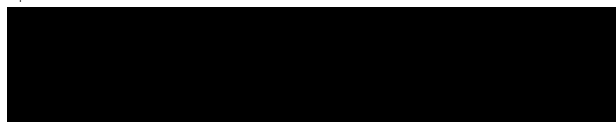

Deed of Variation

Bayside Council ABN 80 690 785 443

and

JQZ Nine Pty Ltd ACN 167 994 167 as trustee for the JQZ Nine Unit Trust ABN 26 431 817 599



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Deed of Variation

Agreement dated **1st March**

2019

Parties

Bayside Council	Name	Bayside Council
	Address	444-446 Princes Highway, Rockdale NSW 2216
JQZ	Name	JQZ Nine Pty Limited as trustee for the JQZ Nine Unit Trust
	ACN	167 994 167
	Trust ABN	26 431 817 599
	Address	Retail 24 & 25, 1 Nipper Street, Homebush NSW 2140

Background

- A. Bayside Council and JQZ are parties to the Principal Document.
- B. The parties by mutual agreement wish to amend the Principal Document in accordance with the provisions of this Deed, the *Environmental Planning & Assessment Act 1979* and the *Environmental Planning and Assessment Regulation 2000*.

OPERATIVE PROVISIONS

1. Definitions and Interpretation

1.1 Definitions

The following definitions apply in this document.

Effective Date means the date of this Deed; and

Principal Document means the Planning Agreement dated 9 May 2016 between Land & Portfolio Pty Ltd (ABN 32 004 241 406) and DLN Pty Ltd (ABN 85 000 030 419) and the predecessor of Bayside Council and registered on Lot 2 in DP405531, Lot 22 DP 620329, Lot 2 DP838198, Lot 1 DP 599502, Lot 1 DP 1144981 and Lot 1 DP666138 under dealing number AK481288 including the Deed of Novation between Bayside Council, Land & Portfolio Pty Ltd and JQZ dated 15 December 2016.

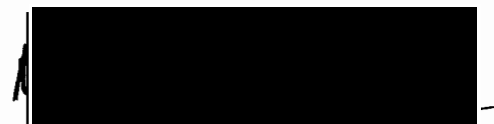
1.2 Terms defined in the Principal Document

Capitalised terms not otherwise defined in this Deed will have the same meaning as in the Principal Document.

1.3 Interpretation

In this Deed, headings and underlining are for convenience only and do not affect the interpretation of this Deed and, unless the context otherwise requires:

- (a) words importing the singular include the plural and vice versa;
- (b) words importing a gender include any gender;
- (c) an expression importing a natural person includes any company, partnership, joint venture, association, corporation or other body corporation and any government agency;
- (d) a reference to any thing (including, but not limited to, any right) includes a part of that thing;
- (e) a reference to a part, clause, party, annexure, exhibit or schedule is a reference to part, clause, annexure, exhibit or schedule to this Deed;
- (f) a reference to this Deed includes a reference to any annexure, exhibit or schedule to this Deed;
- (g) a reference to a statute, regulation, proclamation, ordinance or by-law includes all statutes, regulations, proclamations, ordinances or by-laws amending, consolidating or replacing it, and a reference to a statute includes all regulations, proclamations, ordinances and by-laws issued under that statute;
- (h) a reference to a document includes all amendments or supplements to, or replacements or novations of, that document;
- (i) a reference to a party includes that party's nominees, successors and permitted assigns and the legal personal representative of that party;



- (j) no provision of this Deed will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Deed or that provision;
- (k) an easement or agreement on the part of two or more persons binds them jointly and severally;
- (l) claim includes any claim, demand, request, requisition, notice, direction, allegation, action, proceeding, damage or judgment arising in any manner and at any time, and whether present, immediate, unascertained, future or contingent;
- (m) cost includes any cost, charge, expense, disbursement, fee, commission, outgoing, premium, tax, levy, fine, penalty or loss incurred at any time, whether directly or indirectly;
- (n) default includes any default, breach, non-performance, non-compliance or repudiation;
- (o) liability includes any liability or obligation of any nature, whether present, prospective or contingent; and
- (p) loss means any loss, cost, damage or liability.

1.4 Business Day

Where the day on or by which any thing is to be done is not a Business Day, that thing must be done on or by the next following Business Day.

1.5 Liability

Any agreement in this Deed by two or more persons named as the same separate party to this Deed is a joint and several liability of each named person.

2. Amendments to Principal Document

The Principal Document is amended in accordance with the **Schedule 1** to this Deed effective as of the Effective Date.

3. Costs

JQZ agrees to pay the Council's reasonable costs in relation to:

- (a) the negotiation, preparation, execution, performance, amendment or registration of this Deed, or any notice given or made; and
- (b) the performance of any action by that party in compliance with any liability arising,

under this Deed, or any agreement or document executed or effected under this Deed, unless this Deed provides otherwise.

4. Governing Law and Jurisdiction

4.1 Governing Law

This Deed is governed by and construed under the law in the State of New South Wales.

4.2 Jurisdiction

Any claim in relation to this Deed against any party or its property may be brought in any court of competent jurisdiction in the State of New South Wales.

4.3 Submission

Each party by execution of this Deed irrevocably, generally and unconditionally submits to the non-exclusive jurisdiction of any court specified in this provision in relation to both itself and its property.

5. General

5.1 Further assurance

The parties must do all things and sign all documents necessary to give effect to the provisions of this Deed.

5.2 Amendments

Any amendment of this Deed has no force or effect, unless effected by a document executed by the parties.

5.3 Third Parties

This Deed confers rights only upon a person expressed to be a party, and not upon any other person.

5.4 Continuing Performance

- (a) The provisions of this Deed do not merge with any action performed or document executed by any party for the purposes of performance of this Deed.
- (b) Any representation or warranty in this Deed survives the execution of any document for the purposes of, and continues subsequent to, performance of this Deed.
- (c) Any indemnity agreed by any party:
 - (i) constitutes a liability of that party separate and independent from any other liability of that party under this Deed or any other Deed; and
 - (ii) survives and continues subsequent to performance of this Deed

5.5 Waivers

Any failure or delay by any party to exercise any right under this Deed does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

5.6 Remedies

The rights of a party under this Deed are cumulative and not exclusive of any rights provided by law.

5.7 Severability

Any provision of this Deed which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Deed or the validity of that provision in any other jurisdiction.

5.8 Counterparts

This Deed may be executed in any number of counterparts, all of which taken together are deemed to constitute one and the same document.

5.9 Trustee Limitation of Liability

- (a) It is agreed and acknowledged that JQZ enters into this Deed only in its capacity as trustee of JQZ Nine Unit Trust (**Trust**) and in no other capacity. A liability arising under or in connection with this deed is limited to and can be enforced against JQZ only to the extent to which it can be satisfied out of property of the Trust and out of which JQZ is actually indemnified for the liability. The limitation of JQZ 's liability applies despite any other provisions of this agreement and extends to all liabilities and obligations of JQZ in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this agreement.
- (b) It is agreed and acknowledged that JQZ may not be sued in any capacity other than as trustee of the Trust, including to seek the appointment of a receiver (except in relation to property of the Trust), a liquidator, an administrator or any similar person to JQZ or prove in any liquidation, administration or arrangement of or affecting JQZ (except in relation to property of the Trust).
- (c) These provisions shall not apply to any obligation or liability of JQZ to the extent that it is not satisfied because under the constitution establishing the Trust or by operation of law there is a reduction on the extent of JQZ 's indemnification out of the assets of the Trust, as a result of JQZ 's fraud, gross negligence or breach of trust.

5.10 Registration of this Deed

- (a) As contemplated by s7.6 of the Act, the Developer agrees to lodge this Deed for registration under the *Real Property Act 1900* on the relevant folios of the Register for all of the Land, within 1 month of the date of this Deed, and to do all things required to procure registration as soon as practicable thereafter.
- (b) The Developer shall provide to Council a copy of the relevant folios of the Register within 20 Business Days after the date of registration of this Deed.

Schedule 1

The Principal Document is amended and varied as follows:

1. Clause 1.1.2: the words:

"Deed means this document, including any schedule or annexure to it, signed by the parties"

are to be deleted and replaced with:

"Deed means this document, including any schedule or annexure to it, and any variation of it from time to time"

2. Clause 1.1.6 (a): the number:

"1200"

is to be deleted and replaced with the number

"1000"

3. Clause 1.1.6(b) the words

"(subject to a capped Fit-Out Value pursuant to clause 3.4 of Schedule 3)"

are to be deleted and replaced with:

"and Schedule 3"

4. Clause 1.1.15: this clause is deleted and replaced with:

"Developer means the registered proprietor of the Land, which at the date of this Deed is JQZ Nine Pty Ltd ACN 167 994 167 as trustee for the JQZ Nine Unit Trust ABN 26 431 817 599"

5. Clause 8.4.1: In subparagraph (a), after the words "Development Contribution", insert the words:

", except for the Child Care Centre Works (which to avoid doubt, may be completed after this Deed has been removed from the relevant folio of the Register)"

6. Clause 22: Clause 22.3 is to be deleted and replaced with:

"Subject to clause 22.5, Council must return all Bank Guarantees provided by the Developer to Council as soon as practicable following the transfer of the title to the Child Care Centre Land to Council pursuant to clause 5.2 of Schedule 3"

7. Clause 22: Insert new clauses 22.5, 22.6, 22.7 and 22.8 which state:

"22.5 In the event the Council is to return the Bank Guarantees to the Developer pursuant to clause 22.3 prior to the completion of the Child Care Centre Works, the Developer must provide Council with the following prior to the return of the Bank Guarantees:

22.5.1 a real property mortgage, in registrable form, over six (6) unencumbered residential strata lots from the Development Site (as selected by the Developer)(the **Real Property Security**);

22.6 The Real Property Security provided by the Developer is to be held by Council:

22.6.1 as security for the Developer's obligation to complete the Child Care Centre Works; and

22.6.23 as the Rectification Security.

22.7 Council must immediately release the Real Property Security and return the associated certificates of title (including the right to deal with such titles) to the Developer within three (3) days of the later of:

22.5.3 completion and Hand-Over of the Child Care Centre Works in accordance with the terms of this Deed; and

22.5.4 the end of the First Defects Liability Period;

22.8 Council acknowledges and agrees that:

22.8.1 at any time after the Child Care Centre Works have been Handed-Over, the Developer may request the Real Property Security be reduced to represent a value equal to the Security required for any Item of Work not yet Handed-Over, plus the Rectification Security;

22.8.2 it must accept a replacement Security (such as a bank guarantee) at any time the Developer requests the Council release the Real Property Security, provided the Council is provided with the replacement Security before it releases the Real Property Security."

8. Schedule 3, Clause 1, Part A, Item D (Scarborough Park South (and environs) Contribution), Column 4: the words:

"Works contribution: Prior to the issue of the first occupation certificate for the 300th residential dwelling on the Development Site."

are to be deleted and replace with the words:

"Works contribution: Prior to the issue of the Occupation Certificate for the Child Care Centre."

9. Schedule 3, Clause 1, Part A, Item E (Playground Contribution), Column 4: the words:

"Prior to the issue of an occupation certificate for the 150th residential dwelling on the Development Site."

are to be deleted and replace with the words:

"Prior to the issue of the Occupation Certificate for the Child Care Centre."

10. Schedule 3, Clause 1, Part B, Item F (Production Lane Works), Column 2: the words:

*"Alternatively, Council may direct the Developer in writing to provide a monetary contribution equivalent to the Contribution Value, for the purposes of Council carrying out the Production Lane Works (**Production Lane Direction**)."*

are to be deleted and replace with the words:

"Alternatively, Council may direct the Developer in writing to provide a monetary contribution equivalent to the Contribution Value for the purposes of Council carrying out, at the Council's absolute discretion:

(a) the Production Lane Works; or

(b) the Works in Part A, Item D (Scarborough Park South (and environs) Contribution), Column 2 being works to create shared footpaths and cycleways in Scarborough Park South, Leo Smith Reserve, Hawthorn St Reserve and Tonbridge Reserve with priority being given to works on Scarborough Park South."

(Production Lane Direction)."

11. Schedule 3, Clause 1, Part B, Item G (Child Care Centre Works), Column 2: the words:

"(to a value no greater than the Fit-Out Value)"

are to be deleted.

12. Schedule 3, Clause 1, Part B, Item G (Child Care Centre Works), Column 3: the words:

"\$1.5m (Fit-Out Value)"

are to be deleted and replaced with the words

"\$2.29m (Fit-Out Value)"

13. Schedule 3, Clause 1, Part B, Item G (Child Care Centre Works), Column 4: the words:

"to be completed prior to the issue of an occupation certificate for the 350th residential dwelling on the Development Site"

are to be deleted and replaced with the words

"to be completed eighteen (18) months after the later of the date: 1. The Child Care Centre is granted Development Consent; and 2. Council provides its final written approval to the Child Care Centre Specification."

14. Schedule 3, Clause 1, Part C, Item H (Child Care Centre Land Dedication), Column 2: the number:

"1200"

is to be deleted and replaced with the number

"1000"

15. Schedule 3, Clause 3.4: the heading

"Capping of Child Care Centre Works costs"

is deleted and replaced with:

"Child Care Centre Works"

16. Schedule 3, Clause 3.4.1: This clause is to be deleted.

17. Schedule 3, Clause 3.4.2: This clause is to be deleted.

18. Schedule 3, Clause 3.4.3: This clause is to be deleted.
19. Schedule 3, Clause 3: insert a new sub-clause 3.4.1 which states:
- Subject to Council approval of the detailed design and specification for any Item of Work under clause 2 of Schedule 4 in relation to the Child Care Centre Works, and any legislative requirements, the parties acknowledge and agree that the Developer will have discretion over the product brands, specifications, and construction methodologies of the Child Care Centre Works and items contained within the Child Care Centre Specifications.*
20. Schedule 3, Clause 3: insert a new clause 3.4.2 which states:
- The parties acknowledge and agree that the architectural floor plans in Schedule 5 form part of the Child Care Centre Specification and are the drawings to be assessed by Council as part of the Development Application for the Child Care Centre Works (the Child Care Plans). Any changes to the Child Care Plans directed by Council:*
- 3.4.2.1 *in its capacity as consent authority under the Legislation, which are required solely to satisfy legislative and planning requirements are to be at the cost of, and paid by, the Developer;*
- 3.4.2.2 *which are other than those detailed in clause 3.4.2.1 (including to increase the amenities or floorspace or change the Child Care Centre Specifications) and which cause an increase in the construction costs by more than \$50,000.00 in aggregate, are to be at the cost of, and paid by, Council.*
21. Schedule 3, Clause 3: insert a new clause 3.4.3 which states:
- The parties acknowledge and agree that all construction risk relating to the Child Care Centre Works is to be borne by the Developer, and that the Council will not be responsible for the cost of any latent conditions or construction delays incurred during the delivery of the Child Care Centre Works.*
22. Schedule 3, Clause 3: insert a new clause 3.5 which states:
- 3.5 Access to Child Care Centre Land and performance of Child Care Centre Works**
- 3.5.1 *In the event the Child Care Centre Land is dedicated to Council prior to the completion of the Child Care Centre Works, Council must permit the Developer, at its own risk, to enter the Child Care Centre Land to enable the Developer to complete the Child Care Centre Works.*
- 3.5.2 *Council must promptly do all things reasonably practicable to assist the Developer to obtain any necessary Approval from the requisite authority for the Child Care Centre Works, including:*
- a) *for the operation of the Child Care Centre by Council (including any service approval); and*
- b) *to obtain an occupation certificate for the Child Care Centre.*
- 3.5.2 *Nothing in this Deed creates or gives the Developer any estate or interest in the Child Care Centre Land after it has been dedicated to Council."*
23. Schedule 4, clause 14.1.15: the words:

"Security Amount means the total of all amounts specified in Column 3 of Part B of the Table in clause 1 of Schedule 3, adjusted annually in accordance with clause 2 of Schedule 3"

are to be deleted and replaced with:

"Security Amount means \$1,870,000.00 (consisting of \$370,000 for the Production Lane Works, and \$1,500,000.00 for the Child Care Centre Works)"

24. Schedule 5: the architectural floor plans in Annexure A of this Deed are to be inserted at the end of Schedule 5. The parties agree that the architectural floor plans form part of the Child Care Centre Specification.

Annexure A – Architectural Plans (which form part of the Child Care Centre Specification).



EXECUTED as a deed

EXECUTED by JQZ NINE PTY LTD ACN
167 994 167 AS TRUSTEE FOR THE JQZ
NINE UNIT TRUST ABN 26 431 817 599

in accordance with section 127 of the
Corporations Act 2001 and in the presence
of:

[Redacted Signature]

Director/Secretary

Full Name: Jianqiu Zhang

Director

Full Name:

EXECUTED by BAYSIDE COUNCIL by
its authorised delegate

in the presence of:

[Redacted Signature]

Meredith Wallace
General Manager

[Redacted Signature]

Witness Signature

JUSTIN THOMAS RAPISARDA

Witness Full Name

EXECUTIVE PROJECT OFFICER

Witness Position and Address

444 PRINCES HIGHWAY, ROCKDALE
NSW 2216