

## **Development Management Agreement**

**Faunce Investment Pty Ltd ABN 99 158 407 482**

and

**Faunce Developments Pty Ltd ACN 169 416 157**



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# Development Management Agreement

<b>Date</b>	
<b>Parties</b>	<b>Faunce Investment Pty Ltd ABN 99 158 407 482</b> of Fairfax House, Level 5, 19-31 Pitt Street, Sydney NSW 2000 ( <b>Faunce Investment</b> ) <b>Faunce Developments Pty Ltd ACN 169 416 157</b> of Fairfax House, Level 5, 19-31 Pitt Street, Sydney NSW 2000 ( <b>Development Manager</b> )
<b>Recitals</b>	
A.	The Development Manager has been appointed by Faunce Investment to undertake the Works on the Land and act as the development management company for the Project.
B.	The Development Manager must carry out or procure that the Works are carried out in accordance with this Agreement.
C.	Faunce Investment and the Development Manager have agreed to enter into this Agreement to record the Parties' rights, obligations and entitlements in respect of the Project.

The parties agree, in consideration of, among other things, the mutual promises contained in this Agreement as follows:

## 1. Definitions

### 1.1 Definitions

In this Agreement unless the context otherwise requires:

**Agreement** means this agreement as amended from time to time.

**Approvals** means any approval provided by an Authority.

**Authority** means any government or governmental, semi-governmental body, statutory, administration, fiscal or financial body, department, commission, Council, authority, tribunal, agency or entity whether public or private, which has authority, jurisdiction or rights over or relating to the Land, the Project or this Agreement.

**Audit** means, in respect of the Project Costs, a process under which the Auditor verifies:

- (a) whether or not the Project Costs have been properly accounted for by the Development Manager in connection with the Project; and

(b) the amount of those Project Costs,

but does not involve the Auditor determining whether those Project Costs are reasonable in their nature or amount.

**Auditor** means an independent, suitably qualified and experienced person engaged by Faunce Investment.

**Builder** means the builder or builders to be appointed by the Development Manager and approved by Faunce Investment for the Project.

**Building** means the building contemplated by the Project DA.

**Building Contract** means a building contract or contracts entered into between the Development Manager and the Builder for the implementation of the Project.

**Business Day** means a day which is not a Saturday or a Sunday or a public holiday in New South Wales.

**Commission** means the agency commission payable by the Development Manager to an agent/introducer under a Contract for Sale up to a maximum of 4% of the Price.

**Common Property** means the common property created on registration of the Strata Plan.

**Completion** means the later of:

- (a) expiry of the defects liability period for all Contracts for Sale;
- (b) with the exception of any Lots to be retained by Faunce Investment, all Contracts for Sale for Lots sold are completed;
- (c) the accounts for the Project are reconciled; and
- (d) all financial and tax requirements are completed.

**Contract for Sale** means a contract for sale and purchase of the Lots in a form approved by Faunce Investment.

**Controller** means a person appointed to manage the property of a Party.

**Costs** means a cost, charge, expense, outgoing, payment, fee or other expenditure of any nature.

**Development Finance** means the finance facility to be provided by a financier nominated by Faunce Investment for the construction of the Works.

**Event of Default** means, in respect of a Party, if the following occurs:

- (a) if that Party does not pay any money payable under this Agreement within 5 Business Days of the due date and otherwise in the manner required by this Agreement;
- (b) that Party fails to carry out its obligations under this Agreement in a proper, timely, professional and workmanlike manner such that in the opinion, acting reasonably, of the Party not in default such failure will have a material and adverse effect on viability, profitability or time of completion of the Project;
- (c) distress is levied or a judgement or order is enforced, or becomes enforceable against any property of that Party or can be rendered enforceable by the giving of notice, lapse of time or fulfilment of any condition and the occurrence of that event has a materially

adverse effect on the ability of that Party to perform its obligations under this Agreement;

- (d) a representation or warranty made or taken to be made by or on behalf of that Party in connection with this Agreement is found or is notified by that Party to be incorrect or misleading when made or taken to be made and the occurrence of that event has a materially adverse effect on the ability of that Party to perform its obligations under this Agreement; or
- (e) an Insolvency Event occurs in respect of that Party.

**Feasibility Statement** means a statement setting out the feasibility of the Project provided by Faunce Investment to the Development Manager from time to time.

**GST** has the meaning given in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (as amended).

**Insolvency Event** means, in respect of a Party, the happening of any of the following:

- (a) a person is or states that the person is unable to pay from the person's own money all of the person's debts as and when they become due and payable;
- (b) a person is taken or must be presumed to be insolvent or unable to pay the person's debts under any applicable legislation;
- (c) an application or order is made (and in the case of an application, is not withdrawn within 5 Business Days of lodgement) for the winding up or dissolution or a resolution is passed or any steps are taken to pass a resolution for the winding up or dissolution of a corporation;
- (d) an administrator, provisional administrator, liquidator or person having a similar function under the laws of any relevant jurisdiction is appointed in respect of a corporation or any action is taken to appoint any such person and the action is not stayed, withdrawn or dismissed within 5 Business Days;
- (e) a Controller is appointed;
- (f) a corporation is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to that corporation;
- (g) a person enters into or takes any action to enter into an arrangement (including a scheme of arrangement or deed of company arrangement), composition or compromise with, or assignment for the benefit of, all or any class of person's credits or members or a moratorium involving any of them;
- (h) a petition for the making of a sequestration order against the estate of a person is presented and the petition is not stayed, withdrawn or dismissed within 5 Business Days or a person presents a petition against herself or himself;
- (i) a person presents a declaration of intention under section 54A of the *Bankruptcy Act 1966* (Cth); or
- (j) anything analogous to or of a similar effect to anything described above under the law of any relevant legislation occurs in respect of a person or corporation.

**Land** means lot 1 in DP258890 and lot 2 in DP258890 contained in certificates of title folio identifiers 1/258890 and 2/258890.

**Late Settlement Interest** means any interest paid to Faunce Investment by a purchaser of that Lot as a consequence of the late settlement of that Lot.

**Lot Completion** has the same meaning as "Completion Date" in a Contract for Sale for the Sale Lot.

**Notice of Dispute** has the meaning given in clause 9.1(a).

**Party** means a party to this Agreement.

**Plans and Specifications** means the plans and specifications for the subdivision of the Land to create the Lots and the Common Property in accordance with the Project DA.

**Price** mean the price specified in the Contract for Sale for a Lot and if that price does not include GST, the GST payable in respect of that price.

**Proceed of Sales** means, in respect of a Sale Lot, the aggregate of:

- (a) the Price;
- (b) any Late Settlement Interest;
- (c) any outgoings adjustment in favour of Faunce Investment

but less any outgoings adjusted in favour of the purchaser under a Contract for Sale.

**Project** means the development of the Land to construct the Building, the stratum (if required) and strata subdivision of the Land, the sale of each Lot, the financing of the Project Costs, the preparation of the Plans and Specifications, the obtaining of all Approvals from all relevant Authorities, the design, demolition and supervision of the development of the Building and such other activities, works and other matters in relation to the Land as Faunce Investment considers necessary or desirable for the development of the Land under the Project DA (as varied from time to time).

**Project Costs** means all costs, expenses, charges, rates, taxes, commissions, interest, fees (including fees payable to the Development Manager), duties and other outgoings and liabilities incurred in relation to the Project and includes any costs agreed to be "Project Costs" by Faunce Investment from time to time, and any GST referred to in clause 11.

**Project Cost Statement** means a statement of the Project Costs incurred by the Development Manager up to the date of the specified statement and which has not previously been included in a prior statement.

**Project DA** means the development consent 43702/2013 (as amended from time to time).

**Sale Lot** means a lot created on registration of the Strata Plan.

**Strata Plan** means the subdivision of the Land to create the thirty (32) Lots or such other amount agreed by Faunce Investment and the Common Property.

**Transaction Documents** means this Agreement, the Building Contract, securities for the Development Finance, Contracts for Sale and all other agreements and documents entered into or created for the purposes of the Project.

**Works** means all of the construction works required to carry out the Project in accordance with the Plans and Specifications and the Project DA (each as amended with the approval of Faunce Investment from time to time).

## 2. Authority and Status of Parties

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### 2.1 Authority

Each Party promises that it has the full corporate or other right, power and authority to enter into this Agreement and to carry out the Project.

### 2.2 Term

The Project continues until determined by:

- (a) Lot Completion of all of the Lots (unless otherwise agreed by Faunce Investment) and distribution of the Proceeds of Sale in accordance with this Agreement; or
- (b) three years from the date of this Agreement (unless extended by agreement between the Parties); or
- (c) completion of the defects liability period for all Contracts for Sale,

or is otherwise determined or terminated in accordance with this Agreement.

### 2.3 Ownership of Land

### 2.4 The rights, powers and privileges granted in accordance with this Agreement do not create in favour of the Development Manager an estate or interest including, without limitation, an equitable interest in the Land or any improvements at any time constructed on the Land. No Partnership

- (a) Nothing stated or implied in this Agreement makes a Party the partner, agent or legal representative of the other Party for any purpose or creates any partnership, agency or trust. Unless otherwise specifically stated in this Agreement, a Party has no authority to bind the other Party or to act for, or to incur any obligation or assume any responsibility on behalf of, the other Party.
- (b) The rights of the Parties are several, not joint and collective. Each Party is only responsible for their obligations. No Party will represent to anyone else that it has the authority to act as agent of, or to in any way bind or commit the other Party to any obligation to anyone else, other than pursuant to the terms of this Agreement.

### 2.5 No authority to bind Faunce Investment

The Development Manager:

- (a) is not the agent of Faunce Investment; and
- (b) must not, and must not purport to, do anything to bind Faunce Investment to incur costs or assume other obligations other than in accordance with this Agreement without the prior consent of Faunce Investment.

### 2.6 Name

The project is to be known as the Faunce Project.

### 2.7 Fidelity and Good Faith

Each Party:

- (a) undertakes to be just and faithful in all its activities and dealings with the other Party;



- (b) must act in good faith and assist the other Party in the performance of its obligations; and
- (c) recognises that this Agreement creates a fiduciary relationship between the Parties which can be enforced by equitable remedies.

### **3. Obligations of Parties**

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#### **3.1 Authority**

- (a) The Parties agree that each of the Parties and their officers, employees, agents and contractors are authorised to enter the Land for all purposes associated with the Project.
- (b) Once the Land (or any part of it) is in the possession or control of a building or other contractor, the Parties must comply with the terms of any applicable building work contract for entry onto the Land or that part of the Land in the possession or control of that building or other contractor.

#### **3.2 Insurance**

The Development Manager must in the joint names of the Parties effect insurance cover (including comprehensive insurance for any improvements on the Land, public liability, workers' compensation, company officers' liability and other appropriate cover) to adequately protect the interests of the Parties and their officers, employees and agents at all times during the term of the Project. The Development Manager must provide Faunce Investment with a certificate of currency of insurance when requested by Faunce Investment evidencing the insurance as required by this clause 3.2. The costs of such insurances will form part of the Project Costs.

#### **3.3 Rates and Land Tax**

- (a) Faunce Investment is responsible for, and the Development Manager must pay all rates, charges, levies and land tax assessed and charged on the Land by the due date from the date of this Agreement. Such rates, charges, levies and land tax assessed and charged on the Land will form part of the Project Costs.
- (b) The Development Manager must supply Faunce Investment with evidence of payments required by clause 3.3(a).
- (c) In the event that the Development Manager fails to make any payments in accordance with clause 3.3(a), the Development Manager indemnifies Faunce Investment from all Claims that are incurred by Faunce Investment as a result of the Development Manager's failure to comply with clause 3.3(a).

#### **3.4 Payments to Development Manager**

From the date of the first draw down of the Development Finance until Completion, Faunce Investment must pay to the Development Manager a fee being equal to \$8,533 plus GST per month in consideration for the Development Manager entering into this Agreement and carrying out the Project in accordance with the terms of this Agreement, up to a maximum amount of \$128,000 (plus GST). This amount is to be paid on the first day of each month, in advance and forms part of the Project Costs.

#### **3.5 Payment of Commissions**

- (a) The Development Manager must pay the Commission payable under a Contract for Sale for a Lot as follows:

- (i) 25% of the Commission by the date ninety (90) days after the contract date under a Contract for Sale;
  - (ii) 25% of the Commission by the date thirty (30) days after the first drawdown of the Development Finance; and
  - (iii) 50% of the Commission on the date of completion of a Contract for Sale.
- (b) If a Contract for Sale is terminated due to the purchaser's default, any part of the Commission paid by the Development Manager will be refunded to the Development Manager.
- (c) If a Contract for Sale is not completed because the Development Manager agrees to release the purchaser from its obligation to complete the Contract for Sale, the Development Manager must still pay the Commission to the agent.

## **4. Management**

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### **4.1 Decisions**

All decisions in regard to the carrying out of the Project are to be made by Faunce Investment and implemented by the Development Manager including, without limitation, in relation to the following matters:

- (a) Budgets and expenditure including the Feasibility Statement;
- (b) the terms of finance for the Project;
- (c) the content of applications for any Approvals;
- (d) changes to applications for the Project DA;
- (e) the form for the Contract for Sale (including special conditions and variations);
- (f) changes to applications for Approvals;
- (g) whether to appeal the result of the Project DA, any section 96 application or any other Approvals;
- (h) the preparation of the Plans and Specifications and changes to the Plans and Specifications;
- (i) the terms of the Building Contract;
- (j) the civil and / or building works contracts and changes to the civil and / or building works contracts or the waiver or release of rights under those contracts;
- (k) the appointment of consultancies and contractors including the civil and / or building works contractors (and including the engagement of any Party to perform any service or task in connection with the Project that the Party is not already required to do under this Agreement);
- (l) amendments, variations, modifications, alterations, additions, deletions to any document required to lodge or register any of the subdivision plans anticipated by the Joint Venture Agreement including section 88B instruments, positive covenants, restrictions as to user, easements, strata by-laws and strata management statement; and

- (m) strategic decisions in connection with the Project including approval of funding proposals and budgets.

#### 4.2 **Acknowledgment about Development Manager**

- (a) Faunce Investment acknowledges and agrees that the Development Manager may cause another entity associated with or nominated by the Development Manager to be appointed as development / project manager pursuant to a project management agreement to assist the Development Manger to carry out the Project, subject to obtaining the prior approval of Faunce Investment.
- (b) The terms of that appointment will be set out in a project management agreement on such terms and conditions agreed by Faunce Investment (acting reasonably).

#### 4.3 **Deemed decisions**

Despite anything else in this Agreement, for so long as:

- (a) Faunce Investment is a party to this Agreement; and
- (b) the directors of the Development Manager are nominees of the persons referred in clause 4.3(a),

then all decisions of the Development Manager in relation to the matters for which it is responsible under this Agreement will be deemed to be decisions of Faunce Investment in respect of those matters.

#### 4.4 **Meetings**

- (a) The Parties must meet every month from the date of this Agreement until Completion to discuss and decide all matters in relation to the Project.
- (b) Any meetings of the Parties may be called or held using any technology consented to by the Parties. The consent may be a standing one. A Party may only withdraw its consent within a reasonable period before the meeting.

### **5. Project**

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#### 5.1 **General object of Project**

The Parties agree that the object of the Project is to:

- (a) construct the Building on the Land;
- (b) sell the Lots;
- (c) complete the Works; and
- (d) as Faunce Investment directs, distribute the Proceeds of Sale.

#### 5.2 **Commitment to Proceed with Project**

The Development Manager agrees to proceed with and carry out the Project:

- (a) in a timely and cost effective manner with due regard to:
  - (i) market forces;

- (ii) weather and town planning conditions;
- (b) in accordance with the directions of Faunce Investment; and
- (c) in accordance with the Development Manager's obligations under this Agreement.

### 5.3 Design and Approvals

The Development Manager is responsible for obtaining the Approvals for the Works the subject of the Project including briefing and monitoring consultants in the preparation of the Plans and Specifications.

### 5.4 Planning and Environment Court

If the Development Manager wishes to pursue an Approval including if necessary seeking an appeal to the Land and Environment Court or any other appropriate forum, the Development Manager must seek the consent of Faunce Investment. Faunce Investment must take all such necessary steps to assist the Development Manager in obtaining any Approval or seeking an appeal to the Land and Environment Court or any other appropriate forum, where they have consented to such action.

### 5.5 Execution of the Works

- (a) Faunce Investment must procure that the:
  - (i) Land is available for demolition, site and building works, reconfiguration and titling as required for the execution of the Project; and
  - (ii) Development Manager pays all Project Costs incurred in carrying out the Works.
- (b) The Development Manager must cause the Works to be carried out:
  - (i) in accordance with the Project DA
  - (ii) in accordance with all Approvals, all statutory or governmental requirements, the law (including any occupational health and safety laws) and good building practices;
  - (iii) in accordance with the Building Code of Australia and otherwise be fit for purpose and using good quality materials;
  - (iv) at all times subject to budgets approved by Faunce Investment; and
  - (v) otherwise in accordance with this Agreement
- (c) The Development Manager acknowledges and agrees that for the purpose of complying with all occupational health and safety laws in the carrying out of the Works, the Development Manager must be the principal contractor.

### 5.6 Faunce Investment's Obligations

Faunce Investment must:

- (a) signs any necessary consent to the Development Manager's applications for any Approval in accordance with this Agreement;
- (b) permit the erection on the Land of any notice or sign required in connection with the application(s) for the Approvals; and

- (c) permit the Development Manager and its consultants, agents and contractors to enter the Land for the purpose of carrying out the Project.

#### 5.7 **Development Manager's Obligations**

Without limitation to the Development Manager's obligations in this Agreement, the Developer must:

- (a) if requested by Faunce Investment, obtain a valuation of the Land;
- (b) enter into the Building Contract with the Builder to undertake the Works;
- (c) set up and manage a bank account in the name of the Development Manager for the purposes of paying any Project Costs;
- (d) ensure that the Project Costs are in accordance with the costs approved by Faunce Investment from time to time;
- (e) submit the Contract for Sale to Faunce Investment for consent;
- (f) carry out any services and activities required to be undertaken in order to deliver the Project in accordance with this Agreement;
- (g) give to Faunce Investment at the end of each month a Project Costs Statement in accordance with clause 7;
- (h) disburse the Proceeds of Sale in accordance with clause 6;
- (i) lodge and progress, any strata plans and associated documentation with Land and Property Information, as required to procure the subdivision of the Land as envisaged by the Project;
- (j) if directed by Faunce Investment, prepare and lodge tax returns, BAS statements and other tax applications in relation to the Project; and
- (k) at all times act in accordance with the instructions of Faunce Investment, including any decisions made in accordance with clause 5.1.

## **6. Proceeds of Sale**

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### 6.1 **Disbursement of Proceeds of Sale**

The Development Manager must disburse the Proceeds of Sale as follows:

- (a) firstly, an amount equivalent to GST which the Development Manager or Faunce Investment is required to pay to the Australian Taxation Office in respect of each Lot sold;
- (b) secondly, to repay the Development Finance; and
- (c) thirdly, to Faunce Investments.

## 7. Project Cost Statement

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### 7.1 Project Cost Statement

- (a) The Development Manager must at the end of each month give to Faunce Investment a Project Costs Statement.
- (b) The Development Manager must ensure that the Project Costs Statement sets out in relation to each Project Cost specified in that Project Costs Statement the amount, the payee and the nature of the Project Cost.
- (c) Faunce Investment may from to time (but only once in respect of a particular Project Cost Statement), give notice to the Development Manager that it wishes to conduct an Audit of the Project Costs specified in the Project Costs Statement.
- (d) The Development Manager must co-operate with an Audit of the Project Costs in accordance with clause 7.1(c).
- (e) The Development Manager must:
  - (i) keep proper records of any contract, arrangement or understanding relating to the engagement of another person to carry out any of the Development Manager's obligations under this Agreement;
  - (ii) keep proper records of the Project Costs; and
  - (iii) retain those records and make those records available to the Auditor.
- (f) If an Audit of the Project Costs specified in the Project Costs Statement in accordance with clause 7.1(c) reveals that a particular Project Costs Statement contains Costs which are not Project Costs then that Project Costs Statement will be adjusted in accordance with the Audit.

## 8. Other obligations

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### 8.1 General obligation to co-operate

If the approval or consent of a Party must be obtained under this Agreement, or for the Project, that Party must respond promptly and must not, unless this Agreement expressly provides otherwise, unreasonably withhold or delay giving its approval or consent.

### 8.2 General undertakings by the Parties

The Parties must:

- (a) promptly execute all documents that must be executed for the Project (including all applications for Approvals and proceedings instituted to obtain the Project DA or any Approvals);
- (b) comply with all laws relevant to their respective obligations under this Agreement;
- (c) not breach, or cause a party to breach, a Transaction Document;
- (d) promptly send each other copies of all notices, certificates and other material correspondence received by them under or in accordance with the Transaction Documents;

- (e) promptly notify each other of the occurrence of an event of default under the Transaction Documents and of any event that, after the lapsing of time, satisfaction of a condition, the giving of notice or the determination of materiality, would constitute an event of default under a Transaction Document; and
- (f) promptly notify each other of any breach of a Transaction Document by a Party to a document.

### 8.3 Development Manager's Undertakings

The Development Manager must not at any time:

- (a) terminate, rescind, discharge (otherwise than by performance) or agree to vary a Transaction Document; or
- (b) grant any material waiver, time or indulgence in respect of an obligation under a Transaction Document;
- (c) enter into any agreement that may have the effect of derogating from the obligations of a person under a Transaction Document;
- (d) do or omit to do anything with a result that another party to a Transaction Document may rescind or terminate the Transaction Document,

without the consent of Faunce Investment.

### 8.4 Indemnities

Except to the extent that any damage or injury is caused or contributed to by Faunce Investment, the Development Manager indemnifies Faunce Investment for any loss or Claim arising from, and any Costs incurred in connection with (including legal Costs on a full indemnity basis or a solicitor and own client basis whichever is the higher), for any act, omission, negligence or a default by the Development Manager under any Transaction Document including as a result of:

- (a) a breach by the Development Manager of any of its obligations, representations, warranties, covenants and undertakings under a Transaction Document;
- (b) damage to or loss of anything or loss of property of Faunce Investment;
- (c) injury to or the death of any person;
- (d) the termination of any Transaction Document unless such termination is caused by Faunce Investment;
- (e) fraud, misconduct or dishonesty;
- (f) the conduct of the Development Manager, its servants, contractors or agents or any agent or contractors appointed by the Development Manager in carrying out the Works; and
- (g) undertaking the Project.

### 8.5 Risks of Project

- (a) Subject to any other provision in this Agreement, the Development Manager accepts no risks of the Project, without limitation for the following:

- (i) physical conditions on the Land or its surroundings, including artificial things and any existing buildings on the Land;
  - (ii) climatic and weather conditions relating to the Land;
  - (iii) the means of access to and around the Land;
  - (iv) subsurface and geotechnical conditions of the Land;
  - (v) any contamination or its remediation;
  - (vi) liquidity of the Builder or any consultants or contractors engaged to carry out the Works or the Project;
  - (vii) any damage caused by act of God or terrorism; and
  - (viii) legislative requirements relating to clauses 8.5(a)(i) to (vii).
- (b) This clause does not affect any obligation of the Development Manager under this Agreement.

## 9. Dispute resolution

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### 9.1 Notice of Dispute

- (a) If a dispute or difference arises or the Parties fail to agree in connection with any matter arising out of or relating to this Agreement (except as otherwise expressly provided for in this Agreement) either Party may give a notice of the dispute to the other setting out details of the dispute (**Notice of Dispute**).
- (b) The Parties must ask their respective representatives to resolve the dispute identified in the Notice of Dispute or in clause 9(a). These persons are:

Party	Nominated Person
Faunce Investment	Peter Gribble
Development Manager	David Dessom

### 9.2 Dispute to be determined by third party

- (a) If the Parties do not settle the dispute specified in the Notice of Dispute within 10 Business Days after the Notice of Dispute is given, either Party may require the dispute to be determined by an expert in the relevant field agreed upon and appointed jointly by the Parties.
- (b) If the Parties are unable to agree on an expert within 5 Business Days after the Notice of Dispute is given, then:
- (i) if the dispute involves the legal interpretation of this Agreement or if the Parties are unable to agree whether the dispute involves legal interpretation of this Agreement either Party may apply to the President of the Bar Council of New South Wales or his or her nominee to appoint an independent Queen's or Senior Counsel to resolve the dispute or to determine whether the dispute involves legal interpretation of this Agreement (as the case may be); and



- (ii) in any other case, either Party may apply to the President for the time being of the Royal Australian Institute of Architects (NSW Chapter) or his or her nominee to appoint an expert in the relevant field who is prepared to determine the dispute.
- (c) The expert agreed upon or appointed under this clause acts as an expert and not as an arbitrator and the decision of the expert is final and binding on the Parties.
- (d) The Parties agree that the expert has no power to make any decision or determination in relation to the application of any statutory remedy or statutory damages.
- (e) Where this clause is intended to apply, no Party may commence or maintain any action relating to a dispute or difference arising out of or in relation to this Agreement until it has been referred and determined as provided in this clause. This clause does not limit the right of either Party to seek injunctive relief.
- (f) An expert may engage other consultants to advise him or her if he or she considers it necessary.
- (g) The fees of the expert (and any other consultants he or she engages) are payable as directed by the expert and in the absence of direction equally by the parties.

## 10. Termination

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### 10.1 Service of notice of default

- (a) A Party (**Non Defaulting Party**) may terminate this Agreement if:
  - (i) an Event of Default occurs in respect of the another Party (**Defaulting Party**);
  - (ii) the Non Defaulting Party serves a written notice on the Defaulting Party specifying the Event of Default and requiring the Defaulting Party to remedy the Event of Default; and
  - (iii) the Defaulting Party fails to rectify the Event of Default within a reasonable time (not being less than 10 Business Days) of receiving written notice from the Non Defaulting Party.
- (b) A Non Defaulting Party may not terminate this Agreement except under clause 10(a).

### 10.2 Complying with notice of default

If:

- (a) an Event of Default is the appointment of a Controller to a Defaulting Party; and
- (b) within 30 Business Days after the date of the Controller's appointment, the Controller **gives** notice to the other Party that it will perform the Defaulting's Party's obligations under this Agreement,

then that Event of Default will cease to be an Event of Default.

### 10.3 Rights of Parties on termination of Agreement

The termination of this Agreement under this clause 10 does not prejudice a Party's Claim against the other Party arising from a breach of this Agreement occurring before the date such termination is effected.

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## 11. Goods and Services Tax (GST)

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### 11.1 Preliminary

Words or expressions used in this clause that are defined in *A New Tax System (Goods and Services Tax) Act 1999 (GST Act)* have the same meaning given to them in that Act.

### 11.2 GST exclusive

Unless otherwise stated, any amount specified in this Agreement as the consideration payable for any taxable supply does not include any GST payable in respect of that supply.

### 11.3 Liability to pay GST

If a Party makes a taxable supply under this Agreement (**Supplier**), then the recipient of the taxable supply (**Recipient**) must also pay, in addition to the consideration for that supply, the amount of GST payable in respect of the taxable supply at the time the consideration for the taxable supply is payable.

### 11.4 Tax Invoice

Notwithstanding the foregoing, the Recipient is not obliged under this Agreement to pay the amount of any GST payable until the Supplier provides it with a valid tax invoice for the taxable supply.

### 11.5 Adjustment Event

If an adjustment event arises in relation to a taxable supply made by a Supplier under this Agreement, the amount paid or payable by the Recipient pursuant to clause 11.2 will be amended to reflect this and a payment will be made by the Recipient to the Supplier or vice versa as the case may be.

### 11.6 Reimbursement of Expenses

If a third party makes a taxable supply and this Agreement requires a party to this Agreement (the payer) to pay for, reimburse or contribute to (pay) any expense or liability incurred by the other party to that third party for that taxable supply, the amount the payer must pay will be the amount of the expense or liability plus the amount of any GST payable in respect thereof but reduced by the amount of any input tax credit to which the other party is entitled in respect of the expense or liability.

### 11.7 Non Merger

This clause does not merge on completion and will continue to apply after expiration or termination of this Agreement.

### 11.8 Compliance with Law

Compliance with a law requiring the payment of money to any Authorities rather than to a payee is not a breach of this Agreement.

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## 12. Assignment

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### 12.1 Assignment by Development Manager

The Development Manager must not transfer the whole or part of its interests in this Agreement to any third party without the consent of Faunce Investment (such consent may be withheld at the sole discretion of the Faunce Investment).

## 12.2 Assignment by Faunce Investment

If Faunce Investment wishes to sell the Land other than in accordance with a Contract for Sale to a third Party (**Incoming Party**), the Development Manager must consent to the assignment of the Faunce Investment's Parties interest in this Agreement to the Incoming Party provided the Incoming Party enters into a deed of covenant with the Development Manager to comply with the Faunce Investment's obligations under this Agreement.

## 13. Notices

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- (a) Notices under this Agreement may be signed by a Party.
- (b) Notices are effectively given if:
  - (i) delivered or posted to the other Party; or
  - (ii) sent to the facsimile number of the Party.
- (c) As at the date of this Agreement the particulars of the Parties are as follows:

### The Development Manager

Name: Faunce Developments Pty Ltd ACN 169 416 157

Address: Fairfax House, Level 5, 19-31 Pitt Street, Sydney, New South Wales,  
2000

### Faunce Investment

Name:

Address: Fairfax House, Level 5, 19-31 Pitt Street, Sydney, New South Wales, 2000

- (d) Posted notices will be treated as given 2 Business Days after posting.
- (e) Notices sent by facsimile will be treated as given when the sender obtains a clear transmission report.
- (f) Notices by a Party's solicitor to the other Party or its solicitor will be treated as given with the first party's authority.
- (g) For the purposes of Section 11 and 12 of the *Electronic Transactions Act 2000*, the Parties consent to information being given by electronic communication.

## 14. General Provisions

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### 14.1 Costs

The Costs arising out of the preparation, negotiation and signing of this Agreement will form part of the Project Costs. Any duty assessed on this Agreement is payable by the Development Manager and is a Project Cost.

### 14.2 Governing Law

This Agreement is governed by the laws of New South Wales. The Parties submit to the non-exclusive jurisdiction of courts exercising jurisdiction there.

**14.3 Further Assurances**

Each Party must take all steps, execute all documents and do everything reasonably required by the other Party to give effect to any of the transactions contemplated by this Agreement.

**14.4 Entire Agreement**

This Agreement constitutes the entire agreement between the Parties relating in any way to its subject matter. Each Party acknowledges that, in entering into this Agreement, it has not relied on any warranty, representation or other promise of any nature not contained in this Agreement.

**14.5 Variations and Waivers to be in Writing**

No variation, modification or waiver of any provision in this Agreement nor consent to any departure by a Party from a provision, will be of any effect unless it is in writing, signed by the Parties or their solicitors or (in the case of a waiver) by the Party giving it. Any variation, modification, waiver or consent will be effective only to the extent to or for which it may be made or given.

**14.6 Counterparts**

This Agreement may be signed in any number of counterparts with the same effect as if the signatures to each counterpart were on the same instrument.

**14.7 No Notice of Revocation**

Each person signing this Agreement as attorney for a Party, by so doing, promises the other party that as at the date of signing as attorney that person has not received any notice or information of the revocation of the power of attorney appointing that person.

**14.8 Authority to Sign**

Each person signing this Agreement as an authorised officer or agent of any Party by so doing promises the other Party that, as at the date of signing, he or she has full authority to sign this Agreement on behalf of that Party.

**14.9 Exchange by Fax**

The parties may exchange counterparts by facsimile.

**15. Interpretation**

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Headings are for convenience only and do not affect interpretation. In the interpretation of this Agreement, unless the context otherwise requires:

- (a) singular includes plural and vice versa;
- (b) any gender includes every gender;
- (c) where a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (d) a reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them;
- (e) unless otherwise expressed in this Agreement, clause means a clause of this Agreement;

- (f) month means calendar month;
- (g) a reference to any party to this Agreement or any other agreement or document includes the party's executors, successors and substitutes or assigns;
- (h) an agreement, representation or warranty on the part of two or more persons binds all of them;
- (i) an agreement, representation or warranty in favour of two or more persons is for the benefit of each and all of them;
- (j) reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of it;
- (k) if any date falls on a Saturday, Sunday or public holiday in New South Wales then the date will be the Business Day next following such date;
- (l) a reference to writing includes a facsimile transmission and any means of reproducing words in a tangible and permanently visible form;
- (m) if any term of this Agreement is legally unenforceable or made inapplicable, it will be severed or read down but so as to maintain (as far as possible) all other terms of this Agreement (unless to do so would change the underlying principal commercial purposes of this Agreement);
- (n) "including" and similar expressions are not words of limitation;
- (o) unless stated otherwise, one provision does not limit the effect of another; and
- (p) where the context permits, a reference to the whole includes any part. For example, the reference to a Lot includes any part of that Lot.

No rule of construction will apply to a provision of this Agreement to the disadvantage of a party merely because that party put forward the provision or would otherwise benefit from it.

Unless otherwise agreed by the Parties, all accounting matters are to be determined in accordance with sound accounting practices customary in the property development industry and generally accepted in Australia and in accordance with any rulings or requirements of the Commissioner of Taxation.

Execution

Executed as a deed in New South Wales

Executed by Faunce Investment Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):

[Handwritten signature]

Sole Director and Sole Company Secretary

Peter Gribble
(Print) Full Name DIRECTOR

Executed by Faunce Developments Pty Ltd in accordance with section 127 of the Corporations Act 2001 (Cth):

[Handwritten signature]

Sole Director and Sole Company Secretary

Peter Gribble
(Print) Full Name DIRECTOR