 (NSW)* in the relevant folios of the Register for the Land in accordance with s93H of the Act.
- (b) The Developer at its own expense will, promptly after this Agreement comes into operation, take all practical steps, and otherwise do anything that the Council reasonably requires, to procure:
 - (i) the consent of each person who:
 - (A) has an estate or interest in the Land; or
 - (B) is seized or possessed of an estate or interest in the Land; and
 - (ii) the execution of any documents; and
 - (iii) the production of the relevant duplicate certificates of title, to enable the registration of this Agreement in accordance with clause 8.1(a).
- (c) The Developer at its own expense, will take all practical steps, and otherwise do anything that the Council reasonably requires:
 - (i) to procure the lodgement of this Agreement with the Registrar-General as soon as reasonably practicable after this Agreement comes into operation but in any event, no later than 90 Business Days after that date; and

- (ii) to procure the registration of this Agreement by the Registrar-General in the relevant folios of the Register for the Land as soon as reasonably practicable after this Agreement is lodged for registration.

8.2 Landowners Obligations

- (a) Paluma represents and warrant that it is the registered proprietor of Lot 41 Section 4 DP 2872.
- (b) The Bolotins represent and warrant that they are the registered proprietors of Lot 1 DP 572479 as joint tenants.
- (c) The Landowners consent to the registration of this Agreement in accordance with clause 8.1(a) and will do all that is necessary to effect registration of this Agreement and all documents contemplated by this Agreement.
- (d) The Landowners acknowledge and agree that if the Developer:
 - (i) becomes Insolvent; or
 - (ii) fails to comply with this Agreement after having been given reasonable notice to comply in accordance with the terms of this Agreement; or
 - (iii) transfers any interest in the Land or the Development to another party contrary to the terms of this Agreement; or
 - (iv) the Developer does not exercise the options to purchase the Land and no longer has an interest in the Land,

the Landowners will adhere to the provisions of this Agreement and agree to satisfy all obligations and requirements imposed on the Developer under this Agreement, as if they were obligations or requirements imposed on the Landowners, including the obligations outlined in this clause 8 and the obligation to provide the cash bond under clause 11.

- (e) In the event that the Landowners take on the obligations of the Developer in accordance with the terms of this Agreement, then after receiving a replacement cash bond provided by the Landowners in accordance with clause 11, the Council must promptly return to the Developer any cash bond provided by the Developer to the Council.

8.3 Caveat

- (a) The Landowners acknowledge and agree that:
 - (i) when this Agreement is executed, Council is deemed to have acquired, and the Landowners are deemed to have granted, an equitable estate and interest in each relevant parcel of the Land for the purposes of section 74F(1) of the *Real Property Act 1900* and consequently Council has sufficient interest in the Land in

respect of which to lodge a caveat over the Land notifying that interest; and

- (ii) they will not object to Council lodging a caveat in the relevant folios of the Register nor will it seek to remove any caveat lodged by Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) Council must register, at the Landowners' and the Developer's cost, a withdrawal of any caveat in respect of the Land within 20 Business Days after this Agreement has been registered in accordance with clause 8.1 and must not lodge any other caveats on the titles to any of the Land, providing the withdrawal of a caveat will only apply in respect of such parts of the Land in respect of which registration of this Agreement has been procured.

8.4 **Release and Discharge**

The Council will provide a release and discharge of this Agreement so that it may be removed from the folios of the Register for the Land (or any part of it) provided the Council is, acting reasonably, satisfied the Developer has duly fulfilled its obligations under this Agreement and is not otherwise in default of any of the obligations under this Agreement.

9 **Review of this Agreement**

This Agreement may be reviewed or modified by the agreement of the parties using their best endeavours and acting in good faith.

10 **Dispute Resolution**

10.1 **Dispute**

If any dispute arises out of this Agreement (**Dispute**) a party to the agreement must not commence any court or arbitration proceedings unless the parties to the Dispute have complied with the following paragraphs of this clause except where a party seeks urgent interlocutory relief,

10.2 **Notice of Dispute**

A party to this Agreement claiming that a dispute has arisen out of or in relation to this Agreement must give written notice (**Notice**) to the other party to this Agreement specifying the nature of the dispute,

10.3 **Dispute Resolution**

If the parties do not agree within twenty one days of receipt of the Notice (or such further period as agreed in writing by them) as to:

- (a) the dispute resolution technique (eg expert determination) and procedures to be adopted;
- (b) the timetable for all steps in those procedures; and
- (c) the selection and compensation of the independent person required for such technique,

The parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales as published by the Law Society of New South Wales from time to time, and, the President of the Law Society of New South Wales or the President's nominee will select the mediator and determine the mediator's remuneration.

11 Enforcement

11.1 Cash bond

- (a) Prior to the Instrument Change, the Developer is to provide to the Council a cash bond in the amount of \$1,150,000.00.
- (b) Except as expressly permitted by this Agreement, the Council is not to call on a cash bond provided under this clause unless:
 - (i) the Developer is in material or substantial breach of this Agreement and has failed to rectify the breach after having been given reasonable notice (which must not be less than 20 Business Days) in writing to do so; or
 - (ii) the Developer becomes Insolvent.
- (c) On receipt of any replacement cash bond, the Council must release and return to the Developer, as directed, the cash bonds which it holds.
- (d) Subject to this clause, the Council may apply the proceeds of a cash bond in satisfaction of:
 - (i) any obligation of the Developer under this Agreement to pay the Monetary Contribution, and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement.
- (e) When an obligation of the Developer under this Agreement to which a cash bond relates has been fulfilled, the Council must return the cash bond if requested by the Developer.
- (f) Nothing in this clause 11.1 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer under this Agreement; or
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer to comply with this Agreement,that is not nor cannot be satisfied by calling on a cash bond.

11.2 Restriction on the issue of a Certificates

- (a) In accordance with section 109F of the Act and clause 146A of the Regulation the following obligations under this Agreement must be satisfied prior to the issue of any Construction Certificate for any future building or development on the Land:

- (i) payment of the Monetary Contribution under clause 5(a); and
 - (ii) registration of the covenant restricting buildings in the Setback Area under clause 5(d).
- (b) In accordance with section 109H(2) of the Act the following obligations must be satisfied prior to the issue of any Occupation Certificate for any future building or development on the Land:
- (i) completion, to the Council's satisfaction, acting reasonably, of the construction of the Setback Area as required under clause 5(e); and
 - (ii) registration of the easement in gross under clause 5(f).

11.3 **General Enforcement**

- (a) Without limiting any other remedies available to the Parties, this Agreement may be enforced by any party in any Court of competent jurisdiction.
- (b) Nothing in this Agreement prevents:
 - (i) a Party from bringing proceedings in the Land and Environment Court to enforce any aspect of this Agreement or any matter to which this Agreement relates; and
 - (ii) the Council from exercising any function under the Act or any other Act or law relating to the enforcement of any aspect of this Agreement or any matter to which this Agreement relates.

11.4 **Acknowledgement regarding Security**

The parties acknowledge and agree that the security provided under this clause 11 together with the timing of requirements to pay contributions, the agreements and acknowledgements under clause 5, the requirements under clause 8 for registration of this Agreement and the restrictions on assignment of this Agreement under clause 14 will provide sufficient security for the performance of the Developer's obligations under this Agreement.

12 **Notices**

- 12.1 Any notice, consent, information, application or request that must or may be given or made to a Party under this Agreement is only given or made if it is in writing and sent in one of the following ways:
- (a) Delivered or posted to that Party at its address set out below.
 - (b) Faxed to that Party at its fax number set out below.
 - (c) Emailed to that Party at its email address set out below.

Council

North Sydney Council

Attention: Mr Mark Yee
Address: 200 Miller Street, North Sydney, NSW, 2060
Fax number: 9936 8177
Email: mark.yee@northsydney.nsw.gov.au

Developer

Winten Property Group

Attention: Stuart Vaughan
Address: 61 Lavender Street, Milsons Point, NSW, 2061
Fax number: 9929 5001
Email: svaughan@winten.com.au

Landowners

Paluma Pty Limited

Attention: Philip Graham Brook and Carol Wendy Brook
Address: C/- Kellaway Cridland, Level 18, 9 Hunter Street,
Sydney, NSW, 2001

Fax number:

Email:

Yuri and Rae Bolotin

Attention:

Address: 17 Cogan Place, Lane Cove, NSW, 2066

Fax number:

Email:

- 12.2 If a Party gives the other Party 3 business days' notice of a change of its address or fax number, any notice, consent, information, application or request is only given or made by that other Party if it is delivered, posted or faxed to the latest address or fax number.
- 12.3 Any notice, consent, information, application or request is to be treated as given or made at the following time:
- (a) If it is delivered, when it is left at the relevant address.
 - (b) If it is sent by post, 2 business days after it is posted.

- (c) If it is 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.

12.4 If any notice, consent, information, application or request is delivered, or an error free transmission report in relation to it is received, on a day that is not a business day, or if on a business day, after 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.

13 Approvals and consent

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

14 Assignment and Dealings

The Developer and the Landowners may not sell, transfer, assign or novate or similarly deal with their right, title or interest in the Land (if any) or the Development, or rights or obligations under the terms of this agreement, or allow any interest in them to arise or be varied, in each case, without Council's consent and unless, prior to any such sale, transfer, assignment, charge, encumbrance or novation, the Developer or the Landowners as the case may be:

- (a) at no cost to Council, first procures the execution by that person of all necessary documents in favour of Council by which that person agrees to be bound by the Agreement as if they were a party to the original Agreement; and
- (b) satisfies the Council that the Developer is not in breach of this Agreement.

15 Costs

The Developer agrees to pay or reimburse Council all reasonable costs incurred in connection with:

- (a) the negotiation, preparation and execution of this Agreement; and
- (b) advertising and exhibition of this Agreement in accordance with the Act, and
- (c) any other costs required to be paid by the Developer or the Landowners under this Agreement

within ten business days after receipt of a tax invoice from Council.

16 Entire Agreement

This Agreement contains everything to which the Parties have agreed in relation to the matters it deals with. 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.

17 Further Acts

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

18 Governing law and jurisdiction

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

19 Joint and individual liability and benefits

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

20 No fetter

- (a) Nothing in this Agreement shall be construed as requiring Council to do anything that would cause it to be in breach of any of its obligations at law, and without limitation, nothing shall be construed as limiting or fettering in any way the exercise of any statutory discretion or duty.
- (b) This Agreement does not impose any obligation on Council to:
 - (i) grant Development Consent; or
 - (ii) exercise any function under the Act in relation to a change in an environmental planning instrument.

21 Representations and warranties

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

22 Severability

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

23 Modification

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

24 Waiver

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

25 GST

- (a) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this Agreement are exclusive of GST.
- (b) If GST is imposed on any supply made under or in accordance with this Agreement, the Developer must pay, on receipt of a tax invoice from the Council, the GST or pay to the Council an amount equal to the GST payable on or for the taxable supply, whichever is appropriate in the circumstances.

26 Counterparts

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

27 Termination of this Agreement

27.1 This Agreement will be at an end and taken to have been revoked and neither party will, subject to clauses 27.3 and 27.4, have any obligation to the other if:

- (a) Subject to the Council receiving written confirmation from the Minister that the Instrument Change will not proceed:
 - (i) The Instrument Change has not commenced on or before 12 months after the date of this Agreement; or
 - (ii) The Developer serves written notice on the Council, prior to the Instrument Change commencing, confirming that the Agreement is at an end and that it has been revoked by the Developer, or
- (b) The Instrument Change is declared invalid by a Court of competent jurisdiction and any rights of appeal from that decision have been exhausted.

27.2 Clause 27.1 is for the benefit of the Developer, who may waive the benefit of it, by notice in writing to the Council.


- 27.3 Each party will promptly sign all documents and do all things reasonably required to procure the removal of this Agreement as an encumbrance on the Land by appropriate notification or request if this Agreement comes to an end under clause 27.1.
- 27.4 Subject to any rights the Council may have to call on the cash bond arising prior to termination of the Agreement, the Council must, within 7 days of this Agreement coming to an end in accordance with clause 27.1, return the cash bond to the Developer.

EXECUTION

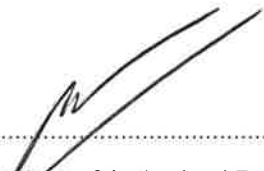
Dated: 13 October 2016

Executed as an Agreement:

Signed for and on behalf of North)
 Sydney Council ABN 32 353 260)
 317 by its authorised delegate)
 pursuant to a resolution dated 15/8/16)
 in the presence of:)
)
)
)


 Signature of Witness

Adrian Panuccio
 Print name of Witness


 Signature of Authorised Delegate
 Ross McCreanor
 Acting General Manager

EXECUTED for and on behalf of)
WINTEN (NO 16) PTY LTD ACN 092)
479 644)
in accordance with Section 127(1) of the)
Corporations Act 2001:)
)



Signature of Director

David Winten Rothwell

Name of Director



Signature of Director/Secretary

William Archer Rothwell

Name of Director/Secretary

Executed by Paluma Pty Limited)
ACN 164 017 412 in accordance with)
section 127 of the Corporations Act 2001)
(Cth) by:)
)
)



Signature of Director

CHRISTIAN BROOK

Print name of Director



Signature of Director/Secretary

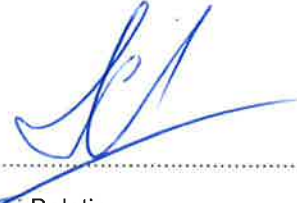
CAROL BROOK

Print name of Director/Secretary

Signed by Yuri Bolotin in the presence)
of:)
)



Signature of Witness



Signature of Yuri Bolotin

Hayley Hewitt

Print name of Witness

Signed by Rae Bolotin in the presence)
of:)
)



Signature of Witness



Signature of Rae Bolotin

MARINA BOLOTIN

Print name of Witness