

# Developer Undertaking – 106 - 108 Brunner Road Adamstown NSW 2289

**Given for the purposes of section 28 of the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (NSW)***

Futura Central Pty Ltd ACN 649 085 352 ATF Futura Central Holdings  
Trust ABN 52 237 991 143

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# Deed Poll

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**Given by** Futura Central Pty Ltd ACN 649 085 352 ATF Futura Central Holdings Trust  
ABN 52 237 991 143 (**Futura Central**) (**Developer**)

## Recitals

- A. Futura Central Pty Ltd ACN 649 085 352 ATF Futura Central Holdings Trust ABN 52 237 991 143 is the developer, of a residential development, located at 106-108 Bruncker Road, Adamstown NSW 2289 (being Lot 1 and Lot 2 DP 345702) (the **Building**).
- B. On 11 July 2023, the Secretary issued a **Stop Work Order** under section 29 of the RAB Act (**Stop Work Order**), in relation to the Commissioner's concerns raised in the Stop Work Order for the Building.
- C. The Developer has agreed to provide the Secretary with an undertaking pursuant to section 28 of the RAB Act to address the Secretary's concerns raised in the Stop Work Order for the Building (**Undertaking**).
- D. This deed poll is entered into by the Developer on a voluntary basis and it sets out the undertakings to be provided by the Developer to enable the building works at the Building to recommence and continue.
- E. A Supervising Certifier will be appointed by the Developer to report and communicate to the Secretary, being in addition to the principal certifying authority required.

## The Developer undertakes as follows:

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### 1. Definitions and interpretation

#### 1.1 Definitions

In this Undertaking:

**Building** has the meaning given in the Recitals to this Undertaking;

**Building Element** has the meaning given in the RAB Act;

**Date of Acceptance** means the date that this Undertaking is accepted by the Secretary as shown on page 5;

**DBP Act** means the Design and Building Practitioners Act 2020 (NSW);

**DBP Legislation** means the DBP Act and the Design and Building Practitioners Regulation 2021 (NSW);

**Home Building Act** means the *Home Building Act 1989* (NSW);

**RAB Act** means the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020* (NSW);

**Related Body Corporate** has the meaning given in the Corporations Act 2001 (Cth);

**Secretary** means the Secretary of the Department of Customer Service or her authorised delegate which includes the NSW Building Commissioner;

**Stop Work Order** has the meaning given in the Recitals to this Undertaking;

**Undertaking** means this document.

## 1.2 Interpretation

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

- (a) (**headings**) clause headings and the table of contents are inserted for convenience only and do not affect the interpretation of this Undertaking;
- (b) (**Recitals**) the recitals form part of this Undertaking;
- (c) (**person**) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their permitted novatees, permitted assignees, personal representatives and successors;
- (d) (**including**) including and includes (and any other similar expressions) are not words of limitation and a list of examples is not limited to those items or to items of a similar kind;
- (e) (**corresponding meanings**) a word that is derived from a defined word has a corresponding meaning;
- (f) (**singular and plural**) the singular includes the plural and the plural includes the singular;
- (g) (**references**) a reference to a clause, subclause, exhibit, attachment or annexure is a reference to a clause, schedule, exhibit, attachment or annexure to or of this Undertaking and a reference includes all schedules, exhibits, attachments and annexures to it; and
- (h) (**joint and several**) an obligation or liability assumed by, or a right conferred on, two or more persons binds or benefits them jointly and severally.

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## 2. Enforceable Undertaking

The Developer acknowledges and agrees that this Undertaking constitutes a written undertaking submitted to the Secretary under section 28 of the RAB Act.

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## 3. Undertakings

### 3.1 Developer obligations

- (a) The Developer acknowledges and agrees that:
  - (i) The Secretary by her delegate, the NSW Building Commissioner, has agreed the Stop Work Order will be revoked upon the execution of this Deed;
  - (ii) Upon the revocation of the Stop Work Order, the Secretary may issue a Prohibition Order;
  - (iii) The Secretary may revoke the Prohibition Order in accordance with this Undertaking and the *Residential Apartment Buildings (Compliance and Enforcement Powers) Act*;

- (iv) The Developer will engage a Supervising Certifier ("Supervising **Certifier**") to confirm to the Secretary that all relevant requirements associated with the issue of an Occupation Certificate have strictly been complied with in relation to the development.
- (v) Without limiting the generality of 3.1(a)(iv), the Developer will ensure the engagement of the Supervising Certifier includes for the Supervising Certifier to report to the Secretary and advise in writing whether the occupation certificate has been prepared in accordance with:
  - A. The NSW' *Certifiers Practice Standard*;
  - B. the Development Consent issued by the Council;
  - C. the Construction Certificate' requirements; and
 that the Supervising Certifier has been paid
- (b) Upon the revocation of the Stop Work Order, the Developer undertakes to the Secretary as follows:
  - (i) The Developer will appoint the Supervising certifier -at the building;
  - (ii) The Developer will ensure the engagement of the Supervising Certifier includes for the Supervising Certifier to report and communicate with the Secretary-prior to the issue of any occupation certificate ("**OC**");
  - (iii) The Developer will cooperate with and provide the Supervising Certifier with all records, information and documents necessary or required by the Certifier to perform its obligations.
  - (iv) The Developer will also forward details of 3 proposed Supervising Certifiers for consideration of the Building Commissioner. The Developer acknowledges the Building Commissioner may approve (acting reasonably) one or more of the proposed certifiers. In the event that all of the three proposed certifiers are not approved then the Developer will put forward a further three names.
  - (v) The Developer will appoint one of the approved certifiers as Supervising Certifier within 4 weeks of execution of this Deed.
  - (vi) In the event that the Developer wishes to change the Supervising Certifier, the Developer must notify the Secretary and the Developer will submit names of proposed replacement supervising certifier candidates for the approval of the Secretary (which will not be unreasonably withheld).
  - (vii) The Developer will bear the costs of the Supervising Certifier.
  - (viii) The Developer agrees that the information and reports provided by the Supervising Certifier may be shared by the Building Commissioner with the Newcastle City Council.

### 3.2 Indemnity

- (a) The Developer indemnifies the Secretary (and her staff and agents) against any cost, expense, charge, liability or disbursement (including legal fees on a full indemnity basis incurred by the Secretary (or her staff or agents) in connection with

exercising, enforcing or preserving, or attempting to exercise, enforce or preserve, any of their rights, powers or remedies under this Undertaking.

### **3.3 Cooperation**

The Developer agrees to:

- (a) cooperate with and provide the Secretary (or their nominees) with all information and documents necessary or required by the Secretary in connection with the Building or to otherwise perform its functions under this deed poll; and
- (b) provide the Secretary and its nominees with unimpeded access to the Building to perform its functions activities pursuant to the in this deed poll.

### **3.4 Costs**

The Developer must:

- (a) carry out all of its obligations under this deed poll at its cost.

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## **4. Occupation Certificate**

The Developer agrees that it will not take any steps to obtain an occupation certificate issued under the *Environmental Planning and Assessment Act* in respect of the Building without the Secretary's prior written consent.

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## **5. General**

### **5.1 Governing law and jurisdiction**

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

### **5.2 Indemnities**

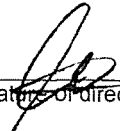
- (a) Each indemnity in this Undertaking is a continuing obligation, separate and independent from the other obligations of the Developer and survives expiry or termination of this Undertaking.
- (b) It is not necessary for the Secretary to incur expense or to make any payment before enforcing a right of indemnity conferred by this Undertaking.
- (c) The Developer must pay on demand any amount it must pay under an indemnity in this Undertaking.

### **5.3 Publication of Undertaking**

The Developer acknowledges that the Secretary may publish this Undertaking in full on its website or otherwise.

Executed as a deed poll.

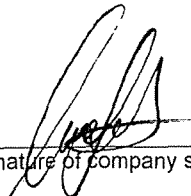
Executed by Futura Central Pty Ltd ACN 649  
085 352 ATF Futura Central Holdings Trust  
ABN 52 237 991 143 in accordance with section  
127 of the Corporations Act 2001 (Cth):

  
\_\_\_\_\_  
Signature of director

Youssef Ahmad

\_\_\_\_\_  
Full name of director who states that they are a  
director of Futura Central Pty Ltd ACN 649 085 352

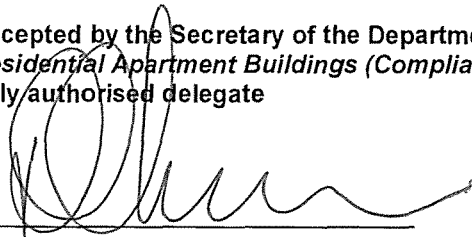
8/8/2023  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Signature of company secretary/director

Nicole Sadek

\_\_\_\_\_  
Full name of company secretary/director who states  
that they are a company secretary/director of Futura  
Central Pty Ltd ACN 649 085 352

Accepted by the Secretary of the Department of Customer Service under section 28 of the  
*Residential Apartment Buildings (Compliance and Enforcement Powers) Act 2020 (NSW)* by her  
duly authorised delegate

  
\_\_\_\_\_

Delegate of the Secretary of the Department of Customer Service, the Building Commissioner Mr  
David Chandler OAM.

Date accepted 13/9/23  
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