

Instrument setting out terms of Easements or Profits a Prendre intended to be created or released and of Restrictions on the Use Of Land or Positive Covenants intended to be created pursuant to Section 88B of the Conveyancing Act 1919

(Sheet 1 of 14 Sheets)

Plan: Plan of subdivision of Lot 101 in Deposited Plan [] covered by Subdivision Certificate No.

Full name and address of the owner of the land **Abacus Group Holdings Limited**
ACN 080 604 619
 Level 34, 264-278 George Street
 SYDNEY NSW 2000

Part 1 (Creation)

Number of item shown in the intention panel on the Plan	Identity of the easement, profit a prendre, restriction or positive covenant to be created and referred to in the Plan	Burdened Lot(s) or parcel(s)	Benefited Lot(s), road(s), bodies or Prescribed Authorities
1.	Easement for support and shelter (whole lot)	102 103	103 102
2.	Easement for services (whole lot)	102 103	103 102
3.	Easement for services (whole lot) (S)	102	103
4.	Easement for access variable width limited in stratum (W)	103	102
5.	Easement for garbage room variable width limited in stratum (Y)	102	103
6.	Easement for grease arrestor variable width limited in stratum (Z)	102	103
7.	Easement for fire egress variable width limited in stratum (V)	103	102
8.	Easement for access variable width limited in stratum (K)	102	103
9.	Easement for trade exhaust variable width limited in stratum (L)	102	103
10.	Restriction on use variable width (R)	103	102
11.	Restriction on use (RU)	102	Inner West Council
12.	Positive covenant (PC)	102	Inner West Council
13.	Restriction on use (whole lot).	103	102

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14.	Easement for letterboxes and intercom variable width limited in stratum (X)	103	102
15.	Easement for footway and vehicles variable width limited in stratum (K1)	103	102

Part 1A (Release)

Number of item shown in the intention panel on the Plan	Identity of the easement or profit a prendre to be released and referred to in the Plan	Burdened Lot(s) or parcel(s)	Benefited Lot(s), road(s), bodies or Prescribed Authorities
1.	Easement for air fifteenthly referred to in Deposited Plan 1222372	100/1222372	103

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PART 2 (Terms)

DEFINITIONS

Where an easement, restriction or other right referred to in this Instrument is limited or partly limited in stratum, it is limited in stratum to the reduced levels on Australian Height Datum shown on the plan.

For the purpose of this Instrument, the following words have the following meanings unless the contrary intention appears:

- (a) **Authorised User** means every person authorised by the Grantee for the purposes of any easement created by this Instrument and includes, but is not limited to, the Grantee's Employees.
- (b) **Grantee** means every person who is at any time entitled to an estate or interest in possession in the benefited lot, or any part of it with which the right shall be capable of enjoyment.
- (c) **Grantor** means the registered proprietor for the time being of the burdened lot or any part of it (as applicable).
- (d) **Grantor's Employees** means the employees, servants, agents and contractors of the Grantor.
- (e) **Grease Arrestor** means the grease arrestor situated on Lot 102.
- (f) **Instrument** means this section 88B Instrument.
- (g) **Plan** means the plan of subdivision to which this Instrument relates.
- (h) **Services** includes the supply of water, gas, electricity, telephone, cable television, fibre-optic and other data services, chilled water and the discharge of trade exhaust air, sewage, sullage and other fluid wastes, all by means of pipes, vents, shafts, wires, cables or conduits.

1. TERMS OF THE EASEMENT FOR SUPPORT AND SHELTER (WHOLE LOT) NUMBERED ONE IN THE PLAN

An easement for support and shelter on the terms set out in section 196K of the *Conveyancing Act 1919*.

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2. TERMS OF THE EASEMENT FOR SERVICES (WHOLE LOT) NUMBERED TWO IN THE PLAN

An easement for services on the terms specified in Schedule 8B of the *Conveyancing Act 1919*.

3. TERMS OF THE EASEMENT FOR SERVICES (S) NUMBERED THREE IN THE PLAN

An easement for services on the terms specified in Schedule 8B of the *Conveyancing Act 1919*.

4. TERMS OF THE EASEMENT FOR ACCESS VARIABLE WIDTH LIMITED IN STRATUM (W) NUMBERED FOUR IN THE PLAN

Full and free but non-exclusive right for the Grantee and Authorised Users to go, pass and repass on foot or using a mobility assistance device (such as a wheelchair or motorised mobility scooter) but without road vehicles at all times and for all purposes to and from the benefited lot or any part of it.

5. TERMS OF THE EASEMENT FOR GARBAGE ROOM VARIABLE WIDTH LIMITED IN STRATUM (Y) NUMBERED FIVE IN THE PLAN

The Grantee and Authorised Users:

- (a) may cause garbage and waste generated on the lot benefited to be stored in garbage bins in the room comprising the site of this easement;
- (b) must ensure that:
 - (i) garbage and waste (other than recyclable materials) are drained and securely wrapped before being placed in a garbage bin allocated for garbage;
 - (ii) recyclable materials are cleaned and emptied, but not bagged, before being placed in a garbage bin allocated for recyclable materials;
 - (iii) they comply with any applicable waste and recycling guidelines;

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- (iv) bottles are drained and cleaned and not broken before placing them in a garbage container designated for that purpose and that bottles, glass or liquids are not deposited in a garbage bin; and
- (v) no items are placed in a garbage bin such that the lid of the garbage bin cannot be securely closed.

5.2 An Authorised User must immediately clean up any spillage of waste, garbage or recyclable material caused by them.

5.3 The Grantee at its cost must:

- (a) cause the garbage bins in the room comprising the site of this easement to be emptied daily; and
- (b) cause the room comprising the site of this easement to be kept clean.

6. TERMS OF THE EASEMENT FOR GREASE ARRESTOR VARIABLE WIDTH LIMITED IN STRATUM (Z) NUMBERED SIX IN THE PLAN

6.1 The Grantee and Authorised Users:

- (a) may cause the drainage systems installed on the benefited lot to be connected to the Grease Arrestor;
- (b) may obtain access to the Grease Arrestor for the purposes of emptying, cleaning, inspecting, maintaining and repairing it;
- (c) must comply with all:
 - (i) applicable laws and standards,
 - (ii) requirements of Sydney Water, and
 - (iii) manufacturer's recommendations,regarding the use and operation of the Grease Arrestor;

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(d) must not cause anything to be introduced to any drainage system connected to the Grease Arrestor which causes or is likely to cause the Grease Arrestor to malfunction or to become blocked.

6.2 The Grantee must at its cost cause the Grease Arrestor to be emptied, cleaned, inspected, repaired and maintained so as to ensure its continuous operation in accordance with all:

- (i) applicable laws and standards,
- (ii) requirements of Sydney Water, and
- (iii) manufacturer's recommendations.

7. TERMS OF THE EASEMENT FOR FIRE EGRESS VARIABLE WIDTH LIMITED IN STRATUM (V) NUMBERED SEVEN IN THE PLAN

7.1 The Grantee and Authorised Users may go, pass and repass within the site of this easement by foot only for the purpose of egressing the benefited lot:

- (a) in an emergency; or
- (b) for fire drill purposes;
- (c) if the lifts in the benefited lot are not operational or are otherwise unavailable.

7.2 In exercising the right granted under this easement, the Grantee and Authorised Users must:

- (a) cause as little inconvenience as is practicable to the Grantor and any occupier of the burdened lot; and
- (b) cause as little damage as is practicable to the burdened lot and any improvements on it.

8. TERMS OF THE EASEMENT FOR ACCESS VARIABLE WIDTH LIMITED IN STRATUM (K) NUMBERED EIGHT IN THE PLAN

Full and free but non-exclusive right for the Grantee and Authorised Users to go, pass and repass on foot or using a mobility assistance device (such as a wheelchair

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or motorised mobility scooter) but without road vehicles at all times and for all purposes to and from the benefited lot or any part of it.

9. TERMS OF EASEMENT FOR TRADE EXHAUST VARIABLE WIDTH LIMITED IN STRATUM (L) NUMBERED NINE IN THE PLAN

9.1 The Grantee and Authorised Users:

- (a) may use all flues and shafts within the site of this easement for the discharge of exhaust air from the benefited lot;
- (b) may obtain access to the site of all inspection hatches forming part of those flues or shafts for the purposes of cleaning, inspecting, maintaining and repairing them;
- (c) must comply with all applicable laws and standards regarding the of the flues and shafts; and
- (d) must not cause anything to be introduced to any flues and shafts which causes or is likely to cause them to malfunction or to become blocked.

9.2 The Grantee must at its cost cause the flues and shafts within the site of this easement to be cleaned, inspected, repaired and maintained so as to ensure their continuous operation in accordance with all applicable laws and standards.

10. TERMS OF THE RESTRICTION ON USE VARIABLE WIDTH (R) NUMBERED TEN IN THE PLAN

The Grantor must:

- (a) not place any fixed or moveable items on the site of this restriction on use; and
- (b) at the Grantor's cost cause any items placed or left on the site of this restriction on use to be removed promptly.

11. TERMS OF RESTRICTION ON USE (RU) NUMBERED ELEVEN IN THE PLAN

The Grantor covenants as follows with the Council in respect to the structure erected on the land described as "On Site Stormwater Detention System" (which expression includes all ancillary gutters, pipes, drains, walls, kerbs, pits, grates, tanks, chambers, basins and surfaces designed to temporarily detain stormwater) as

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described by the plan [TBA] of the Council Development Consent No. 10.2013.114 [TBC] and the conditions of such consent.

The Grantor shall not:

- (a) do any act, matter or thing which would prevent the structure and works from operating in an efficient manner;
- (b) make any alterations or additions to the structure and works or allow any development within the meaning of the Environmental Planning and Assessment Act 1979 to encroach upon the structure and works without the express written consent of the Council.

This covenant shall bind all persons who claim under the Grantor as stipulated in section 88E (5) of the Conveyancing Act, 1919.

Authorised employees of the Council are to be allowed access for inspection upon reasonable notice. The Grantor is to comply with any notices issued by the Council regarding rectification or maintenance works to be carried out for compliance.

In the event of the Grantor not complying with the notice, the Council or its authorised agents may enter and carry out the specified work, and recover the costs due.

In this restriction on use:

1. Council means the Inner West Council
2. Act means the Conveyancing Act 1919.

Name of authority empowered to release, vary or modify this Restriction:

Inner West Council.

12. TERMS OF POSITIVE COVENANT (PC) NUMBERED TWELVE IN THE PLAN

The Grantor covenants with the Council that it will maintain and repair the structure and works on the land in accordance with the following terms and conditions:

12.1 The Grantor will:

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- (a) keep the structure and works clean and free from silt, rubbish and debris;
- (b) maintain and repair at the sole expense of the Grantor the whole of the structure and works so that it functions in a safe and efficient manner;
- (c) maintain the structure and works in accordance with the following schedule:

Insert "maintenance schedule" from Engineer here.

- 12.2 For the purpose of ensuring observance of the covenant the Council may by its servants or agents at any reasonable time of the day upon giving to the person against whom the covenant is enforceable not less than two days' notice (but at any time without notice in the case of an emergency) enter the land and view the condition of the land and the state of construction maintenance or repair of the structure and works on the land.
- 12.3 By written notice the Council may require the Grantor to attend to any matter and to carry out such work within such time as the Council may require to ensure the proper and efficient performance of the; structure and works and that extent section 88F(2) (a) of the Act is hereby agreed to be amended accordingly.
- 12.4 Pursuant to section 88F (3) of the Act the Council shall have the following additional powers pursuant to this covenant:
- (a) In the event that the Grantor fails to comply with the terms of any written notice issued by the Council as set out above the Council or its authorised agents may enter the land with all necessary equipment and carry out any work which the Council in its discretion considers reasonable to comply with the said notice referred to in clause 12.3.
 - (b) The Council may recover from the Grantor in a Court of competent jurisdiction:
 - (i) any expense reasonable incurred by it in exercising its powers under sub-paragraph (a) hereof. Such expense shall include reasonable wages for the Council's own employees engaged in effecting the said work, supervising the said work and administering the said work together with costs, reasonably estimated by the Council, for the use of machinery, tools and equipment in conjunction with the said work;

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- (ii) legal costs on an indemnity basis for issue of the said notices and recovery of the said costs and expenses together with the costs and expenses of registration of a covenant charge pursuant to section 88F of the Act or providing any certificate required pursuant to section 88G of the Act or obtaining any injunction pursuant to section 88H of the Act.

12.5 This covenant shall bind all persons who claim under the Grantor as stipulated in section 88E(5) of the Act.

For the purposes of this covenant:

The stormwater surface flow path defined by drawing TBC dated TBC shall not be obstructed nor have the finished ground and/or pavement levels within the defined area modified in whole or in part without written approval of the Council.

It shall be the responsibility of the Grantor to ensure the stormwater surface flow path is kept unobstructed by fences or any physical structures or barriers (whether temporary or not) at all times.

In this covenant:

1. "Structure and works" means the on-site stormwater detention system constructed on the land as detailed on the Plan No. dated (Council's File Ref: .) including all gutters, pipes, drains walls, kerbs, pits, grates, tanks, chambers, basins, and surfaces designed to temporarily detain stormwater on the land.
2. The Act means the Conveyancing Act 1919.
3. Council means Inner West Council.

Name of authority empowered to release, vary or modify this Positive covenant:

Inner West Council.

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13. TERMS OF RESTRICTION ON USE (WHOLE LOT) NUMBERED THIRTEEN IN THE PLAN

The owner or occupier of the burdened lot or any part of it must not use or permit the burdened lot or that part to be used other than as a restaurant or café or for uses ancillary to a restaurant or café and in particular must not use or permit the burdened lot or that part to be used for any purpose referred to in this restriction on use regardless of whether that purpose is the primary purpose for which the burdened lot is used or is merely ancillary to another purpose:

- (a) **Adult Use:** as a brothel, massage parlour, strip club, for the provision of entertainment of an "adult" or "erotic" nature, for the sale of "adult" or "restricted" products and/or publications, as a "lingerie style" restaurant;
- (b) **Convenience store:** as a grocery shop, mixed business or convenience store;
- (c) **Discount Store:** as a disposal store, bargain or discount store;
- (d) **Entertainment:** as an Internet café, an amusement hall, video games parlour, pool hall or gaming centre;
- (e) **Colleges:** as a college or training institute providing on-site training (for example and without limitation, language education, coaching of high school or university students, sales training);
- (f) **Public Utility Customer Service:** as the office of a public utility or other public organisation where a substantial part of the intended or actual use includes the provision of customer service or accounts paying facilities to customers or members of the public who attend the burdened lot for that purpose (provided that this does not prohibit incidental visits by customers or the public, including for such purposes);
- (g) **Moneylending, etc.:** as the office or shop of a moneylender, pawnbroker, "cash converter" or similar business (not including the office of a bank, building society or credit union);
- (h) **Gymnasium:** as a gymnasium or fitness centre; and
- (i) **Other:** any noxious, noisome, noisy or other use likely to cause a nuisance or unreasonable disturbance to owners or occupiers of any other lot and any

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other use which does or is likely to have a material adverse affect on the value of any other lot or lots within the building (for example and without limitation, a use which involves or may involve significant levels of visitor traffic to the lot or other than incidental staff traffic outside normal business hours).

14. TERMS OF THE EASEMENT FOR LETTERBOXES AND INTERCOM VARIABLE WIDTH LIMITED IN STRATUM (X) NUMBERED FOURTEEN IN THE PLAN

14.1 The Grantee may:

- (a) cause such letterboxes as are necessary to service the residential apartments situated on the benefited lot to be erected and maintained in the site of this easement;
- (b) allocate letterboxes for the use of the occupiers of residential apartments in the benefited lot; and
- (c) install and operate within the site of this easement an intercom panel to control access to the benefited lot.

14.2 Authorised Users:

- (a) may use the letterbox allocated to them by the Grantee for the delivery of mail items capable of fitting in it, and
- (b) must cause the letterbox allocated to them by the Grantee to be cleared regularly.

15. TERMS OF THE EASEMENT FOR FOOTWAY AND VEHICLES VARIABLE WIDTH LIMITED IN STRATUM (K1) NUMBERED FIFTEEN IN THE PLAN

15.1 The Grantee and Authorised Users may:

- (a) go, pass and repass within the site of this easement by foot for the purposes of:
 - (i) inspecting, cleaning, maintaining and repairing the grease arrestor in stalled beneath the site of this easement,

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- (ii) unloading and loading vehicles making deliveries to or collections from the benefited lot;
- (b) cause or permit, subject to clause 15.2, vehicles to stand on the site of this easement while being loaded or unloaded in the course of making deliveries to or collections from the benefited lot.

15.2 The Grantee and Authorised Users must not:

- (a) cause or permit vehicles to:
 - (i) stand on the site of this easement for any longer than is reasonably necessary to complete deliveries to or collections from the benefited lot, or
 - (ii) be parked on the site of this easement or on any other part of the burdened lot, or
- (b) store or leave anything on the site of this easement.

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EXECUTED by Abacus Group Holdings Limited

ACN ACN 080 604 619 by its attorney pursuant to
Power of Attorney dated 18 September 2014
registered Book 4601 No. 849
who states that he/she has received no notice
of revocation of the Power of Attorney,
in the presence of:

.....
Signature of witness
Name of witness (*please print*)

.....
Signature of Attorney
Name & Title of Attorney (*please print*)

EXECUTED by ANZ Fiduciary Services Pty Limited
ACN 100 709 493
(mortgagee under mortgage no. AD896236)

EXECUTED by Inner West Council