

Voluntary Planning Agreement

For exhibition

City of Parramatta Council
ABN 49 907 174 773

Sept Fortis Property Group Pty Ltd
ACN 624 098 326

8GWH Pty Ltd
ACN 632 377 863

The Owners - Strata Plan No 8700
ABN 87 622 181 066

J M Malouf Investments Pty Ltd
ACN 001 172 603

Contents

| | | |
|-----------------------|--|----|
| Parties | 1 | |
| Background | 2 | |
| Operative part | 2 | |
| 1 | <i>Definitions</i> | 2 |
| 2 | <i>Interpretation</i> | 5 |
| 3 | <i>Planning Agreement under the Act</i> | 7 |
| 4 | <i>Application of this agreement</i> | 7 |
| 5 | <i>Operation of this agreement</i> | 7 |
| 6 | <i>Contributions to be made under this agreement</i> | 7 |
| | 6.1 Monetary Contribution | 7 |
| 7 | <i>Application of s 7.11, s 7.12 and s 7.24 of the Act</i> | 8 |
| 8 | <i>Registration of this agreement</i> | 8 |
| | 8.1 8GWH Interest | 8 |
| | 8.2 Registration of this agreement | 8 |
| | 8.3 Removal from Register | 9 |
| | 8.4 Caveat | 10 |
| 9 | <i>Review of this agreement</i> | 10 |
| | 9.1 Review by agreement | 10 |
| | 9.2 Change to Development Contributions | 11 |
| 10 | <i>Dispute Resolution</i> | 12 |
| | 10.1 Reference to Dispute | 12 |
| | 10.2 Notice of Dispute | 12 |
| | 10.3 Representatives of Parties to Meet | 13 |
| | 10.4 Further Notice if Not Settled | 13 |
| | 10.5 Mediation | 13 |
| | 10.6 Expert determination | 14 |
| | 10.7 Litigation | 14 |
| | 10.8 No suspension of contractual obligations | 15 |
| 11 | <i>Enforcement</i> | 15 |
| | 11.1 Default | 15 |
| | 11.2 Bank Guarantee | 15 |
| | 11.3 Restriction on the issue of Certificates | 16 |
| | 11.4 General Enforcement | 17 |

| | | |
|----|---|-----------|
| 12 | <i>Assignment and Dealings</i> | 17 |
| | 12.1 Assignment | 17 |
| | 12.2 Arrangements with Mortgagee | 17 |
| | 12.3 Transfer of Rights and Exercise of Option | 17 |
| 13 | <i>Approvals and consents</i> | 18 |
| 14 | <i>No fetter</i> | 18 |
| | 14.1 Discretion | 18 |
| | 14.2 No fetter | 18 |
| | 14.3 Planning Certificates | 19 |
| 15 | <i>Notices</i> | 19 |
| | 15.1 Notices | 19 |
| | 15.2 Notices sent by email: | 19 |
| | 15.3 Receipt of Notices sent by email | 20 |
| 16 | <i>General</i> | 20 |
| | 16.1 Relationship between parties | 20 |
| | 16.2 Time for doing acts | 21 |
| | 16.3 Further assurances | 21 |
| | 16.4 Joint and individual liability and benefits | 21 |
| | 16.5 Variations and Amendments | 21 |
| | 16.6 Counterparts | 21 |
| | 16.7 Legal expenses and stamp duty | 21 |
| | 16.8 Entire agreement | 21 |
| | 16.9 Representations and warranties | 22 |
| | 16.10 Severability | 22 |
| | 16.11 Invalidity | 22 |
| | 16.12 Waiver | 22 |
| | 16.13 GST | 22 |
| | 16.14 Governing law and jurisdiction | 23 |
| | 16.15 Guarantee | 23 |
| | 16.16 Indemnity | 23 |
| | Schedule 1 Summary of requirements (section 7.4) | 24 |
| | Annexure A Plan showing Land | 28 |

Agreement

Date

Parties

First party

Name City of Parramatta Council (**Council**)
ACN 49 907 174 773
Contact Manager, Land Use Planning
Telephone (02) 9806 5050

Second party

Name Sept Fortis Property Group Pty Ltd (**Sept Fortis**)
ACN 624 098 326
Contact Daniel De Gregorio
Telephone 0404 021 177

Third party

Name 8GWH Pty Ltd (**8GWH**)
ACN 632 377 863
Contact [TBA]
Telephone [TBA]

Fourth party

Name The Owners - Strata Plan No 8700 (**SP8700 Owners**)
ABN 87 622 181 066
Contact [TBA]
Telephone [TBA]

Fifth party

Name J M Malouf Investments Pty Ltd (**Lot 10 Owner**)
ABN 001 172 603
Contact [TBA]
Telephone [TBA]

Background

- A. In August 2019, Sept Fortis made an application to the Council for the Instrument Change for the purpose of making a Development Application to the Council for Development Consent to carry out the Development on the Land.
- B. On 13 July 2020, Council resolved to endorse the Planning Proposal for the purpose of requesting a gateway determination.
- C. On 1 September 2020, the Planning Proposal received Gateway Determination from the Department of Planning, Industry and Environment.
- D. The Instrument Change application was accompanied by an offer by Sept Fortis to enter into this agreement to make contributions for public purposes associated with the Instrument Change and the Development.
- E. 8GWH is the grantee under the Call Options.

Operative part

1 Definitions

In this agreement, unless the context indicates a contrary intention:

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

Address means a party's address set out in the Notices clause of this agreement;

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Bank Guarantee means an irrevocable and unconditional undertaking that is not limited in time and does not expire by one of the following trading banks:

- (a) Australia and New Zealand Banking Group Limited,
- (b) Commonwealth Bank of Australia,
- (c) Macquarie Bank,
- (d) National Australia Bank,
- (e) St George Bank Limited,
- (f) Westpac Banking Corporation, or
- (g) Other financial institution approved by the Council,

to pay an amount or amounts of money to the Council on demand and containing terms and conditions reasonably acceptable to the Council;

Business Day means a day on which banks are open for general banking business in Sydney, excluding Saturdays and Sundays;

Call Options means the call options between 8GWH, as the Grantee, and the registered proprietors of lots 1-27 in SP8700 and the Lot 10 Owner, as grantors, and the term Call Option means any one of them;

Claim means any claim, loss, liability, damage, proceeding, order, judgment or expense arising out of the operation of this agreement;

Construction Certificate means a construction certificate as defined under section 6.4 of the Act;

Contributions Plan has the same meaning as under the Act;

Costs includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid).

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

Damages means all liabilities, losses, damages, costs and expenses, including legal fees and disbursements and costs of investigation, litigation, settlement, judgment, interest and penalties;

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

Developer Parties means Sept Fortis and 8GWH, jointly and severally;

Development means future development of the Land as anticipated by the Planning Proposal either for a high density mixed use development consisting of residential and commercial uses or a wholly commercial development;

Development Application has the same meaning as in the Act;

Development Consent has the same meaning as in the Act;

FSR means floor space ratio, as defined in the *Parramatta Local Environmental Plan 2011*;

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 of or administration of the GST;

Guaranteed Obligations means all agreements, conditions, covenants, provisions, obligations and liabilities to be performed, observed or complied with by 8GWH under or contemplated by this agreement:

- (a) irrespective of the capacity in which 8GWH or Council enter into this agreement;
- (b) whether 8GWH is liable alone, or jointly, or jointly and severally with another person;
- (c) whether 8GWH is the original obligee or an assignee of the Guaranteed Obligations and whether or not:
 - (i) the assignment took place before or after the delivery of this agreement;
 - (ii) Council consented to or was aware of the assignment; or
 - (iii) the assigned obligation was secured; and
- (d) whether 8GWH is the original obligee or an assignee of the original obligee and whether or not Sept Fortis or Council consented to or was aware of the assignment.

Insolvent means, in relation to a party:

- (a) that party makes an arrangement, compromise or composition with, or assignment for, the benefit of its creditors or a class of them;
- (b) a receiver, receiver and manager, administrator, provisional liquidator, trustee, controller, inspector or analogous person is appointed in relation to, or over, all or any part of that party's business, assets or securities;
- (c) a presumption of insolvency has arisen under legislation because of the party's failure to comply with a statutory demand or analogous process;
- (d) an application for the winding up of, or for the appointment of a receiver to, that party, other than winding up for the purpose of solvent reconstruction or re amalgamation, is presented and not withdrawn or dismissed within 21 days (or such longer period agreed to by the parties), or an order is made or an effective resolution is passed for the winding up of, or for the appointment of a receiver to, that party, or any analogous application is made or proceedings initiated;
- (e) any shareholder or director of that party convenes a meeting for the purpose of considering or passing any resolution for the winding up or administration of that party;
- (f) that is an individual, a creditor's petition or a debtor's petition is presented to the Official Receiver or analogous authority in relation to that party;
- (g) an execution or analogous process is levied or enforced against the property of that party;
- (h) that party ceases or suspends, or threatens to cease or suspend, the conduct of all or a substantial part of its business;
- (i) that party disposes of, or threatens to dispose of, a substantial part of its assets;
- (j) that party stops or suspends, or threatens to stop or suspend, payment of all or a class of its debts; or
- (k) that party is unable to pay the party's debts as and when they become due and payable.

Instrument Change means an amendment to the *Parramatta Local Environmental Plan 2011* in response to the Planning Proposal;

Land means Lot 10 DP 10979449 and SP8700 (including each of the strata lots and the common property), known as 8-14 Great Western Highway, Parramatta;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and
- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Monetary Contribution means the monetary contribution payable by the Developer Parties under clause 6 of this agreement;

Occupation Certificate means an occupation certificate as defined under section 6.4 of the Act and includes a partial Occupation Certificate;

Planning Proposal means planning proposal PP_2020_COPAR_006_00 seeking an amendment to the *Parramatta Local Environmental Plan 2011* to:

- a. increase the height of building control applying to the Land from 28 metres to 211 metres,
- b. increase the maximum FSR controls applying to the Land from 3.5:1 to 10:1,
- c. insert site specific provisions applying the following controls to the Land:
 - i. a minimum 1:1 FSR for commercial uses,
 - ii. an additional 5% FSR bonus (0.5:1) provided high performing building standards are met,
 - iii. an additional 3:1 FSR bonus if development meets the “opportunity site” criteria, and
 - iv. an unlimited additional commercial FSR above the mapped FSR control; and
- d. insert a site-specific provision applying maximum car parking rates in accordance with the Parramatta CBD Strategic Transport Study.

Public Reserve has the same meaning as in the *Local Government Act 1993*;

Public Road has the same meaning as in the *Roads Act 1993*;

Register means the Torrens title register maintained under the *Real Property Act 1900* (NSW);

Regulation means the *Environmental Planning and Assessment Regulation 2000*;

Related Body Corporate has the meaning given to that term in s 9 of the *Corporations Act 2001* (Cth); and

Strata Plan means a strata plan, a strata plan of subdivision or a strata plan of consolidation that is registered in accordance with the *Strata Schemes Development Act 2015*.

2 Interpretation

In this agreement, unless the context indicates a contrary intention:

- (a) **(documents)** a reference to this agreement or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;
- (b) **(references)** a reference to a party, clause, paragraph, schedule or annexure is a reference to a party, clause, paragraph, schedule or annexure to or of this agreement;
- (c) **(headings)** clause headings and the table of contents are inserted for convenience only and do not affect interpretation of this agreement;
- (d) **(person)** a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and

their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

- (e) **(party)** a reference to a party to a document includes that party's personal representatives, executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) **(president, CEO, general manager or managing director)** the president, CEO, general manager or managing director of a body or Authority includes any person acting in that capacity;
- (g) **(requirements)** a requirement to do any thing includes a requirement to cause that thing to be done, and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (h) **(including)** including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;
- (i) **(corresponding meanings)** a word that is derived from a defined word has a corresponding meaning;
- (j) **(singular)** the singular includes the plural and vice-versa;
- (k) **(gender)** words importing one gender include all other genders;
- (l) **(parts)** a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;
- (m) **(rules of construction)** neither this agreement nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;
- (n) **(legislation)** a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;
- (o) **(time and date)** a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere;
- (p) **(joint and several)** an agreement, representation, covenant, right or obligation:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) on the part of two or more persons binds them jointly and severally;
- (q) **(writing)** a reference to a notice, consent, request, approval or other communication under this agreement or an agreement between the parties means a written notice, request, consent, approval or agreement;
- (r) **(replacement bodies)** a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions;
- (s) **(Australian currency)** a reference to dollars or \$ is to Australian currency;
- (t) **(month)** a reference to a month is a reference to a calendar month; and

- (u) **(year)** a reference to a year is a reference to twelve consecutive calendar months.

3 Planning Agreement under the Act

- (a) The parties agree that this agreement is a planning agreement within the meaning of section 7.4 of the Act.
- (b) Schedule 4 of this agreement summarises the requirements for planning agreements under section 7.4 of the Act and the way this agreement addresses those requirements.

4 Application of this agreement

This agreement applies to:

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

5 Operation of this agreement

This agreement commences on and from the date it is executed by all parties.

6 Contributions to be made under this agreement

6.1 Monetary Contribution

- (a) If Development Consent is granted for Development that includes use of the Land or any part of the Land for residential purposes, the Developer Parties will pay to Council a monetary contribution of \$5,010,600.00 or an amount calculated in accordance with the following formula, whichever is the greater:

$$\begin{array}{r} \$5,010,600.00 \quad \times \quad \frac{\text{The CPI at the time of payment}}{\text{The CPI at the date of this agreement}} \end{array}$$

- (b) Subject to clause 6.1(c), the Monetary Contribution must be paid to Council in instalments as follows:
 - (i) 75% of the Monetary Contribution prior to the issue of a Construction Certificate for the Development; and
 - (ii) 25% of the Monetary Contribution prior to the issue of an Occupation Certificate for the Development, or prior to the registration of any Strata Plan, whichever is earlier.
- (c) The Developer Parties are not required to pay the instalment of the Monetary Contribution specified in clause 6.1(b)(i) if the Developer Parties provide to the Council a Bank Guarantee in accordance with clause 11.2 as security for that payment, in which case the Developer Parties must pay the full amount of the Monetary Contribution prior to the issue of an Occupation Certificate for the Development.

- (d) The Monetary Contribution must be paid by way of bank cheque in favour of Council or by deposit by means of electronic funds transfer into an account specified by Council.
- (e) The Monetary Contribution will be taken to have been made when the Council notifies the Developer Parties in writing that the bank cheque has been received and cleared funds or electronic funds have been deposited in the Council's bank account.
- (f) The parties agree and acknowledge that the Monetary Contribution will be used by the Council towards community infrastructure within the Paramatta Central Business District.

7 Application of s 7.11, s 7.12 and s 7.24 of the Act

- (a) This agreement does not exclude the application of section 7.11 of the Act to the Development.
- (b) This agreement does not exclude the application of section 7.12 of the Act to the Development.
- (c) This agreement does not exclude the application of section 7.24 of the Act to the Development.
- (d) The benefits under this agreement are not to be taken into consideration in determining a development contribution under section 7.11 of the Act.

8 Registration of this agreement

8.1 8GWH Interest

- (a) 8GWH represents and warrants to Council that:
 - (i) on the date of this agreement it has entered into the Call Options and is entitled to purchase all lots comprising the Land, except the common property, when the Instrument Change is made; and
 - (ii) 8GWH has lodged and will maintain a caveat over the Land to protect its interests as grantee under the Call Options; and
 - (iii) under the Option, 8GWH is entitled to require the SP8700 Owners and Lot 10 Owner to consent to the registration of this agreement against all lots comprising the Land.

8.2 Registration of this agreement

- (a) The Developer Parties agree to procure the registration of this agreement under the *Real Property Act 1900* (NSW) in the relevant folios of the Register for Lot 10 DP 10979449 and the common property of SP8700 in accordance with section 7.6 of the Act.
- (b) The Developer Parties, at their own expense, must:
 - (i) 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 10 Business Days after that date;
 - (ii) procure the registration of this agreement by the Registrar-General in the relevant folios of the Register for Lot 10 DP 10979449 and the common

property of SP8700 as soon as reasonably practicable after this agreement is lodged for registration; and

- (iii) provide documentary evidence that the registration of this agreement has been completed to Council within 5 Business Days of receiving confirmation that the registration has occurred.
- (c) The Developer Parties at their own expense will 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 Lot 10 DP 10979449 and the common property of SP8700 registered under the *Real Property Act 1900* (NSW); or
 - (B) is seized or possessed of an estate or interest in Lot 10 DP 10979449 and the common property of SP8700,
 - (ii) an acceptance of the terms of this agreement and an acknowledgement in writing from any existing mortgagee in relation to the Land that each will consent to the registration of this agreement and be bound by and adhere to the provisions of this agreement as owner of the Land or as mortgagee in possession, as the case may be, in accordance with section 7.6 of the Act,
 - (iii) the execution of any documents; and
 - (iv) the production of the relevant duplicate certificates of title or electronic equivalent,
- to enable the registration of this agreement in accordance with this clause 8.2.
- (d) The Lot 10 Owner consents to the registration of this agreement against the title to Lot 10 DP 10979449.
 - (e) The SP8700 Owners consent to the registration of this agreement against the title to the common property of SP8700 and warrant that, as at the date of this agreement, the SP8700 Owners have resolved to enter into this agreement and consent to this agreement being registered against the title to the common property of SP8700.
 - (f) If the strata scheme SP8700 is terminated, this agreement must remain registered on the title created on termination and, if this agreement is removed from the Register, the Developer Parties agree to take all action without delay to have this agreement registered.

8.3 *Removal from Register*

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 satisfied the Developer Parties have duly fulfilled their obligations under this agreement, and are not otherwise in default of any of the obligations under this agreement.

8.4 Caveat

- (a) The SP8700 Owners acknowledge and agree that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the SP8700 Owners are deemed to have granted, an equitable estate and interest in the common property of SP8700 for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in that land in respect of which to lodge a caveat notifying that interest;
 - (ii) they will not object to the Council lodging a caveat in the relevant folios of the Register for common property of SP8700 nor will they seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (b) The Lot 10 Owner acknowledges and agrees that:
 - (i) when this agreement is executed, the Council is deemed to have acquired and the Lot 10 Owner is deemed to have granted, an equitable estate and interest in Lot 10 DP 10979449 for the purposes of section 74F(1) of the *Real Property Act 1900* (NSW) and consequently the Council will have a sufficient interest in that land in respect of which to lodge a caveat notifying that interest;
 - (ii) it will not object to the Council lodging a caveat in the relevant folios of the Register for Lot 10 DP 10979449 nor will it seek to remove any caveat lodged by the Council provided the caveat does not prevent registration of any dealing or plan other than a transfer.
- (c) The Council must, at the Developer Parties' cost, register a withdrawal of any caveat in respect of the common property of SP8700 or Lot 10 DP 10979449 within five Business Days after the Developer Parties comply with clause 8.2 and must not lodge any other caveats on the title.
- (d) 8GWH must retain caveats against the title to the Land to protect its interest as Grantee under the Call Options and must:
 - (i) notify Council if any part of the Land is to be sold to a third party;
 - (ii) inform the purchaser that this agreement applies to the Land; and
 - (iii) ensure that Council's interests are not diminished or fettered in any way by the proposed sale of the Land, including if necessary, require the purchaser to enter into any novation deed or further deed with Council.

9 Review of this agreement

9.1 Review by agreement

- (a) This agreement may be reviewed or modified by agreement between the parties using their best endeavours and acting in good faith.
- (b) For the purposes of clause 9.1 of this agreement and subject to clause 9.2, no modification or review of this agreement will be of any force or effect unless it is in writing, exhibited in accordance with the requirements of the Act and Regulation and signed by the parties to this agreement.

- (c) For the purposes of clause 9.1 of this agreement and subject to clause 9.2, a party is not in breach of this agreement if it does not agree to an amendment to this agreement requested by a party in, or as a consequence of, a review.

9.2 *Change to Development Contributions*

- (a) The parties acknowledge that as at the date of this agreement:
 - (i) Council is proposing to amend the *Parramatta Local Environmental Plan 2011* to address the provision of community infrastructure within the Parramatta Central Business District and to adopt an accompanying Infrastructure Strategy and Development Guideline;
 - (ii) the Monetary Contribution payable under this agreement has been calculated on the basis of a monetary rate per square metre of land (**Community Infrastructure Rate**), being a percentage of land value uplift (as defined in the Council's Planning Agreements Policy); and
 - (iii) the Community Infrastructure Rate of \$150.00 per square metre for incentive sites and \$375.00 per square metre for opportunity sites is being applied by Council at the date of this agreement but may change when the planning proposal for the Parramatta Central Business District is finalised.
- (b) If, at the time the Monetary Contribution becomes payable (**Payment Date**):
 - (i) the Community Infrastructure Rate adopted by Council is less than the rate applied at the time of this agreement (being \$150 per square metre for incentive sites and \$375.00 per square metre for opportunity sites) or Council decides not to adopt the approach set out in clause 9.2(a)(i) and the Community Infrastructure Rate; and
 - (ii) as a consequence of the reduction of the Community Infrastructure Rate or the rejection of the Community Infrastructure Rate, Council amends the Contributions Plan applying to the Land, or adopts a new Contributions Plan that applies to the Land, so that the contributions payable under section 7.11 or section 7.12 of the Act (**Development Contributions**) for the Development are higher, per square metre or other basis of measurement used to determine the contributions, than they would have been as at the date of this agreement,

then, within 20 Business Days of the Developer Parties making a request for review, the Council and the Developer Parties must meet to review this agreement in accordance with the principles in clause 9.2(c) and using their best endeavours and in good faith.
- (c) If a review of this agreement is carried out under clause 9.2(b) the parties must consider during that review process, the quantum of Monetary Contribution payable by the Developer Parties to the Council under this agreement and a reduction of the Monetary Contribution by an amount equivalent to the difference between:
 - (i) the Development Contributions calculated as at the date of this agreement (indexed in accordance with increases in the CPI from the date of this agreement to the date of the calculation); and

- (ii) the Development Contributions paid or payable for the Development in accordance with the Development Consent.
- (d) If, at the Payment Date, Council has adopted a Community Infrastructure Rate that is higher than the rate applicable as at the date of this Agreement, within 20 Business Days of either party making a request for review, the Council and the Developer must meet to review this Agreement using their best endeavours and in good faith to consider increasing the quantum of Monetary Contribution payable by the Developer under this Agreement in accordance with the increased Community Infrastructure Rate, having regard to the Development and Development Contributions payable in accordance with the Development Contributions Plan, or provision of other material public benefits in lieu of that increased amount.
- (e) Any agreement reached during a review under this clause 9.2 will not constitute an amendment to this agreement until the amendment has been:
 - (i) confirmed in writing as a proposed amendment to this agreement;
 - (ii) publicly notified in accordance with the Act and the Regulation;
 - (iii) approved by Council after consideration of any public submissions; and
 - (iv) signed by the parties.
- (f) A failure by a party to agree to participate in a review under this clause 9.2 is taken to be a dispute for the purposes of clause 10.
- (g) If the parties cannot agree to the terms of any amendment to this agreement following a review under clause 9.2, either party may refer the matter to dispute resolution under clause 10.
- (h) Nothing in this clause 9.2:
 - (i) affects the obligation of the Developer Parties under the Act to pay contributions in accordance with section 7.11 or section 7.12 of the Act; or
 - (ii) requires the Council to pay any money to the Developer Parties or to refund to the Developer Parties or any other entity, any amount paid to it under this agreement or for any other purpose.

10 Dispute Resolution

10.1 Reference to Dispute

If a dispute arises between the parties in relation to this agreement, the parties must not commence any court proceedings relating to the dispute unless the parties have complied with this clause, except where a party seeks urgent interlocutory relief.

10.2 Notice of Dispute

The party wishing to commence the dispute resolution process must give written notice (**Notice of Dispute**) to the other parties of:

- (a) The nature of the dispute,
- (b) The alleged basis of the dispute, and
- (c) The position which the party issuing the Notice of Dispute believes is correct.

10.3 *Representatives of Parties to Meet*

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the Notice of Dispute) meet in good faith to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting,
 - (ii) agree that further material or expert determination in accordance with clause 10.6 about a particular issue or consideration is needed to effectively resolve the dispute (in which event the parties will, in good faith, agree to a timetable for resolution); or
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute.

10.4 *Further Notice if Not Settled*

If the dispute is not resolved within 10 Business Days after the nominated representatives have met, either party may give to the other a written notice calling for determination of the dispute (**Determination Notice**) by mediation under clause 10.5 or by expert determination under clause 10.6.

10.5 *Mediation*

If a party gives a Determination Notice calling for the dispute to be mediated:

- (a) The parties must agree to the terms of reference of the mediation within 15 Business Days of the receipt of the Determination Notice (the terms shall include a requirement that the mediation rules of the Institute of Arbitrators and Mediators Australia (NSW Chapter) apply);
- (b) The mediator will be agreed between the parties, or failing agreement within 15 Business Days of receipt of the Determination Notice, either Party may request the President of the Institute of Arbitrators and Mediators Australia (NSW Chapter) to appoint a mediator;
- (c) The mediator appointed pursuant to this clause 10.5 must:
 - (i) Have reasonable qualifications and practical experience in the area of the dispute; and
 - (ii) Have no interest or duty which conflicts or may conflict with his or her function as a mediator he or she being required to fully disclose any such interest or duty before his or her appointment;
- (d) The mediator shall be required to undertake to keep confidential all matters coming to his or her knowledge by reason of his or her appointment and performance of his or her duties;
- (e) The parties must within 15 Business Days of receipt of the Determination Notice notify each other of their representatives who will be involved in the mediation (except if a resolution of the Council is required to appoint a representative, the Council must advise of the representative within 5 Business Days of the resolution);

- (f) The parties agree to be bound by a mediation settlement and may only initiate judicial proceedings in respect of a dispute which is the subject of a mediation settlement for the purpose of enforcing that mediation settlement; and
- (g) In relation to costs and expenses:
 - (i) Each party will bear its own professional and expert costs incurred in connection with the mediation; and
 - (ii) The costs of the mediator will be shared equally by the parties unless the mediator determines that a party has engaged in vexatious or unconscionable behaviour in which case the mediator may require the full costs of the mediation to be borne by that party.

10.6 *Expert determination*

If the dispute is not resolved under clause 10.3 or clause 10.5, or the parties otherwise agree that the dispute may be resolved by expert determination, the parties may refer the dispute to an expert, in which event:

- (a) The dispute must be determined by an independent expert in the relevant field:
 - (i) Agreed upon and appointed jointly by the parties; and
 - (ii) In the event that no agreement is reached or no appointment is made within 20 Business Days of the agreement to refer the dispute to an expert, appointed on application of a party by the then President of the Law Society of New South Wales;
- (b) The expert must be appointed in writing and the terms of the appointment must not be inconsistent with this clause;
- (c) The determination of the dispute by such an expert will be made as an expert and not as an arbitrator and will be in writing and contain the reasons for the determination;
- (d) The expert will determine the rules for the conduct of the process but must conduct the process in accordance with the rules of natural justice;
- (e) Each party will bear its own costs in connection with the process and the determination by the expert and will share equally the expert's fees and costs; and
- (f) Any determination made by an expert pursuant to this clause is final and binding upon the parties except unless:
 - (i) Within 20 Business Days of receiving the determination, a party gives written notice to the other party that it does not agree with the determination and commences litigation; or
 - (ii) The determination is in respect of, or relates to, termination or purported termination of this agreement by any party, in which event the expert is deemed to be giving a non-binding appraisal.

10.7 *Litigation*

If the dispute is not *finally* resolved in accordance with this clause 10, then either party is at liberty to litigate the dispute.

10.8 *No suspension of contractual obligations*

Subject to any interlocutory order obtained under clause 10.1, the referral to or undertaking of a dispute resolution process under this clause 10 does not suspend the parties' obligations under this agreement.

11 Enforcement

11.1 *Default*

- (a) In the event a party considers another party has failed to perform and fulfil an obligation under this agreement, it may give notice in writing to the other party (**Default Notice**) giving all 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.
- (b) 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 a public nuisance or raises other circumstances of urgency or emergency.
- (c) If a party disputes the Default Notice it may refer the dispute to dispute resolution under clause 10 of this agreement.

11.2 *Bank Guarantee*

- (a) If the Developer Parties elect to provide a Bank Guarantee instead of paying the first instalment of the Monetary Contribution as set out in clause 6.1(b), the Developer Parties must provide to the Council a Bank Guarantee in an amount equivalent to 75% of the Monetary Contribution prior to the issue of a Construction Certificate for the Development.
- (b) The Council may reject any Bank Guarantee that contains errors, or if it has received the Bank Guarantee, require at any time the Developer Parties to obtain a replacement Bank Guarantee that rectifies any such errors or otherwise obtain rectification of the errors. The Developer Parties must provide the replacement Bank Guarantee, or otherwise obtain rectification of the errors, within 5 Business Days of receiving the Council's request.
- (c) The Council may call on a Bank Guarantee provided under this clause if:
 - (i) the Developer Parties are in material or substantial breach of this agreement and has failed to rectify the breach within a reasonable period of time after having been given reasonable notice (which must not be less than 21 Business Days) in writing to do so in accordance with clause 11.1 of this agreement; or
 - (ii) Sept Fortis or 8GWH becomes Insolvent.
- (d) Within 20 Business Days of each anniversary of a Bank Guarantee provided under clause (a), the Developer Parties must provide Council with one or more replacement Bank Guarantees (**Replacement Bank Guarantee**) in an amount calculated in accordance with the following:

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

Where:

A is the amount of the Replacement Bank Guarantee,

B is the amount of the Bank Guarantee to be replaced,

C is the CPI for the quarter ending immediately before the date of the Bank Guarantee to be replaced,

D is the CPI for the quarter ending immediately before the date of the Replacement Bank Guarantee,

provided A is greater than B.

- (e) On receipt of a Replacement Bank Guarantee provided under clause 11.2(d), the Council must release and return to the Developer Parties, as directed, the Bank Guarantee that has been replaced as soon as reasonably practicable.
- (f) At any time following the provision of a Bank Guarantee under this clause, the Developer Parties may provide the Council with one or more replacement Bank Guarantees totalling the amount of all Bank Guarantees required to be provided under this clause for the time being. On receipt of such replacement Bank Guarantee, the Council must release and return to the Developer Parties, as directed, the Bank Guarantee(s) which it holds that have been replaced as soon as reasonably practicable.
- (g) Subject to clause 11.2(c), the Council may apply the proceeds of a Bank Guarantee in satisfaction of:
 - (i) any obligation of the Developer Parties under this agreement that is secured by the Bank Guarantee; and
 - (ii) any associated liability, loss, cost, charge or expense directly or indirectly incurred by the Council because of the failure by the Developer Parties to comply with this agreement.
- (h) Nothing in this clause 11.2 prevents or restricts the Council from taking any enforcement action in relation to:
 - (i) any obligation of the Developer Parties 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 Parties to comply with this agreement,that is not or cannot be satisfied by calling on a Bank Guarantee.

11.3 *Restriction on the issue of Certificates*

- (a) In accordance with section 6.8 of the Act and clause 146A of the Regulation the obligation to pay the first instalment of the Monetary Contribution under clause 6.1(b)(i) or instead provide a Bank Guarantee under clause 11.2 must be satisfied prior to the issue of a Construction Certificate for the Development or any part of the Development.
- (b) In accordance with section 6.10 of the Act and clause 154E of the Regulation the obligation to pay the Monetary Contribution in full must be satisfied prior to the

issue of an Occupation Certificate for the Development or any part of the Development.

11.4 *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.

12 Assignment and Dealings

12.1 *Assignment*

- (a) A party must not assign or deal with any right under this agreement without the prior written consent of the other parties.
- (b) Any change of ownership or control (as defined in section 50AA of the *Commonwealth Corporations Act 2001*) of a party (excluding the Council) shall be deemed to be an assignment of this agreement for the purposes of this clause.
- (c) Any purported dealing in breach of this clause is of no effect.

12.2 *Arrangements with Mortgagee*

- (a) The Developer Parties agree with the Council that if the Developer Parties mortgage the Land after this agreement is entered into they must use all reasonable efforts at that time to arrange a multiple party deed of agreement between the Council, the Developer Parties, and the mortgagee who will be providing finance for the Works so that the mortgagee accepts that the responsibilities set out in this agreement are binding upon the mortgagee in the event that the Developer Parties default on the mortgage and the mortgagee takes possession of the Land.
- (b) The terms of the adoption of the obligations of the Developer Parties by the mortgagee shall be as reasonably required by the Council. The agreement shall be prepared at the cost of the Developer Parties.

12.3 *Transfer of Rights and Exercise of Option*

- (a) 8GWH may not transfer, assign or dispose of the whole or any part of its right, title or interest under the Option or the Development to another person (**Transferee**) and must not nominate another entity to exercise or receive the benefit of the Option (**Nominee**) unless before it sells, transfers or disposes of that right, title or interest or exercises any right to nominate under the Option:
 - (i) the Development Parties have registered this agreement against the title to the Land;

- (ii) 8GWH satisfies the Council that the proposed Transferee or Nominee is financially capable of complying with the Developer Parties' obligations under this agreement;
 - (iii) 8GWH satisfies the Council that the rights of the Council will not be diminished or fettered in any way;
 - (iv) the Transferee or Nominee delivers to the Council a novation deed signed by the Transferee or Nominee in a form and of such substance as is acceptable to the Council containing provisions under which the Transferee or Nominee agrees to comply with all the outstanding obligations of the Developer Parties under this agreement;
 - (v) the Transferee or Nominee delivers to the Council replacement Bank Guarantees as required by this agreement;
 - (vi) any default under any provisions of this agreement has been remedied or waived by the Council, on such conditions as the Council may determine, and
 - (vii) the Developer Parties and the Transferee or Nominee pay the Council's reasonable costs in relation to the assignment.
- (b) For the avoidance of doubt, any novation deed entered into under clause 12.3(iv) may, if agreed between the parties, provide for the release of 8GWH and Sept Fortis from this agreement.

13 Approvals and consents

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 obligated to give its reasons for giving or withholding consent or for giving consent subject to conditions.

14 No fetter

14.1 *Discretion*

This agreement is not intended to operate to fetter, in any manner, the exercise of any statutory power or discretion of the Council, including, but not limited to, any statutory power or discretion of the Council relating to the Development Application or any other application for Development Consent (all referred to in this agreement as a "**Discretion**").

14.2 *No fetter*

No provision of this agreement is intended to constitute any fetter on the exercise of any Discretion. If, contrary to the operation of this clause, any provision of this agreement is held by a court of competent jurisdiction to constitute a fetter on any Discretion, the parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied,
- (b) in the event that (a) cannot be achieved without giving rise to a fetter on the exercise of a Discretion, the relevant provision is to be severed and the remainder of this agreement has full force and effect, and

- (c) to endeavour to satisfy the common objectives of the parties in relation to the provision of this agreement which is to be held to be a fetter on the extent that is possible having regard to the relevant court judgment.

14.3 *Planning Certificates*

The Developer Parties acknowledge that Council may, at its discretion, include advice on any planning certificate issued under section 10.7 of the Act that this agreement affects the Land.

15 Notices

15.1 *Notices*

Any notice given under or in connection with this agreement (**Notice**):

- (a) must be in writing and signed by a person duly authorised by the sender;
- (b) must be addressed as follows and delivered to the intended recipient by hand, by prepaid post or by email or fax at the address or fax number below, or at the address or fax number last notified by the intended recipient to the sender after the date of this agreement:
 - (i) to City of Parramatta Council: PO Box 32, Parramatta, NSW 2124
Fax: 02 9806 5917
Email: council@cityofparramatta.nsw.gov.au
Attention: Manager, Land Use Planning
 - (ii) to Sept Fortis and 8GWH 1705/101 Grafton St, Bondi Junction, NSW 2022
Email: team@septfortispropertygroup.com.au
Attention: Daniel De Gregorio
- (c) is taken to be given or made:
 - (i) in the case of hand delivery, when delivered;
 - (ii) in the case of delivery by post, three Business Days after the date of posting (if posted to an address in the same country) or seven Business Days after the date of posting (if posted to an address in another country); and
 - (iii) in the case of a fax, on production of a transmission report by the machine from which the fax was sent that indicates the fax was sent in its entirety to the recipient's fax number; and
- (d) if under clause (c) a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it is taken to have been given or made at the start of business on the next Business Day in that place.

15.2 *Notices sent by email:*

- (a) A party may serve a Notice by email if the Notice:
 - (i) includes a signature block specifying:
 - (A) the name of the person sending the Notice; and
 - (B) the sender's position within the relevant party;

- (ii) states in the body of the message or the subject field that it is sent as a Notice under this agreement;
- (iii) contains an express statement that the person sending the Notice has the authority to serve a Notice under this agreement;
- (iv) is sent to the email address below or the email address last notified by the intended recipient to the sender:
 - (A) to City of Parramatta Attention: Manager, Land Use Planning Council: council@cityofparramatta.nsw.gov.au
 - (B) to Sept Fortis and 8GWH Attention: Daniel De Gregorio team@septfortispropertygroup.com.au

- (b) The recipient of a Notice served under this clause 15.2 must:
 - (i) promptly acknowledge receipt of the Notice; and
 - (ii) keep an electronic copy of the Notice,
- (c) Failure to comply with clause 15.2 does not invalidate service of a Notice under this clause.

15.3 *Receipt of Notices sent by email*

- (a) A Notice sent under clause 15.2 is taken to be given or made:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the Notice has been delivered to the email address stated above;
 - (ii) when the Notice enters an information system controlled by the recipient; or
 - (iii) when the Notice is first opened or read by the recipient,
 whichever occurs first.
- (b) If under clause 15.3 a Notice would be taken to be given or made on a day that is not a Business Day in the place to which the Notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next Business Day in that place.

16 General

16.1 *Relationship between parties*

- (a) Nothing in this agreement:
 - (i) constitutes a partnership between the parties; or
 - (ii) except as expressly provided, makes a party an agent of another party for any purpose.
- (b) A party cannot in any way or for any purpose:
 - (i) bind another party; or
 - (ii) contract in the name of another party.

- (c) If a party must fulfil an obligation and that party is dependent on another party, then that other party must do each thing reasonably within its power to assist the other in the performance of that obligation.

16.2 *Time for doing acts*

- (a) If the time for doing any act or thing required to be done or a notice period specified in this agreement expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5.00 pm on the specified day, it is taken to have been done on the following Business Day.

16.3 *Further assurances*

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in this agreement.

16.4 *Joint and individual liability and benefits*

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

16.5 *Variations and Amendments*

A provision of this agreement can only be varied by a later written document executed by or on behalf of all parties and in accordance with the provisions of the Act.

16.6 *Counterparts*

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

16.7 *Legal expenses and stamp duty*

- (a) The Developer Parties must pay the Council's legal costs and disbursements in connection with the negotiation, preparation, execution, carrying into effect, enforcement and release and discharge of this agreement, including the reasonable costs of obtaining any legal advice in connection with this agreement, no later than 10 Business Days after receiving a demand from the Council to pay such costs.
- (b) The Developer Parties agree to pay or reimburse the costs and expenses incurred by Council in connection with the advertising and exhibition of this agreement in accordance with the Act.
- (c) The Developer Parties agrees to pay Council any administrative fees as required by Council, acting reasonably, in connection with the administration of this agreement.

16.8 *Entire agreement*

The contents of this agreement constitute the entire agreement between the parties and supersede any prior negotiations, representations, understandings or arrangements made between the parties regarding the subject matter of this agreement, whether orally or in writing.

16.9 *Representations and warranties*

The parties represent and warrant that they have the power and authority 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.

16.10 *Severability*

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

16.11 *Invalidity*

- (a) A word or provision must be read down if:
 - (i) this agreement is void, voidable, or unenforceable if it is not read down;
 - (ii) this agreement will not be void, voidable or unenforceable if it is read down; and
 - (iii) the provision is capable of being read down.
- (b) A word or provision must be severed if:
 - (i) despite the operation of clause (a), the provision is void, voidable or unenforceable if it is not severed; and
 - (ii) this agreement will be void, voidable or unenforceable if it is not severed.
- (c) The remainder of this agreement has full effect even if clause 16.11(b) applies.

16.12 *Waiver*

- (a) A right or remedy created by this agreement cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.
- (b) 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.

16.13 *GST*

- (a) Words and expressions which are not defined in this agreement but which have a defined meaning in GST Law have the same meaning as in the GST Law.
- (b) Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this agreement are exclusive of GST.
- (c) If GST is imposed on any supply made under or in accordance with this agreement, the Developer Parties must pay 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.

- (d) If the Council is obliged to pay any GST on any supply made under or in accordance with this agreement, the Developer Parties indemnify the Council for the amount of any such payment is required to make.

16.14 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this agreement.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

16.15 Guarantee

- (a) Sept Fortis unconditionally and irrevocably guarantees to Council the punctual performance and observance by 8GWH of the Guaranteed Obligations.
- (b) If 8GWH does not perform or observe the Guaranteed Obligations on time and/or in accordance with the provisions of the Guaranteed Obligations, Sept Fortis agrees to perform and observe the Guaranteed Obligations for the benefit of Council on demand from Council.
- (c) Council may make a demand on Sept Fortis under clause 16.15(b) at any time if Council has first:
 - (i) notified Sept Fortis of the particular non-performance of the relevant Guaranteed Obligation by 8GWH; and
 - (ii) given Sept Fortis the same grace period (if any) as 8GWH has to remedy the particular matter of concern to Council.

16.16 Indemnity

- (a) Sept Fortis unconditionally and irrevocably indemnifies Council for all losses, Costs, damages and liabilities which it incurs or suffers because 8GWH fails to punctually perform and observe the Guaranteed Obligations.
- (b) The indemnity in this clause will be reduced proportionally to the extent only that a negligent act or omission of 8GWH or a breach of its obligations under this agreement has contributed to the loss, Costs, damages or liability which it incurs or suffers.

Schedule 1

Summary of requirements (section 7.4)

| Subject and subsection of the Act | Planning Agreement |
|---|--|
| <p>Planning instrument and/or Development Application – Section 7.4(1)</p> <p>The Developer has:</p> <p>(a) Sought a change to an environmental planning instrument</p> <p>(b) Made, or propose to make a Development Application</p> <p>(c) Entered into an agreement with, or are otherwise associated with, a person to whom paragraph (a) or (b) applies</p> | <p><input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> |
| <p>Description of the land to which the planning Agreement applies – Section 7.4(3)(a)</p> | <p>Lot 10 DP 1097949 and SP8700 at 8-14 Great Western Highway, Parramatta</p> |
| <p>Description of the application – Section 7.4(3)(b)</p> | <p>See the definition of Planning Proposal.</p> |
| <p>The scope, timing and manner of delivery of contribution required by the Planning Agreement – Section 7.4(3)(c)</p> | <p>See clause 6.</p> |
| <p>Applicability of section 7.11 of the Act – Section 7.4(3)(d)</p> | <p>This section is not excluded by this agreement. See clause 7.</p> |
| <p>Applicability of section 7.12 of the Act – Section 7.4(3)(d)</p> | <p>This section is not excluded by this agreement. See clause 7.</p> |
| <p>Applicability of section 7.24 of the Act – Section 7.4(3)(d)</p> | <p>This section is not excluded by this agreement. See clause 7.</p> |
| <p>Mechanism for dispute resolution – Section 7.4(3)(f)</p> | <p>See clause 10</p> |
| <p>Enforcement of the Planning Agreement – Section 7.4(3)(g)</p> | <p>See clause 11</p> |
| <p>Registration of the Planning Agreement – Section 7.6</p> | <p>See clause 8.2</p> |
| <p>No obligation to grant consent or exercise functions – Section 7.4(9)</p> | <p>See clause 14.</p> |

Executed as an agreement

Signed on behalf of **City of Parramatta Council** (ABN 49 907 174 773) by its authorised delegate pursuant to section 377 of the *Local Government Act 1993* in the presence of:

Signature of witness

Signature of authorised delegate

Name of witness

Name of authorised delegate

Address of witness

Position of authorised delegate

Executed by Sept Fortis Property Group)
Pty Ltd ACN 624 098 326 in accordance)
with section 127 of the *Corporations Act*)
2001 (Cth) by:)
)
)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name of Director

.....
Print name of Director/Secretary

Executed by 8GWH Pty Ltd ACN 632)
377 863 in accordance with section 127 of)
the *Corporations Act 2001* (Cth) by:)
)
)
)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name of Director

.....
Print name of Director/Secretary

Executed by J M Malouf Investments)
Pty Ltd ACN 001 172 603 in accordance)
with section 127 of the *Corporations Act*)
2001 (Cth) by:)
)
)

.....
Signature of Director

.....
Signature of Director/Secretary

.....
Print name of Director

.....
Print name of Director/Secretary

Attestation

The seal of The Owners - Strata Plan No 8700 was affixed on ^ ... in the presence of the following person(s) authorised by section 273 *Strata Schemes Management Act 2015* to attest the affixing of the seal.

Signature: Name: Authority:

.....

Signature: Name: Authority:

.....

^ Insert appropriate date

Annexure A

Plan showing Land

