

Deed of Agreement to Nominate

**61-67, 71A, 73 and 75 Forest Road, Hurstville
and 126 Durham Street, Hurstville**

The One Capital Group Pty Limited ABN 39 600 814 131

and

Prime Hurstville Pty Limited ABN 44 615 377 672

and

Wensheng Liu

Ref MMD:KG:625348

Doc ID 387369933/v1

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Deed of Agreement to Nominate

Date

Parties

The One Capital Group Pty Limited ABN 39 6000 814 131 c/ - HPL
Lawyers, Level 1, 17 Albert Street, Freshwater NSW 2096

(One Capital)

Prime Hurstville Pty Limited ABN 44 615 377 672 of suite 1705, Level
17, 227 Elizabeth Street, Sydney NSW 2000

(Aoyuan)

Wensheng Liu of 81 Penshurst Road, Narwee NSW 2209

(Liu)

Recitals

- A. One Capital entered into the Call Options for the purchase of the Properties, under which One Capital has options to purchase or to appoint a nominee(s) to purchase the Properties.
- B. Liu is the sole director and secretary of One Capital and the beneficial owner of all the Shares.
- C. One Capital has agreed to appoint Aoyuan as its nominee to exercise the Call Options and if required by Aoyuan, Aoyuan may exercise the Call Options, subject to the terms of this deed.

This deed witnesses that in consideration of, among other things, the mutual promises contained in this deed the parties agree as follows:

1. Definitions and interpretation clauses

1.1 Definitions

In this deed:

Authority	means any government or governmental, semi-government 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 Properties, the Call Options and this deed.
Aoyuan's Solicitors	means HWL Ebsworth Lawyers of Australia Square, Level 14, 264 George Street, Sydney NSW 2000 Attention: Martin Downing.
Aoyuan's Representatives	means all employees, agents, consultants and contractors of Aoyuan including Aoyuan's Solicitors.
Business Day	means a Monday to Friday excluding a Saturday, Sunday or public holiday in New South Wales.
Call Options	means the Garthon Option, the Sentumar Option and the South East Option and, where the context permits, includes the respective Contracts.
Call Option Exercise Period	means the period of time described as such or in a similar manner under each Call Option being the period of time under each Call Option during which the grantee or its nominee may exercise the call option granted under that Call Option.
Claim	means a claim, demand, suit, cause of action, damage, debt, Cost, verdict and judgment whatsoever whether at law or in equity or under any statute.
Completion	means the total of all amounts paid or payable by Aoyuan to the Grantors under each of the Contracts on completion of each of

Amount	the Contracts as adjusted under each of the Contracts.
Conditions Precedent	means Aoyuan being satisfied that: <ul style="list-style-type: none">(a) each of the Properties will be subject to Vacant Possession on or before 30 June 2018: or(b) if any of the Properties (or any part) of them will not be subject to Vacant Possession on or before 30 June 2018 due an occupancy the term of which extends past 30 June 2018, Aoyuan (as owner of that Property) will have an enforceable contractual right to terminate the relevant occupancy on or about 30 June 2018 by no more than 6 months notice to the occupant without compensation to the occupant and otherwise on terms and conditions satisfactory to Aoyuan.
Conditions Precedent Satisfaction Notice	means a written notice from Aoyuan stating that all the Conditions Precedent have been satisfied or, if not satisfied, have been waived by Aoyuan.
Contracts	means the contracts for sale of land in respect of each of the Properties in the form annexed to each of the Call Options and which will be entered into upon exercise of the call options granted under each of the Call Options.
Cost	means a cost, charge, expense, outgoing, payment, fee or other expenditure of any nature.
Council	means Georges River Council.
Due Diligence Material	means any information, documents or materials: <ul style="list-style-type: none">(a) attached or referred to in this deed;(b) provided in writing (including by email) to Aoyuan's representative or Aoyuan's Solicitors in response to reasonable questions or requests for further information raised by or on behalf of Aoyuan or Aoyuan's Solicitors; and(c) the subject of written replies to reasonable requests for information submitted by Aoyuan, its representatives or Aoyuan's Solicitors as part of

Aoyuan's due diligence investigations.

Event of Default means:

- (a) in respect of a Party, if the following occurs:
 - (i) if that Party does not pay any money payable under this deed within five (5) Business Days of the due date and otherwise in the manner required by this deed;
 - (ii) that Party fails to carry out its obligations under this deed 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 completion of this deed;
 - (iii) 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 deed;
 - (iv) a representation or warranty made or taken to be made by or on behalf of that Party in connection with this deed 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 deed; and
 - (v) an Insolvency Event occurs in respect of that Party and
- (b) in respect of One Capital, in addition to the above matters, if One Capital breaches any of the One Capital Warranties and Covenants; and
- (c) in respect of Liu, in addition to the above matters, if Liu breaches clause 4.7.

- Extension Fee** means the total of fee payable by the grantee under each of the Call Options to each of the Grantors to validly extend the Call Option Exercise Period under each Call Option by the Second Extension Period.
- Extension Notices** means all notices necessary and required under each Call Option to validly extend the Call Option Exercise Period under each Call Option by the Second Extension Period.
- Facilitation Fee** means the amount of \$4,250,000 payable by Aoyuan in accordance with this deed which includes the following amounts:
- (a) the First Instalment; and
 - (b) the IA Amount payable by Aoyuan under clause 3.4(a).
- First Extension Period** means the first 6 month period of extension of each of the Call Option Exercise Periods after 24 November 2016 which has the effect that each of the Call Option Exercise Periods expire on or about 24 May 2017.
- First Instalment** means \$2,000,000 (which includes the Good Faith Amount) payable by Aoyuan in accordance with the provisions of clause 3.
- Fundamental Matters** means the following matters in respect of One Capital:
- (a) the sale, transfer or any other similar dealing with the Shares;
 - (b) the creation or grant of a Security Interest over any of the Shares or any assets;
 - (c) the appointment or removal any officers;
 - (d) the acquisition or disposal of any asset of the One Capital;
 - (e) the cessation of, or material alteration of the scale of operations of, the business conducted by One Capital;
 - (f) the sale, transfer, lease, assignment, acquisition or disposal of an asset or assets (either tangible or intangible) of One Capital or any contract to do so;

- (g) the entering into borrowings or other financial accommodation;
- (h) the entering into a partnership or joint venture;
- (i) undertaking a bonus issue of shares, a subdivision or consolidation of shares or any other reorganisation or reconstruction of share capital;
- (j) issue or allotment or granting of a right to issue or allot securities;
- (k) make or agree to make any change to the issued share capital or grant any option over or interest in, or issuance of any instrument carrying rights of conversion into, any Share;
- (l) redemption, purchase, reorganisation, consolidation, subdivision, cancellation, conversion or alteration in any other way of the share capital or securities of One Capital or in any way altering the rights attaching thereto;
- (m) amendment of the constitution of One Capital;
- (n) make any composition or arrangement with One Capital's creditors, move for insolvency, receivership or administration or do or permit to suffer to be done any act or thing whereby One Capital may be wound up (whether voluntarily or compulsorily);
- (o) commencement of the prosecution or defence of, or settlement of, any legal or arbitration proceedings;
- (p) entering into or becoming liable under any guarantee or indemnity or, or any similar arrangement under which One Capital might incur liability in respect of the financial obligation of any other person; and
- (q) anything else which in the opinion of Aoyuan would be likely to have a material detrimental affect on the ability or capacity of One Capital to perform its obligations under this deed.

Good Faith Amount

means the amount of \$500,000 paid by Aoyuan to One Capital on or about 3 November 2016.

- Garthon Option** means the call option between One Capital (as grantee) and Arthur William Garthon and Valda May Garthon (together as grantor) in respect of the Garthon Property a full copy of the executed versions of which (including all variations and amendments) are contained in Annexure A.
- Garthon Property** means 71A Forest Road, Hurstville being all that land contained in certificate of title 100/776275.
- Gazettal** means the date on which the LEP is amended to alter the zoning or permitted use of the combined Properties to:
- (a) allow mixed use development (as defined in the LEP);
 - (b) with a minimum floor space ratio (as defined in the LEP) of 4:1 with a maximum non residential accommodation (as defined in the LEP) floor space ratio component of 1.5:1; and
 - (c) a minimum building height (as defined in the LEP) of 60 metres.
- Grantors** means the grantors under each of the Call Options.
- GST** has the meaning in the GST Act.
- GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (as amended).
- IA Amount** means an amount of \$1,500,000 (exclusive of GST) payable to Investment Alliance Group in accordance with clause 3.4.
- 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 five (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 five Business Days;
- (e) a controller is appointed in respect of any property of a corporation;
- (f) a corporation is deregistered under the *Corporations Act 2001* (Cth) or notice of its proposed deregistration is given to the 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 the person's creditors 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 five (5) Business Days or a person presents a petition against herself or himself;
- (i) a person presents a declaration of intention under s54A 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 jurisdiction occurs in respect of a person or corporation.

LEP means Hurstville Local Environmental Plan 2012.

Mortgage means a mortgage of the issued capital in Aoyuan in a form reasonably acceptable to Aoyuan and One Capital.

Nomination Date	means 23 October 2017.
Nomination Fee	has the meaning given to it in clause 7.1 and for the avoidance of doubt is a net amount after taking into account the Completion Amounts, the Facilitation Fee, any Variation Fee paid by Aoyuan (unless paid from the Facilitation Fee), any amount of the Extension Fees paid by Aoyuan and the IA Amount payable by Aoyuan under clause 3.4(b).
Nomination Notices	means the notices of nomination in the form specified in and as otherwise required under each of the Call Options which, when delivered in accordance with the relevant Call Option, will have the effect of validly nominating Aoyuan (or its nominee) as the grantee under the respective Call Option in place of One Capital.
Non-Exercise Notice	means a notice issued by Aoyuan entitled 'Non-Exercise Notice' in which Aoyuan indicates that Aoyuan does not wish to: <ul style="list-style-type: none">(a) be nominated as grantee under any of the Call Options; and/or(b) exercise the call options granted under the Call Options.
Notice of Dispute	has the meaning given in clause 10.1.
One Capital's Solicitors	means D'Angelo Solicitors of G04, 4-12 Garfield Street, Five Dock Attention: Angelo D'Angelo.
One Capital Warranties and Covenants	means the warranties and covenants given by One Capital to Aoyuan as set out in clauses 4.2, 12.2 and 12.3 and each of them separately.
Original Transaction documents	means originals of the following documents duly executed by all parties to those documents; <ul style="list-style-type: none">(a) Call Options;(b) deeds, Land and Property Information forms and other documents relating to the satisfaction of the Conditions Precedents; and(c) all other original documents in the possession or control of One Capital relating to the Call Options

and/or the Properties.

Parties	means One Capital, Aoyuan and Liu.
Payment Date	means the later of: <ul style="list-style-type: none">(a) the date of completion of last to be completed of the Contracts; and(b) ten (10) Business Days after the date of the Gazettal.
Properties:	means the Garthon Property, the Sentumar Property and the South East Property.
Second Extension Period	means the second 6 month period of extension of each of the Call Option Exercise Periods after 24 November 2016 which has the effect that the Call Option Exercise Periods expire on or about 24 November 2017.
Security Interest	has the meaning given in the <i>Personal Property Securities Act 2009</i> (Cth).
Sentumar Option	means the call option between One Capital (as grantee) and Sentumar Pty Limited (as grantor) in respect of the Sentumar Property a full copy of the executed versions of which (including all variations and amendments) are contained in Annexure B.
Sentumar Property	means 61-67 Forest Road, Hurstville being all that land contained in certificates of title 101/776275 and 1/225302.
Shares	means all the issued capital of One Capital.
South East Option	means the call option between One Capital (as grantee) and South East Automotive Pty Limited (as grantor) in respect of the South East Property a full copy of the executed versions of which (including all variations and amendments) are contained in Annexure C.
South East Property	means 73 Forest Road, Hurstville, 75 Forest Road, Hurstville and 126 Durham Street, Hurstville being all that land contained in certificates of title 10/621395, 3/12517, 4/12517 and Auto Consol

5324-180.

Sunset Date means 15 February 2017 as may be extended by Aoyuan pursuant to clause 4.1(c).

Uplift Payment means the amount calculated in accordance with the following formula:

$$(RFA \times \$1,386.61)$$

where

- **RFA** means the gross floor area of residential accommodation permitted on the combined Properties on Gazettal:
 - (i) that exceeds the gross floor area of residential accommodation on the combined Properties at a 5:1 ratio; and
 - (ii) which is capped at 8,546 square metres.
- All terms used in this definition that are defined in the LEP have the meaning ascribed to them in the LEP.
- RFA is a number representing a square metre value.

Vacant Possession means the right to exclusive possession of each Property such that none of the Properties is subject to any right at law or in equity to possession (including under any lease, license or other right of occupancy) other than the right of the registered proprietor of the Property.

Variation Fees has the meaning given to it in clause 4.9(a).

1.2 Interpretation

In this deed unless the context otherwise requires or permits:

- (a) where any word or phrase is given a defined meaning any other grammatical form of that word or phrase will have a corresponding meaning;
- (b) references to legislation or legislative provisions will include modifying, consolidating or replacing legislation or legislative provisions;

- (c) references to months and years means calendar months and years;
- (d) the use of headings are only for convenience and do not affect interpretation and any headings, underlinings or marginal notes are only included for ease of reference;
- (e) if any part of this deed is void or unenforceable or would be so unless severed, then the rest of the deed will continue to have full force and effect;
- (f) delivery of this deed will be taken to have been given on the date it bears;
- (g) if the day on which any act, matter or thing is to be done under or in accordance with this deed is not a Business Day, that act, matter or thing may be done on the next Business Day;
- (h) references to a Party will include as the context requires respective executors, administrators, successors and permitted assigns;
- (i) references to a person includes any other entity recognised by law;
- (j) words denoting the singular number include the plural and vice versa;
- (k) words denoting one gender include every gender;
- (l) every covenant or provision applying to or binding more than one person will bind them jointly and each of them severally;
- (m) references to clauses, subclauses, paragraphs, annexures and schedules are references to clauses, subclauses, paragraphs, annexures and schedules in this deed;
- (n) a reference to Aoyuan shall, where Aoyuan has exercised its nomination right contained in clause 6.1(b), means the nominee of Aoyuan as the contracting party under the Call Options and the Contracts; and
- (o) an Event of Default subsists until it is remedied to the satisfaction of the non-defaulting Party or waived by the non-defaulting Party.

2. Agreement to Nominate and ancillary rights

In consideration of payment of the Facilitation Fee by Aoyuan to One Capital in accordance with this deed, irrevocably agrees to nominate Aoyuan (or its nominee) to exercise each the Call Options in accordance with the terms of this deed and complete the Contracts.

3. First Instalment (including Good Faith Amount)

3.1 Good Faith Amount

One Capital acknowledges receipt of the Good Faith Amount.

3.2 Payment

- (a) Aoyuan must pay the balance of the First Instalment (in the amount of \$1,500,000) to One Capital's Solicitors as stakeholder on the date of this deed.
- (b) If the balance of the First Instalment is not paid on time or a cheque for any part of the balance of the First Instalment is not honoured, One Capital may terminate this deed.
- (c) If this deed is terminated by Aoyuan as a result of an Event of Default on the part of One Capital, the First Instalment must be returned to Aoyuan on demand.
- (d) If this deed is rescinded by Aoyuan in accordance with clause 4.5, the First Instalment (other than the amount utilised by One Capital under clause 3.2(f)) is refundable to Aoyuan.
- (e) If this deed is terminated as a result of an Event of Default on the part of Aoyuan or Aoyuan provides to One Capital a Non-Exercise Notice in accordance with clause 6.2, the First Instalment becomes the property of One Capital.
- (f) One Capital is entitled to utilise the First Instalment for the purposes of paying to a Grantor any fees payable by One Capital in respect of the First Extension Period.

3.3 Investment of First Instalment

- (a) One Capital's Solicitors are authorised to invest the First Instalment (other than the amount used by One Capital under clause 3.2(f)) in an interest bearing account.
- (b) Any interest earned on the First Instalment after deduction of all property government taxes and financial institution charges and other charges must be shared equally between the Parties.
- (c) If tax is payable on the interest earned on the First Instalment that Party's tax file number then:
 - (A) it is an expense of that Party only;
 - (B) an error in the adjustment does not affect the rights of a Party arising out of the required adjustment; and

- (C) One Capital's Solicitor is not liable to a Party for an error in this adjustment.

3.4 IA Amount

Aoyuan acknowledges that:

- (a) \$500,000 (exclusive of GST) of the IA Amount forms part of the Facilitation Fee and that Aoyuan is responsible for the payment of that amount to Investment Alliance Group in accordance with a side arrangement as between Aoyuan, One Capital and Investment Alliance Group on the date of satisfaction or waiver by Aoyuan of the Conditions Precedent; and
- (b) \$1,000,000 (exclusive of GST) of the IA Amount forms part of the Nomination Fee and that Aoyuan is responsible for the payment of that amount to Investment Alliance Group in accordance with a side arrangement as between Aoyuan, One Capital and Investment Alliance Group on the Payment Date.

4. Conditions Precedent

4.1 Conditions Precedent

- (a) This deed is conditional upon the satisfaction of the Conditions Precedent by One Capital on or before Sunset Date.
- (b) One Capital must use best endeavours to do all that is necessary to satisfy the Conditions Precedent on or before the Sunset Date.
- (c) If One Capital does not satisfy the Conditions Precedent on or before 5.00 pm on the Sunset Date, Aoyuan may, in its discretion give notice to One Capital extending the Sunset Date to a date not less than 1 month prior to the date specified in the Call Options as being the final date to exercise the Second Extension right under the Call Options (**Extension Notice**).
- (d) Aoyuan may give more than one Extension Notice.
- (e) If Aoyuan gives an Extension Notice to One Capital in accordance with clause 4.1(c), the Sunset Date is extended to the date specified by Aoyuan in the Extension Notice.

4.2 Process to satisfaction

One Capital must:

- (a) keep Aoyuan informed of all communications between One Capital and anyone on behalf of One Capital (including One Capital's Solicitors) and each Grantor, occupant of each Property and any representative of any of those people in respect of any matter relating to the Conditions Precedent;

- (b) upon request, allow Aoyuan's Representatives to attend any meeting (as an observer) with each Grantor, occupant of each Property and any representative of any of those people in respect of any matter relating to the Conditions Precedent and for that purpose give reasonable notice to Aoyuan of any such meeting; and
- (c) otherwise comply with all reasonable directions of Aoyuan in respect of any matter relating to the Conditions Precedent.

4.3 **Waiver by Aoyuan**

The Parties acknowledge and agree that the Conditions Precedent are for the benefit of Aoyuan only and Aoyuan may give written notice to One Capital waiving all or any one of the Conditions Precedent prior to the Sunset Date.

4.4 **Conditions Precedent Satisfied**

If One Capital satisfies the Conditions Precedent on or before the Sunset Date, Aoyuan must give to One Capital a Conditions Precedent Satisfaction Notice within two (2) Business Days from the date of satisfaction of the Conditions Precedent.

4.5 **Conditions Precedent not satisfied**

If:

- (a) Aoyuan has not waived the Conditions Precedent in accordance with clause 4.3; or
- (b) One Capital has not satisfied all the Conditions Precedent by the Sunset Date;

then:

- (c) Aoyuan may by notice in writing to One Capital rescind this deed;
- (d) no Party will have any Claims against another Party as a result of the rescission of this deed;
- (e) One Capital must refund the First Instalment (other than the amount utilised by One Capital under clause 3.2(f)) to Aoyuan in full on demand;
- (f) Aoyuna is not required to pay to One Capital the balance of the Facilitation Fee or the Nomination Fee; and
- (g) this deed is at an end.

4.6 **One Capital to provide documents to Aoyuan**

Within ten (10) Business Days of the date of this deed, Capital must provide to Aoyuan the following documents:

- (a) duly executed and undated Nomination Notices (in blank) to be held in escrow in accordance with clause 6;

- (b) all Original Transaction Documents;
- (c) a duly executed ASIC form 490 to appoint Adrian Liaw as a director of One Capital;
- (d) all Extension Notices duly executed by One Capital to be held in escrow in accordance with clause 6;
- (e) duly executed proxies in favour of Aoyuan of all the Shares; and
- (f) if applicable, any withdrawal of caveats or other registered or unregistered interests in registrable form relating to One Capital's interest in the Properties or any person acting through One Capital together with any registrations associated with those withdrawals.

4.7 Fundamental Matters

- (a) Liu warrants that as at the date of this deed he is:
 - (i) the beneficial owner of all the Shares and will until this deed is terminated remain the beneficial owner of all the Shares; and
 - (ii) the sole director and secretary of One Capital and will until this deed is terminated remain a director and secretary of One Capital.
- (b) Liu agrees that he will not do and will use his best endeavours to prevent any of the Fundamental Matters without the express written approval of Aoyuan to the extent he is not prohibited from doing so by law or the requirements of any Authority.

4.8 Aoyuan to pay balance of the Fee

Within five (5) Business Days of the Conditions Precedent having been satisfied or waived by Aoyuan, subject to the provision by One Capital of the documents specified in clause 4.6:

- (a) Aoyuan will pay to One Capital the balance of the Facilitation Fee in the amount of (\$1,750,000); and
- (b) the Facilitation Fee will be released to One Capital.

4.9 Variation Fees

- (a) Any fees payable by One Capital to any occupant of any of the Properties or any of the Grantors to secure a variation of existing occupancy terms in order to satisfy the Conditions Precedent, will be payable by One Capital (**Variation Fees**).
- (b) Prior to reaching any agreement with any occupant of any of the Properties or any of the Grantors to secure a variation of existing occupancy terms in order to satisfy the Conditions Precedent (including the amount and terms of any

Variation Fees), One Capital must first obtain the approval of Aoyuan to those agreements.

- (c) Subject to One Capital having complied with clause 4.9(b), Aoyuan agrees that it will reimburse One Capital for the Variation Fees paid by One Capital to any occupants of the Properties or the Grantors to the extent that those fees exceed \$1,000,000 (capped at \$500,000) (exclusive of GST) within 10 Business Days of demand by One Capital.

5. Second Extension

5.1 Exercise of Second Extension right

- (a) One Capital authorises Aoyuan to exercise the rights to the Second Extension Period in accordance with the terms of each of the Call Options.
- (b) Aoyuan will be responsible to pay the Extension Fees up to a maximum amount of \$1,000,000 (exclusive of GST).
- (c) One Capital will be responsible to pay the Extension Fees to the extent that they exceed \$1,000,000 (exclusive of GST).
- (d) One Capital will in a timely manner provide to Aoyuan the Extension Fees payable by it under clause 5.1(c) to enable Aoyuan to exercise the rights to the Second Extension Period under the Call Options provided that Aoyuan may in its discretion pay some or all of the Extension Fees payable by One Capital under 5.1(c).
- (e) Any amount paid by Aoyuan under this clause 5.1 will be taken into account as part of the Nomination Fee to the effect that any payment by Aoyuan of any of the Extension Fees will be treated as a part payment to One Capital of the Nomination Fee.

5.2 Aoyuna must Exercise Second Extension right

Subject to clauses 6.2 and 6.3, Aoyuan must exercise the rights to the Second Extension Period in accordance with the terms of each of the Call Options and pay the Extension Fee to the Grantors in accordance with the Call Options.

6. Exercise of Call Options

6.1 Authorisation

- (a) One Capital authorises Aoyuan to deliver the Nomination Notices and any withdrawal of caveats or other registered or unregistered interests in registrable form relating to One Capital's interest in the Properties or any person acting through One Capital to Aoyuan.

- (b) Aoyuan is entitled to nominate a related entity as the nominee under the Call Options.

6.2 Non-Exercise Notice

- (a) At any time prior to the Nomination Date, Aoyuan is entitled to issue a Non-Exercise Notice to One Capital.
- (b) The Non-Exercise Notice must be accompanied by:
 - (i) all documents provided to Aoyuan by One Capital pursuant to clause 4.6; and
 - (ii) a duly executed ASIC form 490 to remove Adrian Liaw as a director of One Capital.
- (c) With effect on the date of receipt of the Non-Exercise Notice by One Capital in accordance with this clause 6.2 this deed will automatically terminate.
- (d) If this deed is terminated in accordance with clause 6.2, the Facilitation Fee is not refundable to Aoyuan by virtue of that termination and Aoyuan is not entitled to a refund of any Extension Fees paid by Aoyuan.

6.3 Prohibition of exercise without nomination

- (a) Aoyuan is not entitled to exercise the call options under the Call Options unless on or before the date of exercise, Aoyuan (or its nominee) has been nominated as grantee under the Call Options by delivery of the Nomination Notices to the Grantors in accordance with the Call Options and Aoyuan indemnifies One Capital for all Costs, loss, damage or liability incurred by One Capital arising from any breach by Aoyuan of its obligations under this clause 6.3(a).
- (b) On and from the date of this deed until the earlier to occur of the termination or rescission of this deed, One Capital is not entitled to exercise its rights of nomination or the call options under the Call Options except in accordance with the express provisions of this deed and One Capital indemnifies the Aoyuan for all Costs, loss, damage or liability incurred by Aoyuan arising from any breach by One Capital of its obligations under this clause 6.3(b).

6.4 Benefit of amounts paid under Call Options

On nomination of Aoyuan (or its nominee) as grantee under the Call Options, all amounts paid by or on behalf of One Capital under the Call Options are for the benefit of Aoyuan (or its nominee) as grantee under the Call Options absolutely and One Capital has no further claim in respect of those amounts.

6.5 Obligations on exercise of options

On or before the date that Aoyuan (or its nominee) exercises the call options under the Call Options, Aoyuan must give to One Capital:

- (a) a duly executed ASIC form 490 to remove Adrian as a director of One Capital;
- (b) the proxies in favour of Aoyuan of all the issued capital of One Capital handed over pursuant to clause 4.6(e); and
- (c) if required under clause 7, the Mortgage duly executed by Aoyuan.

6.6 Completion under the Contracts

- (a) If Aoyuna (or its nominee) is nominated as grantee under the Call Options and exercises the call options granted under the Call Options, Aoyuan (or its nominee) (as purchaser under the Contracts) is responsible for the payment of the Completion Amounts to the Grantors in accordance with the Contracts.
- (b) Any amount payable by Aoyuan (or its nominee) under this clause 6.6 will be taken into account as part of the Nomination Fee to the effect that the payment by Aoyuan (or its nominee) of the Completion Amount will be treated as a part payment to One Capital of the Nomination Fee.

7. Nomination Fee

7.1 Amount of Nomination Fee

If, as at the date of Gazettal:

- (a) the floor space ratio (as defined in the LEP) for the combined Properties on Gazettal is less than 5:1, the **Nomination Fee** means an amount equal to \$47,400,000 (less the Facilitation Fee, the Completion Amount, any Extension Fees or Variation Fees (unless accounted for in the Facilitation Fee) paid by Aoyuan and the IA Amount payable by Aoyuan under clause 3.4(b) (including any other amounts payable by Aoyuan to Investment Alliance Group under the tripartite arrangements); or
- (b) the floor space ratio (as defined in the LEP) for the combined Properties on Gazettal is equal to or greater than 5:1 (with a floor space ratio for the non residential component not greater than 1.5:1 and a building height restriction at no less than 60 metres), the **Nomination Fee** means:
 - (i) the amount payable under 7.1(a); plus
 - (ii) \$11,850,000; plus
 - (iii) any Uplift Amount that may be payable under clause 7.4.

7.2 Date for payment

Except in respect of the Uplift Amount to which clause 7.4(b) applies, Aoyuan must pay the Nomination Fee on the Payment Date.

7.3 Mortgage

If the Payment Date is after completion of the Contracts, Aoyuan must (if requested by One Capital) grant the Mortgage to One Capital to secure the obligation of Aoyuna to pay the Nomination Fee.

7.4 Uplift Payment

- (a) If as at the date of Gazettal there is an Uplift Payment, Aoyuan will pay to One Capital the Uplift Amount on the Payment Date.
- (b) If as at the date of Gazettal there is no Uplift Payment, then, if by the first anniversary of the date of Gazettal (time being of the essence), One Capital (through its own efforts) is able to cause a further amendment to the LEP such that there is an Uplift Payment then Aoyuan will pay to One Capital the Uplift Payment within 14 days of Aoyuan being satisfied (acting reasonably) that the increase in FSR is effective and able to be utilised by Aoyuan in respect of the combined Properties.

8. GST

- 8.1 The Parties agree that all money payable or consideration to be given by either Party (**Recipient**) to the other (**Supplier**) for any taxable supply under this deed is exclusive of GST.
- 8.2 The Recipient must without deduction or set off and in addition to all other money payable or consideration to be given by the Recipient to the Supplier pay to the Supplier an amount (**GST reimbursement amount**) equal to any GST payable in respect of any taxable supply by the Supplier to the Recipient under this deed.
- 8.3 Any GST reimbursement amount payable by the Recipient will be:
 - (a) calculated by multiplying the amount or consideration payable (or to be provided) for the relevant supply by the prevailing GST rate;
 - (b) paid forthwith upon receipt of a tax invoice in the prescribed form by the Recipient from the Supplier.
 - (c) For the purpose of this clause:
 - (i) any terms used in it which have meanings under the Act, will have the meanings given by the GST Act; and
 - (ii) if the GST Act is repealed, GST means any goods and services tax, consumption tax, value added tax or other like tax.

9. Assignment and other dealings

9.1 Application to Aoyuan

Aoyuan may with the consent of One Capital:

- (a) transfer, assign or otherwise deal with its interest under this deed; or
- (b) grant a Security Interest over its interest in this deed.

9.2 Application of clause to One Capital

One Capital must not sell, lease, charge, alienate or otherwise deal with or dispose of any interest in the Properties or the Call Options.

10. Dispute Resolution - General

10.1 If a dispute or difference arises or the Parties fail to agree in connection with any matter arising out of or relating to this deed (except as otherwise expressly provided for in this deed) either Party may give a notice of the dispute to the other (**Notice of Dispute**).

10.2 The Parties must ask their respective representatives to resolve the dispute identified in the Notice of Dispute or in clause 10.1. These persons are:

Party	Nominated Person
One Capital	Wensheng Liu and Ching Wah Uy
Aoyuan	Adrian Liaw

10.3 If the Parties do not settle the dispute specified in the Notice of Dispute within ten (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.

10.4 If the Parties are unable to agree on an expert within five (5) Business Days after the Notice of Dispute is given, then:

- (a) if the dispute involves the legal interpretation of this deed or if the Parties are unable to agree whether the dispute involves legal interpretation of this deed 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 deed, as the case may be; and

- (b) 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.
- 10.5 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.
- 10.6 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.
- 10.7 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 deed 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 or urgent declaratory relief.
- 10.8 An expert may engage other consultants to advise him or her if he or she considers it necessary.
- 10.9 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.

11. Default, termination and indemnity

- 11.1 If an Event of Default occurs in respect of a Party (**Defaulting Party**), the Party not in default (**Non Defaulting Party**) must serve a written notice on the Defaulting Party specifying the Event of Default and requiring the Defaulting Party to remedy the Event of Default within a reasonable time (as determined by the Non Defaulting Party acting reasonably) (**Default Notice**).
- 11.2 If within the time period specified in a Default Notice the Defaulting Party has not remedied the Event of Default the Non Defaulting Party may terminate this deed.
- 11.3 If this deed is terminated by Aoyuan in accordance with this clause 11, in addition to any other remedies available to Aoyuan, Aoyuan is entitled to the Facilitation Fee and any Extension Fees in full and One Capital must refund to Aoyuan the Facilitation Fee and any Extension Fees in full on demand.

12. Warranties and covenants

12.1 Mutual warranties

Each Party which is a company represents and warrants to the other that:

- (a) it has been duly incorporated as a company limited by shares in accordance with the laws of its jurisdiction of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted; and

- (b) it has power to enter into and observe its obligations under this deed;
- (c) it has in full force and effect the authorisations necessary to enter into this deed and any documents related to this deed, observe obligations under them and allow them to be enforced; and
- (d) its obligations under this deed are valid and binding and are enforceable against it in accordance with its terms; and
- (e) it is solvent and there are reasonable grounds to expect that, on execution of the deed and at all material times during the currency of this deed, it will continue to be able to pay all its debts when they fall due and payable; and
- (f) its execution of this deed and performance under it will not conflict with or violate any law, judgment, ruling, order, document or agreement that binds it (including its constituent documents) or result in a default under any agreement binding it;
- (g) this deed and the transactions under it do not contravene its constituent documents or any law, regulation or official directive or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or the powers of its directors to be exceeded; and
- (h) to its knowledge there is no pending or threatened action or proceeding affecting the Party or any of their respective assets before a court or an Authority which may materially adversely affect its ability to perform its obligations under this deed.

12.2 One Capital warranties

One Capital warrants to Aoyuan that as at the date of this deed:

- (a) the Call Options are valid and binding on the parties to them on their terms;
- (b) all agreements, arrangements and understandings as between the parties in respect of each of the Call Option is contained in Annexures A to C;
- (c) it has disclosed the Aoyuan all information, correspondence and material relating to the Call Options and/or Properties of which it is aware or ought to have been aware as a prudent purchaser of the Properties;
- (d) the warranties made by One Capital in clause 12.1 are warranties made by One Capital to Aoyuan in respect of each Call Option;
- (e) each of the Call Option Exercise Periods under each Call Option has been extended by the First Extension Period and the right to Second Extension Period is able to be exercised on its terms under each Call Option;
- (f) it has paid all amounts due and payable by the grantee under each of the Call Options including the fees payable by the grantee under each Call Option in respect of the First Extension Period;

- (g) the Grantors are the registered proprietors of each of the Properties;
- (h) it has not withheld any information within its knowledge that relates to whether:
 - (i) there is any past, present or future risk in the Properties;
 - (ii) there are no latent or patent defects in the Properties;
 - (iii) there are any affectations or proposals by any Authority in relation to the Properties;
 - (iv) there are any claims by any person in connection with the Properties or in relation to the ownership of the Properties or any one of them including by any occupant; or
 - (v) there are any claims by any person in relation to the Call Options or any one of them; and
- (i) it owns or has proper authorities or licences for the use of any documents annexed to this deed or disclosed to Aoyuan by One Capital for the purposes of this deed;
- (j) the Due Diligence Materials contain all information within the possession and control of One Capital that would be relevant to a reasonable purchaser of the Properties or any one of them;
- (k) it is the grantee under the Call Options and has the right to nominate a third party to exercise the Call Options and to exercise the Call Options; and
- (l) One Capital has not granted any Security Interest, encumbrance or any other interest whatsoever in respect of the Properties or One Capital or its rights to carry out or authorise the carrying out of any development of the Properties.

12.3 One Capital general covenants

One Capital covenants to Aoyuan that at all times during the term of this deed:

- (a) it will comply with all its obligations as grantee under the Call Options;
- (b) exercise all rights and otherwise do all things necessary to keep the Call Options valid and binding on their terms;
- (c) not do or allow anything to occur that would adversely affect the rights of the grantee under the Call Options or in respect of the Properties;
- (d) comply with all directions given to it by Aoyuan in respect of the Call Options and Properties in accordance with this deed;
- (e) do all things reasonably necessary to enable Aoyuan to obtain the benefit of the rights granted to One Capital under each Call Option in respect of access to and the ability to make applications to Authorities in respect of the Properties provided that if as a result of any act or omission on the part of Aoyuan in

exercising those rights any indemnity granted to the Grantors in the Call Options is triggered, Aoyuan indemnifies One Capital in respect of any liability incurred by One Capital to a Vendor as a result of such acts or omissions;

- (f) comply with all reasonable directions of Aoyuan in respect of the Call Options including the appointment of consultants, solicitors and other professionals to represent and advise One Capital in in respect of any matters relating to:
 - (i) the Call Options;
 - (ii) dealings with the occupants of the Properties;
 - (iii) dealings with the Grantors;
 - (iv) dealings with any Authority in respect of the Properties and the Gazettal;
 - (v) the satisfaction of the Conditions Precedent; and
 - (vi) all other matters in respect of or relating to the Properties, the Call Options and the future development of the Properties.
- (g) not agree to or permit any alteration or amendment to any right of occupancy of any of the Properties without first seeking and obtaining the approval of Aoyuan (which approval may be withheld or granted by Aoyuan subject to conditions);
- (h) not agree to or permit the grant of any right of occupancy in respect of any of the Properties without first seeking and obtaining the approval of Aoyuan (which approval may be withheld or granted by Aoyuan subject to conditions); and
- (i) not amend or agree to amend the terms of the Call Options or in any way alter the rights of the parties to each of the Call Option except as expressly permitted under this deed.

12.4 Indemnity

One Capital indemnifies Aoyuan for any Costs, loss, damage or liability incurred by Aoyuan as a result of any breach by One Capital of the warranties and covenants contained in clauses 12.2 and 12.3.

13. General clauses

13.1 Confidentiality

- (a) All Parties agree to keep confidential the terms of this deed and the content of all negotiations leading to its preparation and will not disclose or discuss any of that information without the prior written approval of other Party, except:
 - (i) as specifically provided by this deed;

- (ii) to the extent permitted or required by law;
 - (iii) to the extent required by a Party's financiers or intended financiers in relation to the provision of finance for completion of the transaction provided for by this deed;
 - (iv) to the extent required to instruct the Party's professional advisers in relation to the preparation and completion of this deed;
 - (v) where the information is available generally, but not if it is because a person has contravened a confidentiality obligation under this clause.
- (b) If completion of this deed does not occur, each Party must return to the other or others and ensure that any person who receives information by the Party's authority returns the information to the person who provided it.
- (c) Despite anything contained in this clause 13.1, the Parties will, acting reasonably, without delay and in good faith) agree a public announcement concerning the transactions contemplated in this deed.
- (d) The obligations of this clause survive termination of this deed.

13.2 Entire Agreement

- (a) This deed and any annexures is the entire agreement of the Parties in relation to the agreement to nominate the Call Options.
- (b) All representations, communications and prior agreements in relation to the subject matter are merged in and superseded by this deed.

13.3 Counterparts

This deed may be executed in any number of counterparts and all of those counterparts taken together constitute one and the same instrument.

13.4 Further assurance

Each Party will do, sign, execute and deliver and will procure that each of its employees and agents does, signs, executes and delivers, all agreements, documents, instruments and acts reasonably required of it by notice from another Party to effectively carry out and give full effect to this deed and the rights and obligations of the Parties under it.

13.5 Amendment

This deed may only be amended or supplemented in writing signed by the Parties.

13.6 Assignment

Subject to any express provision in this deed, a Party may not assign its rights, powers or remedies under this deed without the consent of the other Parties.

13.7 Waiver

- (a) The non-exercise of or delay in exercising any power or right of a Party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right.
- (b) A power or right may only be waived in writing, signed by the Party to be bound by the waiver.

13.8 Notices

- (a) All notices required or permitted to be given by one Party to another under this deed must be in writing, addressed to the other Party or their solicitor; and:
 - (i) delivered to that Party's address or their solicitor's; or
 - (ii) transmitted by facsimile transmission to that Party's address or their solicitor's.
- (b) A notice given to a Party under clause 13.8(a) is treated as having been given and received:
 - (i) if delivered to a Party's address or their solicitor's on the day of delivery if a Business Day, otherwise on the next following Business Day; and
 - (ii) if transmitted by facsimile to a Party's address or their solicitor's and a correct and complete transmission report is received, on the day of transmission if a Business Day, otherwise on the next following Business Day.
- (c) For the purposes of this clause the address of a Party or their solicitor is set out below of which that Party or their solicitor may from time to time give notice to each other Party or their solicitor.

Party Name: One Capital and Liu
Address: Suite 3C, 124 Forest Road, Hurstville
Solicitor: D'Angelo Solicitors
Postal Address: G04, 4-12 Garfield Street, Five Dock

Party Name: Aoyuan
Address: Suite 1705, Level 227 Elizabeth Street, Sydney
Solicitor: HWL Ebsworth Lawyers
Postal Address: Australia Square, Level 14
264 George Street
SYDNEY NSW 2000

13.9 Governing Law

This deed is governed by the law in force in New South Wales.

13.10 Jurisdiction

The Parties submit to the exclusive jurisdiction of the courts of New South Wales and any court that may hear appeals from those Courts in respect of any proceedings in connection with this deed.

13.11 Execution by Attorney

Any attorney who executes this deed on behalf of a Party declares that the attorney has no notice of the revocation of the power of attorney under the authority of which the attorney executes this deed and no notice of the death of the grantor.

13.12 Costs

Each Party must pay its own Costs in relation to the preparation, negotiation and finalisation of this deed.

Signing page

Executed as a deed

Executed by The One Capital Group Pty Limited ABN 39 600 814 131 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Sole Director and Secretary

Full name (print)

Executed by Prime Hurstville Pty Limited ABN 44 615 377 672 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Director

Signature of Director/Company Secretary

Full name (print)

Full name (print)

Executed by Wensheng Liu in the presence of:

Signature of witness

Signature of **Wensheng Liu**

Full name of witness (print)

Address of witness (print)

Annexure A Garthon Option

Annexure B Sentumar Option

Annexure C South East Option

Signing page

Executed as a deed

Executed by The One Capital Group Pty Limited ABN 39 600 814 131 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

Signature of Sole Director and Secretary

Full name (print)

Executed by Prime Hurstville Pty Limited ABN 44 615 377 672 in accordance with section 127(1) of the *Corporations Act 2001* (Cth) by:

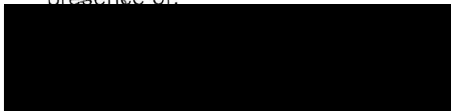
Signature of Director

Full name (print)

Signature of Director/Company Secretary

Full name (print)

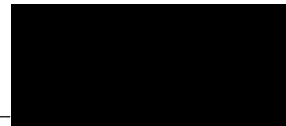
Executed by Wensheng Liu in the presence of:



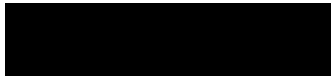
Signature of witness

RONGDI SHAO

Full name of witness (print)



Signature of **Wensheng LIU**

 Hurstville

Address of witness (print)