

DATED

14TH May 2012 ~~2009~~

BETWEEN:

**THE COUNCIL OF THE CITY OF
BOTANY BAY ("the Council")**

AND:

**TOPLACE PTY LIMITED
(ACN 135 918 491)**

DEED OF AGREEMENT

HOUSTON DEARN O'CONNOR

Solicitors

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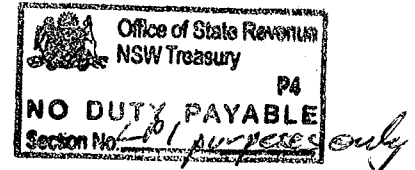
REF: SS:IM:B5488

THIS DEED made the 14TH day of May 2012 ~~2011~~

BETWEEN: THE COUNCIL OF THE CITY OF BOTANY BAY of 141 Coward Street,
Mascot in the State of New South Wales ("the Council") of the first part

AND: TOPLACE PTY LIMITED (ACN 135 918 491) of Unit 2301, 20 Porter
Street, Meadowbank in the State of New South Wales ("Toplace") of the second
part.

WHEREAS:



- A. AFT Pty Ltd is the registered owner of land situated at 214 – 220 Coward Street Mascot NSW 2020, being land comprising Lot F in Development Plan 369255 at Botany ("the subject land").
- B. Toplace intends to develop the subject land.
- C. On 15 July 2010 Toplace lodged with the Council Development Application No.10/314 seeking approval to develop the subject land by constructing on it a 13 storey mixed residential and commercial building comprising 127 residential units, two (2) Ground Floor commercial tenancies and basement level car parking for 258 vehicles.
- D. The development will result in a dedication of approximately 277 square metres for the purpose of road widening required for John Street, Mascot under the Mascot Station Precinct Development Control Plan. The proposed works include the provision of public infrastructure and amenities by Toplace.
- E. On 16 December 2010, the joint Regional Planning Panel resolved to approve Development Application No.10/314 ("Approved Development"). A copy of the approval including all conditions of consent is annexed hereto and marked with the letter "A".
- F. Prior to the joint Regional Planning Panel's determination of Development Application 10/314, Toplace proposed to enter into a voluntary planning

agreement with the Council for the purpose of carrying out work in kind for the road widening works to John Street and any street improvements to the Coward Street frontage of the subject land.

G. It was proposed by Toplace that the work in kind would not involve any drawdown on the Section 94 contributions.

H. Prior to the joint Regional Planning Panel's determination of Development Application No.10/314, it was agreed between the parties that a voluntary planning agreement would be entered into in respect of the following public works:

- Toplace dedicating approximately 227 square meters of land to Council for the purpose of the John Street road widening. The areas of the land to be dedicated shall be the full length of the John Street frontage of the subject land and shall be to a depth, which is determined by measuring from the centre line of John Street, a horizontal distance of 10 metres and as detailed in the Mascot Station Precinct development control plan.
- Toplace upgrading the public domain by construction and reconstruction of road pavement, curb and guttering, footpath, drainage system, street trees, landscaping and any associated works for all street frontages on the site ("Coward Street and John Street").
- All existing above ground service cables, including power lines, telecommunications cables and other similar services ("overhead service cables") in the streets adjacent to and within the confines of the development site shall be placed underground by Toplace.
- Existing street lights located within the footpath reserve along the entire John Street frontage of the development site shall be replaced by Toplace with new street lights.

- In replacing the existing streetlights, Toplace is to provide appropriate and suitable street lighting to a high decorative standard to the Coward Street frontage of the subject land.

- I In addition to the work referred to that at H above, Toplace also proposed to the Council, by letter dated 7 December 2010, that it agreed to enter into a further voluntary planning agreement to contribute to the works proposed for the Laycock Street road closure/pedestrian mall to the approximate value of \$300,000.00.
- J. The public works to Laycock Street are outlined in the plan annexed hereto and marked with the letter "B".
- K. This planning agreement has been publicly notified in accordance with Section 93G of the Environmental Planning & Assessment Act and Clause 25D of the Environmental Planning & Assessment Regulations.
- L. Pursuant to Section 93F of the Act, the parties hereto now enter into this voluntary planning agreement.

NOW THIS DEED WITNESSES as follows:

1. This planning agreement shall be binding on the parties hereto and upon their respective heirs, executors, transferees and assignees.
2. The provisions of clause 8 of this planning agreement do not take effect until the owners have taken up and acted upon the development approval.
3. In taking up and acting upon the development approval, Toplace must comply with all conditions of consent that are in force by virtue of the development consent or any subsequent amendment to it.
4. The rights of the Council expressly provided for herein are cumulative and in addition to and not exclusive of any rights of the Council existing at Law or which the Council would otherwise have available to it.
5. In case one or more of the provisions contained in this planning agreement shall be

invalid, illegal or unenforceable in any respect, the validity, legality or enforceability of the remaining conditions contained therein shall not thereby be affected.

6. Toplace agrees with the Council that it shall at its own expense and to the Council's satisfaction complete all works as specified in this voluntary planning agreement in a fit, proper and workmanlike manner.
7. Toplace acknowledges and agrees that it is not entitled to any reduction in the Section 94 contributions.
8. Toplace covenants and agrees that prior to the issue of any occupation certificate for this approved development it will:
 - (a) Dedicate approximately 227 square meters of land to Council for the purpose of the John Street road widening. The areas of the land to be dedicated shall be the full length of the John Street frontage of the subject land and shall be to a depth, which is determined by measuring from the centre line of John Street, a horizontal distance of 10 metres and as detailed in the Mascot Station Precinct development control plan.
 - (b) Upgrade the public domain by construction and reconstruction of road pavement, curb and guttering, footpath, drainage system, street trees, landscaping and any associated works for all street frontages on the subject land ("Coward Street and John Street").
 - (c) Place underground all existing above ground service cables, including power lines, telecommunications cables and other similar services ("overhead service cables") in the streets adjacent to and within the confines of the subject land.
 - (d) Replace with new street lights all existing street lights located within the footpath reserve along the entire John Street frontage of the subject land.
 - (e) In replacing the existing streetlights, must provide appropriate and suitable street lighting with all replacement street lighting being to a high decorative standard

to the Coward Street frontage of the subject land.

- (f) Pay to the Council the sum of \$300,000.00 (inclusive of GST) for works proposed to be conducted in relation to the Laycock Street road closure.

9. Toplace covenants and agrees with the Council that:

- a. The standards for parking and vehicle access and apartment sizes specified in Section 3.2.13 and Section 3.3.2 control C6 of Council's Development Control Plan No.35 multi unit housing and residential flat buildings are the agreed standard for development at the subject land; and
- b. Any development on the subject land pursuant to the development approval (or any modification thereof approved by the Council) shall fully comply with the requirements for parking and vehicle access and apartment sizes specified in Section 3.2.13 and Section 3.3.2 control C6 of Council's Development Control Plan No.35 multi unit housing and residential flat buildings.

10. Toplace further covenants with the Council:

- a. That prior to the issue of a Construction Certificate for the development the subject of the development approval, or within such further time as the parties hereto agree, they shall do all things reasonably necessary to obtain the consent to the registration of this planning agreement over the title to the subject land pursuant to Section 93H of the Act, from all persons who have an interest in the development site;
- b. That forthwith they shall cause this planning agreement to be registered on the title of the development site;
- c. That if this planning agreement is not registered on the title to the development site, and if Toplace should propose to sell the development site, then they shall,
- d. within seven (7) days of listing the development site for sale, either through an agent or privately, notify the Council of such an intention.

11. Toplace further covenants and agrees with the Council that pending the registration of this Planning Agreement on the title of the Development site as required by clause 10(b), the Council shall be entitled to register a caveat at Land & Property Management Authority over the title to the Development Site to protect its interest therein pursuant to this Planning Agreement.
12. Toplace shall pay the Council's reasonable solicitor/client costs of preparing this Planning Agreement and any cost to the Council of registering the Planning Agreement or caveat over the titles to the Development Site. Should it be necessary for the Council to consent to the registration of any lease, mortgage, consolidation of title, strata plan or other document as a result of a caveat being registered on the titles to the Development Site Toplace shall pay the Council's reasonable solicitor/client costs of providing the Council's consent to such registration. Toplace shall also pay the Council's reasonable costs of preparing any substitute Planning Agreement between the Council and any incoming purchaser, assignee or transferee of the Development Site. The Council must give Toplace a tax invoice for any amount payable to Toplace under this clause.
13. Should Toplace be in breach of any terms of this Planning Agreement, and not rectify the default within twenty one (21) days of receiving notice from the Council to do so (except if a delay in rectification is likely to cause irremediable damage or prejudice to the Council, in which case no notice is required) the Council shall be entitled, at its option, to enforce by way of injunctive relief in the Supreme Court any provisions of this Planning Agreement which have been breached, or to seek damages or seek to enforce the provisions of any development consent which relate to the Development Site whether by way of order under Section 121B of the Act, or Class 4 proceedings in the Land and Environment Court, or otherwise.
14. Any amendment or variation to this Planning Agreement is not effective unless it is in writing and signed by both parties.

15. The explanatory note put on exhibition with this Planning Agreement is not to be used in construing the terms of this Planning Agreement.
16. In the event of any disagreement between the parties hereto arising out the provisions of this Planning Agreement, and if the parties are unable within a reasonable time to resolve such disagreement amicably, either party may serve notice on the other requiring the matter to be referred to a conciliation by a single conciliator at the Australian Commercial Disputes Centre Limited in Sydney. The parties shall thereafter in good faith seek to resolve the matter through conciliation and the parties shall equally bear the cost of such conciliation. The parties must keep confidential and must not to disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
 - (a) views expressed or proposals or suggestions made by a party, an expert or the conciliator during the conciliation relating to a possible settlement of the dispute;
 - (b) admissions or concessions made by a party during the conciliation in relation to the dispute; and
 - (c) information, documents or other material, including any confidential information, concerning the dispute which are disclosed by a party during the conciliation unless such information, documents or facts would have been otherwise discoverable in judicial or arbitral proceedings.
17. Toplace shall do all things necessary to ensure that it complies with its obligations hereunder and shall do all things reasonably necessary to ensure that any occupier or subsequent occupier of the subject land and any purchaser or other successor in title over the subject land, shall comply with the obligations hereunder.
18. (a) All words in this clause which are also defined in the A New Tax System

(Goods and Services Tax) Act 1999 (Cth) ("the GST Act") have a corresponding meaning to that in the GST Act

- (b) the consideration for any supply under this Planning Agreement includes GST;
- (c) where a party to this Planning Agreement is taken to have made a supply to another party, the recipient of that supply must, in addition to the consideration payable for the supply and when paying the consideration for the supply, also pay to the maker of the supply an amount equal to the GST payable in respect of that supply. The recipient of a supply must also pay the GST payable in respect of a supply for which no monetary consideration is payable when the maker of the supply demands payment;
- (d) the maker of a supply must give the recipient a tax invoice in the form required by the GST Act at the same time it receives payment from the recipient of the GST payable for that supply;
- (e) despite any other provision of this Agreement, any amount payable under this Agreement, which is calculated by reference to an amount paid or incurred by a party to this Planning Agreement, is reduced by the amount of any input tax credit to which that party or a member of its GST Group is entitled in respect of that amount.

IN WITNESS WHEREOF the parties have set their hands and seals on the day first hereinbefore written.

Executed as a deed on behalf of **BOTANY**)
BAY CITY COUNCIL by its General)
Manager pursuant to Section 683 of the)
Local Government Act, 1993 in the)
Presence of:)



General Manager

LARA KIRCHNER



ROGER J DOWSON

DIAGRAM

Witness

EXECUTED by TOPLACE PTY LIMITED
(ACN 135 918 491) in the presence of:



Sole Director
JEAN NASSIF

Witness

NICHOLAS KRISIS
55 BENELOUX ROAD
CREMORNE NSW 2090

REGISTERED
28/5/2012
BK 4632 NO 664

