

Our Ref: AFP.103418

**'A'**

## **Voluntary Planning Agreement**

7 September 2011

**East Quarter Hurstville Pty Limited (East Quarter)**

**Hurstville City Council (Council)**

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## Details

### Date

2011

### Parties

Name	<b>East Quarter Hurstville Pty Limited</b>
	ACN 141735373
Description	<b>(East Quarter)</b>
Notice details	'Vantage' Unit B1005 1 Jack Brabham Drive Hurstville NSW 2220 Attention: Colin Sim

Name	<b>Hurstville City Council</b>
Description	<b>(Council)</b>
Notice details	PO Box 205 Hurstville BC NSW 1481 Attention: The General Manager

### Recitals

- A East Quarter is the registered proprietor of Lot 2 DP 270611 (known as 93 Forest Road, Hurstville) (**Land**).
- B The Land is situated in the local government area of Hurstville City Council.
- C The Land is situated within the precinct known as "East Quarter". The Land comprises land bound by Forest Road and Durham Street to the north, Hill Street to the west, and Kempt Field to the east. To the south, the Land abuts the Illawarra Railway Line midway between Hurstville and Allawah Railway Stations.
- D On or about 17 June 2004, Council granted a development consent (identified as DA No.2003-1046) in relation to the Land for a mixed use residential, retail and commercial development, comprising seven buildings, landscaping, at grade parking and basement parking (**original consent**).
- E The original consent granted approval for:
  - (a) seven buildings (identified as Buildings A, B, C, D, E, F and X), ranging in height from 5-16 storeys, with a defined public urban square, two communal courtyards, a publicly accessible link park and three accessible roads
  - (b) 629 new residential units
  - (c) 2,140 sq/m of retail floor space
  - (d) 7,690 sq/m of commercial floor space
  - (e) 1,189 car spaces, and
  - (f) floor space ratio of 2.63:1.

- F Twelve section 96 modification applications were subsequently approved by Council in relation to the original consent.
- G The first section 96 modification application contemplated that the development would be carried out in three stages, as follows:
- (a) Stage 1, comprising Buildings C and D and associated works.
  - (b) Stage 2, comprising Buildings A, B and E and associated works.
  - (c) Stage 3, comprising Buildings F and X and associated works.
- H Stage 1 of the original consent was completed in or about April 2009.
- I Stage 3 of the original consent has not commenced.
- J On 31 January 2011, East Quarter lodged a new development application seeking approval for a revised mixed use development associated with - and in replacement of - Stage 2 of the original consent, as amended by the first section 96 modification application.
- K On 31 March 2011, and prior to any determination by the Consent Authority of the development application, East Quarter lodged a replacement development application with Council (**Development Application**).
- L The Development Application sought approval for:
- (a) three buildings (identified as Buildings A, B and E), ranging in height from 12-18 storeys, with a defined public urban square, two communal courtyards, and associated works
  - (b) 284 new residential units
  - (c) 1,718.4 sq/m of retail floor space (provided at the ground levels of Buildings A, B and E)
  - (d) 1,724.8 sq/m of commercial floor space (provided at the first floor of Building B and the mezzanine level of Building E)
  - (e) 468 car spaces, and
  - (f) floor space ratio (for Stage 2) of 3.6:1 resulting in a floor space ratio for Stages 1, 2 and 3 of 2.71:1.
- M On 15 June 2011, the Development Application came before the Consent Authority for assessment and determination, at which time the Consent Authority resolved that it would grant development consent to the Development Application, subject to the removal of one typical residential floor from each of Buildings A, B and E. A reference in this VPA to the Development Application and the Proposed Development are to be construed as the Development Application and the Proposed Development as amended by the removal of one typical residential floor from each of Buildings A, B and E.
- N The following table demonstrates the comparison between the original consent (for Stages 1, 2 and 3) as amended by:
- (a) the Development Application (new Stage 2); and
  - (b) the resolution of the Consent Authority on 15 June 2011.

TOTAL STAGE 1, 2 & 3	ORIGINAL DA	AS AMENDED BY THE DEVELOPMENT APPLICATION	VARIANCE (-) Decrease / (+) Increase over Original DA
Residential			
1 Bedroom Apartments	246	247	1
2 Bedroom Apartments	327	387	60
3 Bedroom Apartments	56	69	13
<i>Total Apartments</i>	629	703	74
Retail	2,139.0	2,543.3	404
Commercial - Office	4,670.0	2,466.4	(2,204)
Commercial - Childcare	649.0	649.0	0
Commercial - Gymnasium	2,371.0	0.0	(2,371)
FSA	2.63:1	Approx 2.63:1	0
Building A	10 Storey RL97.95	11 Storey Approx RL96.4	(1.55)
Building B	10 Storey RL97.00	11 Storey Approx RL96.4	(0.60)
Building E	16 Storey RL120.20	17 Storey Approx RL118.95	(1.25)

O In recognition of:

- (a) the impacts of the development of the Land including the Proposed Development on the locality and the need for additional infrastructure works and facilities to address these impacts,
- (b) the additional demands placed upon Hurstville Public School generated by the development of the Land including the Proposed Development such as the additional children that may be residents of the Proposed Development and attend Hurstville Public School,
- (c) the contributions and works which East Quarter would be expected by Law (including the Act) to make or carry out in connection with the development of the Land including the works contemplated by the Development Application,
- (d) the fact that, given the above, East Quarter is prepared to undertake certain obligations which are in addition to what would otherwise have been required under section 94 of the Act,

the Parties have agreed to enter into the Voluntary Planning Agreement, which constitutes a planning agreement within the meaning of Section 93F of the Act (VPA).

## Operational Provisions

### 1. Definitions and interpretation

#### 1.1 Dictionary

The following words have these meanings in the VPA unless the contrary intention appears:

**Act** means the *Environmental Planning & Assessment Act 1979*.

**Authority** means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body with relevant power or authority.

**Consideration** has the meaning given by the GST Law.

**CPI** means Consumer Price Index (Sydney - All Groups).

**Consent Authority** means the Joint Regional Planning Panel or such other consent authority as may be lawfully appointed and authorised to grant Development Consent, excluding the NSW Land & Environment Court.

**Cost** includes, but is not limited to, allowances for design (not to exceed 10% of overall cost for any such works), authorities' fees and charges, supply and construction costs.

**Council** means Hurstville City Council.

**Development Application** means the application for development consent for the Proposed Development as lodged with Council on 31 January 2011 pursuant to Part 4 of the Act, as replaced or amended by:

- (a) the replacement application for development consent lodged with Council on 31 March 2011, and
- (b) the resolution of the Consent Authority on 15 June 2011.

**Development Consent** means the approval of the Development Application by the Consent Authority to carry out the Proposed Development on conditions which are lawful.

**Explanatory Note** means the explanatory note exhibited with the VPA as required by the *Environmental Planning & Assessment Regulation 2000*.

**force majeure** means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.

**GST** has the meaning given by the GST Law.

**GST Amount** means in relation to a Taxable Supply the amount of GST payable in respect of that Taxable Supply.

**GST Law** has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth), or, if that Act does not exist means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia and any regulation made under that Act.

**index** means the CPI, but if that Index ceases to be published, such other index as the Council and East Quarter may agree.

**Invoice** has the meaning given by the GST Law.

**Land** means the premises at 93 Forest Road, Hurstville, NSW 2220 also described as Lot 2 DP 270611.

**Law** means the relevant requirements of all statutes, rules, ordinances, codes, policies, regulations, proclamations, by-laws or consents issued by an Authority, present or future.

**Party** means a party or parties to the VPA or successors in title as contemplated by the VPA.

**Proposed Development** means the development of the Land as contemplated by the Development Application for the construction of three new buildings for retail, commercial and residential use, including associated car-parking, roads and open space.

**School Upgrade Works** means upgrading works to the Hurstville Public School including but not limited to works to mitigate the impacts of the additional anticipated students which would be generated by the development of the Land including the Proposed Development.

**Taxable Supply** has the meaning given by the GST Law excluding the reference to section 84-5 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

## 1.2 VPA does not fetter discretion

- (a) The Parties acknowledge and agree that nothing in the VPA abrogates or fetters, or is intended to abrogate or fetter, the lawful and proper discharge by Council of its statutory responsibilities, whether in relation to the subject-matter of the VPA or otherwise.
- (b) If, contrary to the operation of this clause, any provision of the VPA is held by a court of competent jurisdiction to constitute an unlawful fetter on any discretion of the Council, the Parties agree:
  - (i) they will take all practical steps, including the execution of any further documents, to ensure the objectives of the VPA are substantially satisfied, and
  - (ii) in the event that any provision of the VPA cannot be achieved without giving rise to an unlawful fetter on the discretion of Council, the relevant provision is to be severed and the remainder of the VPA has full force and effect.
- (c) Where a Law permits Council to contract out of a provision of that Law or gives Council power to exercise a discretion, then if Council has in the VPA contracted out of a provision or exercised a discretion under the VPA, then to that extent the VPA is not to be taken to be inconsistent with that Law.

## 1.3 Interpretation

- (a) Subject to the VPA, section 3, Part 2, and sections 36, 38 and 76 of the *Interpretation Act 1987* govern the interpretation of the VPA to the extent to which they are applicable as if a reference in that Act to an "Act" or "instrument" is a reference to the VPA and with such other modifications or adaptations as may be necessary for that governing purpose.
- (b) If a clause or part of a clause of the VPA 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 the VPA, but the rest of the VPA is not affected.

#### **1.4 Application of Sections 94, 94A or 94EF of the Act**

The Parties acknowledge and agree that:

- (a) The VPA does not exclude, either in whole or in part, the application of sections 94, 94A or 94EF of the Act in connection with the Development Application.
- (b) The contributions and obligations set out in the VPA will not be taken into consideration in determining the section 94 contributions in connection with the Development Application.

The obligations of East Quarter under the VPA involve a contribution to or provision of public amenities and public services over and above those which would otherwise be imposed under section 94 of the Act.

#### **1.5 Compliance with New Laws**

If a Law is changed or a new Law comes into force (both referred to as "**New Law**") and East Quarter is obliged by the New Law to do something or pay an amount which it is already contractually obliged to do or pay under the VPA then, to the extent only that the relevant obligation is required under both the New Law and the VPA, compliance with the New Law will constitute compliance with the relevant obligation under the VPA.

#### **1.6 Indexation of amounts payable by the Parties**

Where the VPA provides that an amount is to be increased by CPI, then the amount will be increased in accordance the following formula:

$$A = B \times \frac{C}{D}$$

Where:

- A = the indexed amount at the time the payment is to be made.
- B = the contribution amount stated in the VPA.
- C = the Index most recently published before the date of payment.
- D = the Index most recently published before the date of VPA.

For the avoidance of doubt, if A is less than B, then the relevant amount will not change.

## **2. Commencement and Terms of the VPA**

### **2.1 Commencement of the VPA**

The VPA commences on the date of execution of the VPA by the Parties.

### **2.2 Terms of the VPA**

The VPA will remain in force until:

- (a) it is terminated by operation of Law, or



- (b) all obligations are performed or satisfied.

### 3. Condition Precedent

#### 3.1 Condition Precedent to the VPA

The obligations of East Quarter under the VPA are conditional on the Consent Authority granting Development Consent.

### 4. East Quarter's Obligations

#### 4.1 Summary of Obligations

East Quarter will carryout the following works and make the following monetary contributions, upon the terms and timing set out in the VPA:

- (a) Landscaping and associated works outside the Land (**Landscaping works**), to the value of \$400,000.
- (b) Landscaping and associated works at Kempt Field (**Kempt Field works**), to the value of \$350,000.
- (c) Monetary contribution to Hurstville Public School (**School contribution**), in the sum of \$185,198.25.

The total value of the works and contributions made under the VPA is **\$935,198.25**.

In addition to the foregoing, East Quarter will, for the benefit of the local community, register an 88B instrument granting public access to the Land, including the plaza precinct within the Proposed Development of Stage 2 and Stage 3, and associated landscaped corridors leading to Kempt Field (**Grant of public access**), upon the terms and timing set out in the VPA.

The total value of the works and contributions noted above does not include the financial contribution made by East Quarter to Hurstville Public School in the sum of **\$57,397.00**. That sum was paid to Hurstville Public School on or about 12 March 2007, pursuant to the terms of the Hurstville Public School Contribution Deed dated 26 May 2004.

#### 4.2 The Landscaping works

##### **Background**

The Parties acknowledge and agree that, as at the commencement date of the VPA:

- (a) the Landscaping works have not been commenced, and
- (b) East Quarter has lodged with Council, in lieu of carrying out the Landscaping works associated with Stage 1 of the development, a bank guarantee in the sum of **\$175,000**, pursuant to the terms of the Sydney Land Holdings Deed of Commitment, dated 26 May 2004.

##### **Obligations**

East Quarter will carry out the Landscaping works. The Landscaping works comprise:

- (a) The landscaping works shown on the landscaping drawing Nos LADA0000, LADA001 and LADA007, dated 16 December 2003, drawn by Oculus, to the land

owned by Council between the southern alignment of Forest Road and Durham Streets and the northern boundary of the Land.

- (b) Works such as new footpaths, street furniture and planting and undergrounding of overhead power and telecommunications cables to the following areas:
  - (i) the land owned by Council adjoining the southern alignment of Durham Street between the eastern boundary of the Land and Roberts Lane, and
  - (ii) the land owned by Council adjoining the western alignment of Roberts Lane between the intersection of Forest Road and Roberts Lane and the southern end of Roberts Lane.

The Council and East Quarter may agree that East Quarter will carry out alternative works in the immediate vicinity of the Land in lieu of the Landscaping works set out in this clause. Any agreement to carryout alternative landscaping works must be agreed in writing between the parties.

The maximum Cost to East Quarter in connection with carrying out the Landscaping works will be \$400,000.00 (excluding GST and subject to increase by CPI).

### **Timing**

- (a) A Construction Certificate for works above RL60 shall not be issued for **Stage 2** of the development unless:
  - (i) plans and specifications for the Landscaping works to be carried out by East Quarter during Stage 2 to the combined minimum value of \$300,000.00 (excluding GST) have been approved by the Council.
  - (ii) if plans and specifications for the Landscaping works to be carried out by East Quarter during Stage 2 to the combined minimum value of \$300,000.00 (excluding GST) have not been approved, East Quarter provides the Council with a bank guarantee for an amount equal to \$300,000.00 less:
    - (A) the value of the approved Stages 1 and 2 Landscaping works, plus
    - (B) the value of any bank guarantees provided to the Council by East Quarter.
- (b) A Construction Certificate for works above RL60 shall not be issued for **Stage 3** of the development unless:
  - (i) plans and specifications for the Landscaping works to be carried out by East Quarter during Stage 3 to the combined maximum value of \$400,000.00 (excluding GST) have been approved by the Council.
  - (ii) if plans and specifications for the Landscaping works to be carried out by East Quarter during Stage 3 to the combined maximum value of \$400,000.00 (excluding GST) have not been agreed, East Quarter provides the Council with a bank guarantee for an amount equal to \$400,000.00 less:
    - (A) the value of the approved Stage 1 and 2 and 3 Landscaping works, plus

- (B) the value of any bank guarantees provided to the Council by East Quarter.
- (c) The Council must promptly return to East Quarter any bank guarantee held by the Council as security upon approval of the plans and specifications for works applicable to the relevant stage.
- (d) A final occupation certificate for Stage 2 will not be issued until East Quarter:
  - (i) has completed the Landscaping works that it agreed to undertake for the relevant Stage, or
  - (ii) has provided bank guarantees in accordance with this clause.
- (e) A final occupation certificate will not be issued for the final stage until East Quarter has completed the Landscaping works to the maximum value of \$400,000.00 (exclusive of GST and subject to increase by CPI).
- (f) Upon completion of the Landscaping works the Council will forthwith return to East Quarter any and all bank guarantees and other security lodged in connection with the Landscaping works.

#### 4.3 The Kempt Field works

##### **Background**

The Parties acknowledge and agree that, as at the commencement date of the VPA:

- (a) The Kempt Field works have not been commenced.
- (b) East Quarter has lodged with Council, in lieu of carrying out the Kempt Field works associated with Stage 1 of the development, a bank guarantee in the sum of **\$100,000**, pursuant to the terms of the Sydney Land Holdings Deed of Commitment, dated 26 May 2004.

##### **Obligations**

East Quarter will carry out the Kempt Field works. The Kempt Field works comprise:

- (a) the removal of the redundant tennis courts and the provision of tree planting and planter beds and landscaping
- (b) the enhancement of the existing amenities block or the construction of a new amenities block including safety lighting
- (c) the provision of new footpaths, park furniture, regrading of existing park surfaces and tree planting at the northern end of the park to integrate with the works described in the enumerated two preceding points
- (d) the provision of a new footpath between the Land and Allawah Railway Station through Kempt Field to accommodate pedestrian traffic
- (e) the provision of several shelters for weather protection for pedestrians and additional lighting to facilitate pedestrian safety in conjunction with the footpath described in the enumerated point immediately above
- (f) the provision of connections between Kempt Field and the Land for pedestrian and bicycle traffic, and

- (g) the construction of a community facility at Kempt Field.

The maximum Cost to East Quarter in connection with carrying out the Kempt Field works will be \$350,000.00 (excluding GST and subject to increase by CPI).

### **Timing**

- (a) A Construction Certificate for works above RL60 shall not be issued for **Stage 2** of the development unless:
- (i) plans and specifications for the Kempt Field works to be carried out by East Quarter during Stage 2 to the combined minimum value of \$262,500.00 (excluding GST) have been approved by Council; or
  - (ii) if plans and specifications for the Kempt Field works to be carried out by East Quarter during Stage 2 to the combined minimum value of \$262,500.00 (excluding GST) have not been agreed, East Quarter provides the Council with a bank guarantee for an amount equal to \$262,500.00 less:
    - (A) the value of the approved Stage 2 Kempt Field works, plus
    - (B) the value of any bank guarantees provided to the Council by East Quarter.
- (b) A Construction Certificate for works above RL60 shall not be issued for **Stage 3** of the development unless:
- (i) plans and specifications for the Kempt Field works to be carried out by East Quarter during Stage 3 to the combined maximum value of \$350,000.00 (excluding GST) have been approved by Council; or
  - (ii) if plans and specifications for the Kempt Field works to be carried out by East Quarter during Stage 3 to the combined maximum value of \$350,000.00 (excluding GST) have not been approved, East Quarter provides the Council with a bank guarantee for an amount equal to \$350,000.00 less:
    - (A) the value of the approved Stages 1 and 2 and 3 Kempt Field works, plus
    - (B) the value of any bank guarantees provided to the Council by East Quarter.
- (c) The Council must promptly return to East Quarter any bank guarantee held by the Council as security upon approval of the plans and specifications for works applicable to the relevant stage.
- (d) A final occupation certificate for Stage 2 will not be issued until East Quarter:
- (i) has completed those Kempt Field works that it agreed to undertake for the relevant stage; or
  - (ii) has provided bank guarantees in accordance with this clause.
- (e) A final occupation certificate will not be issued for the final stage until East Quarter has completed the Kempt Field works to the maximum value of \$350,000.00 (exclusive of GST and subject to increase by CPI).

- (f) Upon completion of the Kempt Field works the Council will forthwith return to East Quarter any and all bank guarantees and other security lodged in connection with the Kempt Field works.

#### 4.4 The School contribution

##### **Background**

The Parties acknowledge and agree that, as part of the Stage 1 works (now completed), East Quarter made a financial contribution to Hurstville Public School in the sum of \$57,397.00. That sum was paid to the School on or about 12 March 2007.

##### **Obligations**

East Quarter will make the School contribution to Hurstville Public School in the sum of **\$185,198.25**, as adjusted by CPI and in accordance with the terms of the VPA, for the purposes of facilitating and funding the School Upgrade Works.

East Quarter will:

- (a) make the School contribution in a staged manner, as set out in the VPA.
- (b) use its best endeavours to make arrangements with Hurstville Public School, Hurstville Public School P&C Committee and/or the New South Wales Department of Education for an appropriate trust account to be nominated or otherwise created to enable East Quarter to deposit the financial contribution referred to in this clause to the satisfaction of the Principal of Hurstville Public School.

##### **Timing**

East Quarter will make payment of the School contribution in a staged manner directly into the trust account referred to above prior to the release of a Construction Certificate for works above RL60 for each stage of the development of the Land including the Proposed Development calculated in accordance with the following formula:

$$\text{SFC} = \text{TFC} \times \frac{\text{N}}{\text{TN}}$$

where:

**SFC** = **Staged Financial Contribution** (exclusive of GST) towards School Upgrade Works to be paid by East Quarter for a particular stage of the development of the Land including the Proposed Development;

**TFC** = **Total Financial Contribution** of **\$185,198.25**, as increased by CPI;

**N** = **Number** of residential apartments within the particular stage for which a Construction Certificate is sought by East Quarter; and

**TN** = **Total Number** of residential apartments forming part of the development of the Land including the Proposed Development in the amount of 535. The figure of "535" represents the total number of apartments included in Stage 2 (258) plus Stage 3 (277) and excludes the number of apartments completed as part of Stage 1 (168).

Provided always that East Quarter's total contribution under this clause will not exceed the Total Financial Contribution.

The parties acknowledge and agree that, notwithstanding any other term of the VPA, should East Quarter make a further financial contribution to Hurstville Public School prior to entering into the VPA and pursuant to the Hurstville Public School Contribution Deed dated 26 May 2004, the Total Financial Contribution payable under this clause will be reduced by the respective sum paid.

#### **4.5 Grant of public access**

##### ***Background***

The parties acknowledge and agree that the Land, including the plaza precinct within the Proposed Development of Stage 2 and Stage 3 and the associated landscaped corridors leading to Kempt Field, should be opened to public access for the benefit of the local community.

##### ***Obligations***

- (a) East Quarter will by way of conditions of consent provide public access to the following parts of the Land:
  - (i) the area of land between Buildings F and X, for the purpose of creating a continuous public access link between Kempt Field and "Wedge Park" (as that open space area of the Site is called in the original development consent, forming part of Stage 3), excluding those portions of land dedicated for vehicle parking spaces); and
  - (ii) the area of land between Buildings A, B and E, for the purpose of creating a continuous public access link between "Wedge Park", "Link Street" and the outdoor plaza area between Buildings A, B and E, excluding those portions of land immediately adjacent to Buildings A, B and E proposed for outdoor restaurant seating (under the supervision and control of the respective restaurant tenants); and
  - (iii) the area of land to between Building A and Durham Street (to the boundary of the Stage 2 site) for the purpose of creating a continuous public access link between the outdoor plaza area between Buildings A, B and E, and the north of Building A.
  - (iv) the area of land to between Building X and Durham Street (to the boundary of the Stage 3 site) for the purpose of creating a continuous public access link from Forest Rd to Kempt Field.

##### ***Timing***

- (b) In relation to Stage 2, East Quarter will procure, at its own cost, the registration of an 88B instrument incorporating those parts of Stage 2 covered by paragraphs (a)(ii) and (iii) of this clause, upon, and as part of, the registration of the last strata plan for Stage 2.
- (c) In relation to Stage 3, East Quarter will procure, at its own cost, the registration of an 88B instrument incorporating those parts of Stage 3 covered by paragraphs (a)(i) and (iv) of this clause, upon, and as part of, the registration of the last strata plan for Stage 3.
- (d) Upon the registration of the foregoing 88B instruments, East Quarter will forthwith provide Council with copies of those registered instruments.

## 5. Successors in Title

In the event that:

- (a) the obligations set out in the VPA pertaining to the Landscaping works, the Kempt Field works, the School contribution and the Grant of public access are not carried out, made or procured, as the case may be, and
- (b) East Quarter proposes to transfer or relinquish any or all of its interest in the Land or to permit any other person or entity to have the benefit of the Development Consent in whole or in part following procurement of Development Consent and prior to being issued with all necessary Occupation Certificates for the Proposed Development,

East Quarter will include as a binding and enforceable condition within any such arrangement a condition requiring the future owner(s) of the Land or any person or entity entitled to act on the Development Consent to enter into a VPA with Council in substantially the same terms as the VPA.

The Parties acknowledge and agree that this clause does not apply to any sale of an individual residential apartment or apartments, retail space or commercial office space to individual purchasers in the normal course of business activities.

## 6. Performance Guarantee

East Quarter unconditionally and irrevocably guarantees the performance of the obligations referred to under clause 4 of the VPA and, in the event of any default thereunder, shall pay to Council:

- (a) the balance of any monies payable for the Landscaping works, indexed and capped in accordance with the terms of the VPA
- (b) the balance of any monies payable for the Kempt Field works, indexed and capped in accordance with the terms of the VPA
- (c) the balance of the School contribution, indexed and capped in accordance with the terms of the VPA.

## 7. Default

### 7.1 Notice of default

In the event a Party considers another Party has failed to perform and fulfil an obligation under the VPA, it may give notice in writing to that Party (**Default Notice**) giving full particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

### 7.2 Reasonable time

In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.



### **7.3 Suspension of time — dispute**

If a Party disputes the Default Notice it may refer that dispute to dispute resolution under the VPA.

## **8. Dispute resolution**

### **8.1 Notice of dispute**

If a dispute or lack of certainty between the Parties arises in connection with the VPA or its subject matter (**a dispute**), then either Party must give to the other a notice of dispute in writing adequately identifying and providing details of the dispute.

### **8.2 Conduct pending resolution**

The Parties must continue to perform their respective obligations under the VPA if there is a dispute but will not be required to complete the matter the subject of the dispute.

### **8.3 Further steps required before proceedings**

Any dispute between the Parties arising in connection with the VPA or its subject matter must, as a condition precedent to the commencement of litigation, first be the subject of mediation by a mediator agreed by the Parties and, if the Parties cannot agree within 14 days, then by a mediator appointed by LEADR.

## **9. Miscellaneous**

### **9.1 Acknowledgement of Terms and Obligations**

The Parties acknowledge and agree that, upon the commencement of the VPA:

- (a) the terms and obligations of the VPA will supersede, replace and wholly substitute all prior agreements between the Parties in relation to the obligations and contributions the subject matter of the VPA
- (b) the terms and obligations of the Sydney Land Holdings Deed of Commitment dated 26 May 2004 and the Hurstville Public School Contribution Deed dated 26 May 2004 will be of no effect and unenforceable as between the Parties.

This subclause survives notwithstanding termination of the VPA.

### **9.2 Choice of Law**

The Laws of New South Wales as in force from time to time govern the VPA.

### **9.3 Dealing with the Land**

Nothing in the VPA abrogates, fetters or in any way prevents East Quarter from selling, mortgaging or in any other way dealing with the Land.

### **9.4 Entire Agreement**

The VPA contains everything to which the Parties have agreed in relation to the terms and obligations referred to in the VPA. 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 the VPA was executed, except as permitted by law.



## 9.5 Force Majeure

- (a) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under the VPA, it must give to the other Party prompt notice of the force majeure with reasonably full particulars.
- (b) The obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (d) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under the VPA.

## 9.6 Further assurance

Each Party to the VPA must sign and execute all documents and do all things as may be reasonably required to be done by the Party to give effect to the VPA.

## 9.7 GST

If GST is payable on a Taxable Supply made under, by reference to or in connection with the VPA, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration.

- (a) 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.
- (b) If an amount payable under the VPA is adjusted by reference to a change to the CPI, then the impact of GST must be excluded from the change to the CPI.
- (c) The Party entitled to any payment under the VPA will produce a tax invoice for the amount to be paid within 7 days of the request to do so by the Party making the payment.
- (d) Each Party warrants that for the duration of the VPA they are registered under the GST law. If a Party requests written evidence of registration, the Party claiming to be registered will promptly produce evidence satisfactory to the Party seeking such evidence.

## 9.8 Explanatory Note

The Explanatory Note is not to be used to assist in construing the VPA.

## 9.9 Legal and Associated Costs

Each Party is responsible for payment of its own legal and associated costs in connection with the preparation, execution and enforcement of the VPA unless otherwise agreed between the Parties or as may be ordered by a court of competent jurisdiction.

**9.10 Modifications**

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

**9.11 Novation**

Council agrees to execute any deeds of novation or other documents necessary to novate or otherwise transfer all of East Quarter's rights and obligations under the VPA to a successor in title as contemplated by the VPA.

**9.12 Waiver**

The fact that a Party fails to do, or delays in doing, something the Party is required to do under the VPA, does not amount to a waiver of any obligation of any other Party.

**9.13 Warranty of Authority**

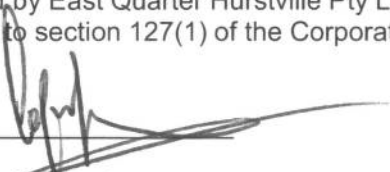
The Parties represent and warrant that they have power to enter into the VPA and comply with their obligations under the VPA and that entry into the VPA will not result in the breach of any law.

## Signing page

Signed, sealed and delivered as a deed

### East Quarter

Executed by East Quarter Hurstville Pty Limited  
pursuant to section 127(1) of the Corporations Act 2001

  
\_\_\_\_\_  
Signature of Director

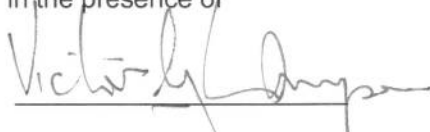
COLIN SUM  
\_\_\_\_\_  
Name of Director

  
\_\_\_\_\_  
Signature of witness

ANDREW YOUNG  
\_\_\_\_\_  
Name of witness

### Council

Executed by Hurstville City Council  
The common seal of Hurstville City Council  
was affixed pursuant to resolution made on  
in the presence of

  
\_\_\_\_\_  
Signature of General Manager

Victor Lampe  
\_\_\_\_\_  
Name of General Manager

  
\_\_\_\_\_  
Signature of Mayor

STEPHEN M'INTOSH  
\_\_\_\_\_  
Name of Mayor