

CLAYTON UTZ

Agreement for Lease Prospect Recreational Park

Western Sydney Parklands Trust

ABN 85 202 544 800

WSPT

Prospect Aquatic Investments Pty Limited

ABN 94 079 214 127

Developer

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Our reference 15266/15661/80067181

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Deed made at **on** **2010**

Parties **Western Sydney Parklands Trust ABN 85 202 544 800** a statutory body constituted under *Western Sydney Parklands Act 2006 (No 92)* (NSW) of Level 4, 10 Valentine Avenue, Parramatta NSW 2150

(WSPT)

Prospect Aquatic Investments Pty Limited ABN 94 079 214 127 of Jam Factory, Level 1, 500 Chapel Street, South Yarra VIC 3141

(Developer)

Background

- A. WSPT owns the Premises and accepts responsibility for title.
- B. Under this deed:
 - (a) WSPT will give to the Developer access to the Premises for the purposes of carrying out the Works;
 - (b) the Developer has agreed to carry out the Works; and
 - (c) WSPT has agreed to grant, and the Developer has agreed to accept, the Lease.

The parties agree

1. Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

Access Guidelines means the access guidelines relating to the Premises to be agreed by the parties in accordance with clause 21.1 ("Access Guidelines").

Agistment Leases means those parts of the Let Areas outlined in yellow and marked "41&C", "D" and "E" on the plan attached to this deed at Annexure B.

Affected Works has the meaning given to that term in clause 11.2(b) ("Mitigation").

Agreed Design Documentation has the meaning given to that term in clause 8.3 ("Agreed Design Documentation").

Application means an application for any Approval.

Approvals means any approvals, consents, Modifications, Part 4A Certificates, Part 3A of the EP&A Act approvals, certificates, Construction Certificates, Occupation Certificates, Complying Development Certificates, permits, endorsements, licences (including licences under the *Liquor Act 1982* (NSW)), conditions or requirements (and any variations to them) which may be required by law or by adjoining owners for the commencement and carrying out of the Works or which may be imposed on the Development by any Authority or WSPT including a Project Approval.

Approved Plans and Specifications means the plans and specifications marked for identification by the parties under clause 8.4 ("Development of Agreed Design Documentation").

Asset Management Plan means the plan prepared by the Developer and approved by WSPT pursuant to clause 8.8 which addresses the way in which the following elements (without limitation) of the Premises will be cared for, managed and maintained during the term of the Lease to the standard required under the Lease:

- (a) external appearance;
- (b) services;
- (c) public areas;
- (d) grounds;
- (e) landscaping;
- (f) security;
- (g) garbage collection and storage;
- (h) cleaning;
- (i) lighting in and around the Premises; and
- (j) emergency evacuation and fire and life safety issues.

Assignment Tests means that a person:

- (a) is solvent;
- (b) (or a Related Entity of the person) is of high financial standing;
- (c) has equity and debt funding available to fund the Development;
- (d) (or a Related Entity of the person who is to be involved in the Development) has demonstrable experience in successfully delivering and marketing comparable developments to the Development;
- (e) has an approach to environmental issues in relation to the Development consistent with the requirements of this deed (including the Environmental Guidelines);
- (f) has a delivery methodology in terms of design, construction, finance, management and maintenance suitable to effect the Development;
- (g) has procured the Insurances, or will have procured them on the date the Dealing takes effect; and
- (h) is otherwise ready, willing and able to carry out the Works as required by this deed.

Authorised Officer means in the case of any party, a director, secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them or any other person appointed by that party to act as an Authorised Officer for the purpose of this deed.

Authority means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body and, where applicable, an accredited certifier accredited under section 109T of the EP&A Act.

Authority Levies means all costs, levies, contributions and fees of whatever description in cash or kind lawfully imposed by any Authority in connection with the Premises or the Development, but excluding any such costs, levies, contributions and fees imposed by WSPT on or after the Commencement Date and also excluding any such costs, levies, contribution and fees imposed on or calculated having regard to the net income of WSPT.

Bank Bill Swap Reference Rate means the market rate of interest used to price commercial borrowings as published in the Australia Financial Review.

Bank Guarantee means each of the First Bank Guarantee, Second Bank Guarantee and Third Bank Guarantee.

Bi-monthly Report has the meaning given to that term in clause 20.2(a) ("Bi-monthly Reports").

Builder means the contractor under each Building Contract.

Builder's Employees and Agents means each of the Builder's employees, officers, agents, contractors, service suppliers, licensees, invitees and those persons who are on the Premises (other than WSPT and its servants, agents and contractors).

Building, Plant and Equipment means the building, plant and equipment generally described in the Part 3A Approval and to be built on the Premises in accordance with this deed.

Building Contract means any contract between the Developer and a contractor for a value of not less than \$3,000,000:

- (a) in connection with the design or construction of the Works; and
- (b) any construction management or project management of the Works.

Business has the meaning given to that term in the Lease.

Business Day means a day on which banks are open for general banking business in Sydney (not being a Saturday, Sunday or public holiday).

Cash Deposit has the meaning given to that term in clause 7.5(b) ("Replacement of expiring Bank Guarantee").

Cash Deposit Account has the meaning given to that term in clause 7.5(b) ("Replacement of expiring Bank Guarantee").

Certificate of Practical Completion means a certificate issued by the Independent Certifier under clause 24 ("Achieving Practical Completion").

Civil Works means all works relating directly to the Land which are preparatory to the construction of the Improvements, including changes or movement to the existing land form, excavation, site access and the provision and installation of Services and utilities infrastructure.

Claim Notice has the meaning given to that term in clause 26.3(b) ("WSPT's entitlement to grant easements over Premises").

Cleanup means the taking of all necessary action to Remediate any Contamination caused by any person for the purpose of restoring any land, building or waters to a condition as close as practical to the condition the land, building or waters were in before being affected by that Contamination.

Code means the WWG Guidelines for PFP.

Commencement Date is the date of this deed.

Compliance Certificate means a certificate referred to in section 109C(1)(a) of the EP&A Act.

Complying Development Certificate means a complying development certificate referred to in section 85 of the EP&A Act.

Concept Plan Application means an Application (if any) made by the Developer to the Minister for approval to carry out the Development pursuant to section 75M of the EP&A Act.

Concept Plan Approval means any concept plan approval to enable the carrying out of the Development pursuant to the Concept Plan Application, and any Modification of it.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Consideration in Kind Supply has the meaning given to that term in clause 42.3(a) ("Non-monetary consideration").

Construction Certificate means a certificate issued under section 109C (1)(b) of the EP&A Act.

Contamination means the presence in, on or under the Land of any substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality being a presence that presents a risk of harm to human health or any other aspect of the Environment.

Control of a corporation includes the direct or indirect power to directly or indirectly:

- (a) direct the management or policies of the corporation; or
- (b) control the membership of the board of directors,

whether or not the power has statutory, legal or equitable force or is based on statutory, legal or equitable rights and whether or not it arises by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of the corporation or otherwise.

Controller has the meaning it has in the Corporations Act.

Conveyancing Act means the *Conveyancing Act 1919* (NSW).

Corporations Act means the *Corporations Act 2001* (Cwlth).

Costs includes costs, charges and expenses, including those incurred in connection with advisers.

Cost to Complete the Works means all Costs and expenses reasonably anticipated to be incurred by the Developer in achieving Practical Completion of the Works.

CPI means the Consumer Price Index All Groups Sydney, or the index officially substituted for it.

Current CPI means the CPI number for the calendar quarter ending immediately before the date the relevant payment is required to be made.

Date for Commencement of Works means the date specified in the Developer's notice under clause 21.5(a) ("Notice of Date of Commencement of Works") as varied under clause 21.5(b).

Date for Practical Completion means the date which is the later of:

- (a) 31 December 2013; and
- (b) 18 months after the Project Proceed Date,

which date may be extended pursuant to clause 23.1 ("Claims for extension of time").

Date for Substantial Commencement means the date which is the later of:

- (a) 28 February 2013; and
- (b) that date extended by the same number of days as the Project Proceed Date occurs after 31 October 2012,

which date may be extended pursuant to clause 23.1 ("Claims for extension of time").

Date of Commencement of Works means the date the Developer actually commences the carrying out of the Works.

Date of Practical Completion means the date being the later of:

- (a) the date the Independent Certifier issues the Certificate of Practical Completion under clause 24 ("Achieving Practical Completion"); and
- (b) the date all documents required to be delivered to WSPT under clause 24.9 ("Prerequisites for Certificate of Practical Completion") have been so delivered.

Date of Project Approval means the date on which the first Project Approval is issued.

Deal and Dealing have the meaning given in clause 30.1 ("Developer may not alienate without consent").

Deed of Appointment means a deed generally in the form of Annexure E.

Defects Liability Period means a period of 12 months commencing on:

- (a) the Date of Practical Completion; or
- (b) if applicable, the date of completion of rectification works as contemplated in clause 25.3(b)(ii) ("Defects Notice given by WSPT").

Defects Notice has the meaning given to that term in clause 25.3 ("Defects Notice given by WSPT").

Delay Event has the meaning given to that term in clause 20.2(b) ("Bi-monthly Reports").

Design Documentation means the preliminary design for the Works, including:

- (a) plans;
- (b) outline specifications; and
- (c) pictorial or three-dimensional representations such as photomontages, artist's perspectives and scale models,

to be prepared by the Developer in accordance with the Design Principles.

Design Obligations means the obligations of the Developer under clause 8 ("Preparation of Applications").

Design Principles means the principles relating to the design and construction of the Developer's proposed commercial aquatic recreation activities centre including but not limited to a water theme park and other associated, supplementary and ancillary uses or events as necessary to conduct the operation or promotion of such a facility as attached to this deed at Annexure F.

Developer's Employees and Agents means each of the Developer's employees, officers, agents, contractors, service suppliers, licensees, invitees and those persons who are on the Premises (other than WSPT and its servants, agents and contractors).

Developer Environmental Liability means any of the following liabilities:

- (a) all Costs and expenses associated with undertaking any Cleanup ordered or required by any Authority of any land, building or waters;
- (b) any compensation or other monies that an Authority requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and
- (e) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses) damages and Costs and interest, payable under an Environmental Law,

which:

- (a) arises, directly or indirectly, from the Developer's occupation or use of the Premises; or
- (b) relates to or is in connection with any Contamination in, on, or under the Land:
 - (i) referred to or contemplated by the Environmental Investigation Report other than a Developer Excluded Contamination Liability; or
 - (ii) which arise, directly or indirectly from the Developer:
 - A. accessing the Land;
 - B. occupying or using of the Land; or
 - C. carrying out the Works or the Development,

(whether or not referred to or contemplated by the Environmental Investigation Report and whether or not it is part of a Developer Excluded Contamination Liability) and includes without limitation any Contamination in, on or under any part of the Land which requires Remediation as a result of any such access, occupation or use of the Land, the carrying out of the Works or the Development (whether or not that part of the Land has been accessed, occupied or used by the Developer and whether or not that part of the Land is subject to the Works).

Developer Excluded Contamination means any Contamination existing at the Commencement Date which does not and in the future will not require any Remediation as a result of any of the matters referred to in sub-clauses A or B of clause 3.6(a)(i).

Developer Excluded Contamination Liability means any Contamination in, on, or under the Land for which the Developer notifies WSPT that it is not liable for, and will not undertake any Remediation pursuant to clause 3.6(a) and for which WSPT either accepts or disputes that liability pursuant to clause 3.6(c).

Developer's Property means all plant and equipment, fixtures, fittings, furniture, furnishings, decorations and other property not owned by WSPT which the Developer brings on to the Premises or fixes to the Premises.

Development means the financing, design, construction, management, maintenance and marketing of the Improvements.

Development Program means the timeline comprising Annexure F which shows the dates by which Major Milestones are to be achieved, as varied in accordance with this deed.

Direct Loss means a loss which arises directly from the occurrence of:

- (a) WSPT's failure to procure vacant possession of the whole of the Land pursuant to clause 11.1(c); or
- (a) any one of the events listed in clause 33.8(a) or clause 35.2,

(as the case may be) and which is reasonably foreseeable by the parties as a being a likely consequence of the occurrence of such an event as at the Commencement Date, and for the avoidance of doubt excludes an Indirect Loss.

Director-General means the Director-General of the Department of Planning.

Disclosure Materials means the materials listed in Annexure G.

Discriminatory Law means a State law which specifically and only affects the Premises, the Building, Plant and Equipment or the execution of the Works in a manner which adversely impacts the Premises, the Building, Plant and Equipment or the execution of the Works.

Documentation means the:

- (a) Approvals; and
- (b) Final Plans and Specifications.

Encumbrance means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement; or
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off; or
- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

Environment includes all aspects of the surroundings of human beings.

Environmental Guidelines means the environmental guidelines relating to the Premises to be agreed by the parties in accordance with clause 13.2 and which include the WSPT ESP Principles ("Environmental Guidelines").

Environmental Investigation means the environmental investigation to be carried out by the Developer in relation to Contamination in, on, or under the Land pursuant to clause 3 ("Developer Due Diligence").

Environmental Investigation Report means the report issued to the Developer in connection with the Environmental Investigation.

Environmental Law means any law concerning the Environment and includes laws concerning:

- (a) the carrying out of uses, works or development or the subdivision of land;
- (b) emissions of substances into the atmosphere, waters and land;
- (c) pollution and contamination of the atmosphere, waters and land; and
- (d) production, use, handling, storage, transportation and disposal of:
 - (i) waste;
 - (ii) hazardous substances;
 - (iii) dangerous goods;
 - (iv) threatened, endangered and other flora and fauna species; and
 - (v) the health and safety of people,

whether made or in force before or after the Commencement Date.

Environmental Management Plan means the environmental management plan to be prepared by the Developer and based on (and incorporating the provisions of) the Environmental Guidelines and the WSPT SEPP, and approved by WSPT.

EP&A Act means the *Environmental Planning and Assessment Act 1979* (NSW).

ESD means ecologically sustainable development.

ESD Consultant means the ESD consultant appointed by the Developer pursuant to clause 13.4.

An **Event of Default** occurs:

- (a) if the Developer does not comply with any of its obligations under this deed;
- (b) if the Developer fails to pay the Estate Levies in accordance with this deed;
- (c) if the Developer fails to provide any Bank Guarantee in accordance with this deed;
- (d) a person becomes or ceases to be a Parent of the Developer without WSPT's prior written consent if that consent is required under this deed;
- (e) a judgment, order or Encumbrance in an amount in excess of \$1,000,000 is enforced against any property of the Developer or a Parent of the Developer, unless in the case of a Parent of the Developer only, the Developer can reasonably satisfy WSPT that the occurrence of any of the matters in this paragraph (e) does not have a Material Adverse Effect;
- (f) any term of this deed, any Transaction Document (or any transaction in connection with any of them) is claimed to be wholly or partly void, voidable or unenforceable by the Developer or by anyone on behalf of the Developer;
- (g) the Works or the Premises are damaged or destroyed and the Developer has not rectified the damage or destruction within a reasonable time after the damage or destruction occurs (having regard to the nature of the damage or destruction);
- (h) the Developer is required under this deed to provide information to WSPT or any other person and:
 - (i) the Developer does not provide the information; or
 - (ii) the Developer does provide the information but it is incomplete, misleading or incorrect;
- (i) an Insolvency Event occurs in relation to:
 - (i) the Developer; or
 - (ii) a Parent of the Developer unless the Developer can reasonably satisfy WSPT that the Insolvency Event does not have a Material Adverse Effect;
- (j) the Developer does not pay on time, being within any allowed period of grace, any money payable under any Transaction Document in the manner required under it;
- (k) the Developer defaults in complying with any condition imposed by WSPT pursuant to clause 2.5(f) and clause 2.5(i)(i);
- (l) the Developer defaults in complying with any provision of any other Transaction Document and such default is not remedied within 10 Business Days (or such longer period as WSPT determines in its absolute discretion but having regard to

any submission made by the Developer within that 10 Business Day period) after it occurs, except if the default relates to the Building Contract and the default has arisen as a consequence of a bona fide dispute between the Developer and the Builder and remedy of the default remains subject to resolution of that dispute;

- (m) any present or future monetary obligation of the Developer or a Parent of the Developer:
 - (i) in connection with money borrowed or raised by any of them, or any hiring arrangement, redeemable preference share, letter of credit, interest rate swap, currency swap, financial option, futures contract or currency exchange agreement to which any of them is party:
 - A. is not satisfied on time or at the end of its period of grace and remains unsatisfied after the expiry date of a written demand by the relevant other person; or
 - B. becomes prematurely payable, or can be rendered prematurely payable by the giving of notice, lapse of time or fulfilment of a condition and remains unpaid after the expiry date of a written demand by the relevant other person; or
 - (ii) to guarantee or indemnify against loss in connection with money borrowed or raised is not discharged at maturity or when called and remains undischarged after the expiry date of a written demand by the relevant other person,

unless, in the case of a Parent of the Developer only, the Developer can reasonably satisfy WSPT that the occurrence of any of the matters referred to in this paragraph (m) does not have a Material Adverse Effect;

- (n) a representation or warranty made or taken to be made by or on behalf of the Developer in connection with a Transaction Document is found, or is notified by the Developer, to be incorrect or misleading in a material respect when made or taken to be made;
- (o) the Developer or a Parent of the Developer stops payment, ceases to carry on its business or a material part of it, or threatens to do either of those things except to reconstruct or amalgamate while solvent on terms approved by WSPT unless, in the case of a Parent of the Developer only, the Developer can reasonably satisfy WSPT that the occurrence of any of the matters referred to in this paragraph (o) does not have a Material Adverse Effect;
- (p) a person is appointed under legislation to investigate or manage any part of the affairs of the Developer or a Parent of the Developer unless, in the case of a Parent of the Developer only, the Developer can reasonably satisfy WSPT that the occurrence of any of the matters referred to in this paragraph (p) does not have a Material Adverse Effect;
- (q) without WSPT's prior written consent where required under this deed:
 - (i) a change takes place in the Control of the Developer or a Parent of the Developer in breach of clause 30 ("Developer - restrictions on alienation");

- (ii) a transfer of shares in the capital of the Developer is registered or any holder of shares in the capital of the Developer disposes of any interest in those shares and that transfer or disposal amounts to a change in Control of the Developer (such consent not to be unreasonably withheld); or
- (iii) new shares, convertible notes or options for shares in the capital of the Developer are issued and that issue amounts to a change in Control of the Developer (such consent not to be unreasonably withheld);
- (r) without WSPT's consent the Developer creates an Encumbrance over its interest in any Transaction Document or any of its rights or obligations under any Transaction Document;
- (s) the Works have not been Substantially Commenced on or before the Date for Substantial Commencement; or
- (t) if Practical Completion has not been achieved on or before the Last Date for Practical Completion.

Expiry Date means the date of the day immediately before the Lease Commencement Date.

Final Certificate means a certificate under which the Independent Certifier certifies that all defects and omissions in the Works have been rectified.

Final Completion means the point in time when the Works have been carried out such that a Final Certificate must issue.

Final Plans and Specifications means the Approved Plans and Specifications for the Works consented to by the Consent Authority and by WSPT and for which a Construction Certificate for the Works has issued.

Financial Statements means:

- (a) a profit and loss statement;
- (b) a balance sheet; and
- (c) a statement of cash flows,

together with any notes to those documents and a directors' declaration as required under the Corporations Act and any other information necessary to give a true and fair view.

Financier means the financier, if any, which provides financial accommodation to the Developer to fund the Development and which may require WSPT to enter into a financier's side deed.

First Bank Guarantee means an irrevocable and unconditional undertaking by a bank, and on terms, acceptable to WSPT to pay on demand \$250,000.

Force Majeure means any one of the following events:

- (a) war (undeclared or declared), civil war, civil commotion, demonstrations, insurrections, riots, floods, explosions, act of terrorism, earthquakes, substantial fires (not caused by the Developer or the Developer's Employees and Agents), acts of God or the public enemy or sabotage; or

(b) state-wide or nationwide industrial disputes, stoppages or strikes.

Geotechnical Investigation means the geotechnical investigation of the Premises to be carried out by the Developer pursuant to clause 3 ("Developer Due Diligence").

Geotechnical Investigation Report means the report issued to the Developer in connection with the Geotechnical Investigation.

Government means the government of New South Wales.

GST has the meaning it has in the GST Act.

GST Act means *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

GST Amount has the meaning given to that term in clause 42.2 ("GST payable").

Guidelines means:

- (a) the Management Vision;
- (b) the Environmental Guidelines; and
- (c) the WSPT SEPP.

Improvements means all improvements erected at any time on the Premises.

Independent Certifier means the person appointed by the Developer to be the Independent Certifier for the purposes of this deed pursuant to clauses 19.6 ("Choice of Independent Certifier") and 19.7 ("Appointment of Independent Certifier") and any replacement appointed under clause 19.7.

Independent Certifier's Deed means a deed generally in the form of Annexure D.

Indirect Loss means consequential loss or damage suffered by WSPT, arising from a breach of this deed by the Developer, and includes (but is not limited to) loss of profits, goodwill and anticipated savings.

Input Tax Credit means payment of GST on any taxable supplies that are acquired for use in business. These are claimable in most cases except where the acquisition relates to the making of input tax supplies or supplies of a private or domestic nature.

Insolvency Event means the happening of any of these events:

- (a) a body corporate is (or states that it is) an insolvent under administration or insolvent (each as defined in the Corporations Act); or
- (b) a body corporate has a Controller appointed, is under administration or wound up or has had a Receiver appointed to any part of its property; or
- (c) a body corporate is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by WSPT); or
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 20 Business Days), resolution passed,

proposal put forward, or any other action taken, in each case in connection with that body corporate, which:

- (i) is preparatory to or could result in any of (a), (b) or (c) above; or
 - (ii) which results in the appointment of a liquidator or provisional liquidator in respect of a body corporate; or
- (e) as a result of the operation of section 459(F)(1) of the Corporations Act a body corporate is taken to have failed to comply with a statutory demand; or
- (f) a body corporate is, or it makes a statement from which WSPT reasonably deduces that the body corporate is, the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act (or it makes a statement from which WSPT reasonably deduces it is so subject); or
- (g) a body corporate is otherwise unable to pay its debts when they fall due; or
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) something having a substantially similar effect to (a) to (g) happens in connection with that person under the law of any jurisdiction.

Insurances means the insurances required to be effected and maintained in connection with the Development under any Transaction Document.

Interest Rate means, for each daily balance, the rate that is 4% per annum above the 90 day Bank Bill Swap Reference Rate last published on or before that day in The Australian Financial Review (or if no such rate has been published, another rate set by WSPT in good faith).

Investigation means each of the Geotechnical Investigation and the Environmental Investigation.

Investigation Completion Date means the date which is 3 months after the Commencement Date.

Investigation Report means each of the Environmental Investigation Report and the Geotechnical Investigation Report.

Land means the land hatched on the Plan being Lot 1 in DP 1045771 and known as Prospect Recreational Park.

Land Tax means land tax payable in accordance with the provisions of the Land Tax Legislation.

Land Tax Legislation means each of the *Land Tax Act 1956* (NSW) and the *Land Tax Management Act 1956* (NSW).

Last Date for Practical Completion means the date which is the later of:

- (a) 31 December 2014; and
- (b) 30 months after the Project Proceed Date,

which date may be extended pursuant to clause 23.1 ("Claims for extension of time").

LEADR means Lawyers Engaged in Alternative Dispute Resolution or, if no such organisation exists, a similar organisation reasonably selected by WSPT.

Lease means the lease to be granted under clause 36 in the form of the lease attached as Annexure C.

Lease Commencement Date means the date of commencement of the lease to be granted under clause 36.1 ("Grant of Lease") determined in accordance with clause 36.2 ("Term of Lease").

Lessee means the lessees of WSPT which occupy parts of the Land.

Let Areas means those parts of the Land which are occupied by the Lessees.

LPI means Land and Property Information New South Wales.

Majority Improvements means all built form structures and Improvements (other than the Civil Works), but including without limitation rides and attractions, buildings, car parking and landscaping) forming part of the Works which have an estimated cost of no less than 60% of the estimated cost of all Works to be performed or carried out to complete the Development.

Major Milestones means each of the following events:

- (a) lodgement of the Project Application with WSPT;
- (b) lodgement of the Project Application with the Consent Authority;
- (c) receipt of the environmental assessment requirements from the Consent Authority (or otherwise known as the Director-General's requirements);
- (d) lodgement of any environmental assessment and revised environmental assessment pursuant to section 75H of the EP&A Act with WSPT (prior to the submission by the Developer of such environmental assessment or revised environmental assessment to the Consent Authority);
- (e) lodgement of any environmental assessment and revised environmental assessment to the Consent Authority pursuant to section 75H of the EP&A Act;
- (f) issue of the notice of determination of the Project Approval by the Consent Authority;
- (g) the Developer effecting the Satisfactory Project Proceed Arrangements and notifying WSPT whether or not it is proceeding with the Development on or before the Project Proceed Date;
- (h) the Works have been Substantially Commenced; and
- (i) Practical Completion.

Management Vision means the Western Sydney Regional Parklands Management Vision, if any Application varies significantly from the requirements of WSPT SEPP.

Material Adverse Effect means as the context permits a material adverse effect on:

- (a) the Developer's ability to comply with its obligations under any Transaction Document; or
- (b) WSPT's rights under any Transaction Document; or
- (c) the business or financial condition of the Developer.

Minister means the Minister for Planning.

Modification means a "modification" of the Part 3A Approval within the meaning of section 75W of the EP& A Act.

Moral Rights means any of the rights described in Article 6b of the Berne Convention for the Protection of Literary and Artistic Works 1886 (as amended and revised from time to time), being "droit moral" or other analogous rights arising under any law (including the *Copyright Act 1968* (Cwlth) or any law outside Australia), that exists now or in the future anywhere in the world.

New Landlord has the meaning given to that term in clause 31.2 ("Change of landlord").

Occupation Certificate means a certificate referred to in section 109C(1)(c) of the EP&A Act.

OH&S Act means the *Occupational Health and Safety Act 2000* (NSW).

OH&S Plan means a site specific occupation health and safety management plan to be prepared in relation to the Works as required by Part 8.3 of Chapter 8 of the OH&S Regulations.

OH&S Regulation means the *Occupational Health and Safety Regulation 2001* (NSW).

Operational Year means for the purpose of the Lease, the period commencing on (and including) 1 September and ending on (and including) 30 April.

Original Cost of the Works has the meaning given to that term in clause 19.8 ("Independent Certifier to certify").

Outgoings means all amounts, costs, charges and expenses of any kind whatsoever assessed, incurred or levied in connection with the Premises including:

- (a) Rates, Taxes and other charges imposed by any Authority (but in the case of land tax, on the basis that the land included in the Premises is the only land owned by WSPT and is not subject to a trust);
- (b) for installing, connecting, supplying, renting, operating, maintaining, servicing, repairing and replacing Services and upgrading Services to comply with any law; and
- (c) any other Costs necessarily incurred by WSPT because of its ownership of the Premises, but Outgoings do not include income tax or capital gains tax payable by WSPT, WSPT's internal administrative Costs, Costs of any valuation of the Premises obtained by WSPT from time to time for its own purposes unrelated to the Developer's use and occupation of the Premises, any Costs incurred by WSPT because of its ownership of the Premises which are not necessarily incurred, or any Input Tax Credit to which WSPT is entitled as a result of incurring Outgoings.

Parent of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:

- (a) if the first mentioned person is a corporation, a person who:
 - (i) controls the composition of the board of directors of the first mentioned person; or
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or
 - (iii) holds or has a beneficial interest in more than one-half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (b) if the first mentioned person is a trustee of a unit trust and, in the case of the Developer, its interest in this deed is property subject to that trust, a person who:
 - (i) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units at that meeting; or
 - (ii) holds or has a beneficial interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); or
- (c) if the first mentioned person is a trustee of a trust and, in the case of the Developer, its interest in this deed is property subject to that trust, a person who:
 - (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or
 - (ii) is entitled to or whose consent is required to:
 - A. appoint or change the trustee; or
 - B. give directions to the trustee; or
 - C. vary the constituent document of the trust; or
 - D. appoint or remove beneficiaries; or
 - E. decide to whom any distribution is made or the amount of any distribution.

A person is also a Parent of another person if a part of this definition is satisfied in respect of each trust and company in any chain of trusts or companies connecting that person and the other person.

Any holder of shares in a Parent, which Parent is listed on a recognised stock exchange will not be a Parent for the purposes of this agreement.

Part 3A Application means:

- (a) where the Developer makes both a Concept Plan Application and a Project Application for approval to carry out the Development, that Concept Plan Application and Project Application; or
- (b) where the Developer makes a Project Application, but does not make a Concept Plan Application, for approval to carry out the Development, that Project Application,

as the case may be.

Part 3A Approval means each and any (as the case requires) Concept Plan Approval or Project Approval to enable the carrying out of the Development pursuant to the Part 3A Application, and any Modification to it.

Part 4A Certificate means a certificate referred to in section 109C(1)(a), (b), (c) or (d) of the EP&A Act.

Personal Information means information or an opinion (including information or an opinion forming part of a database) collected, held, used or disclosed in connection with this deed or the Development whether true or not, and whether recorded in a material form or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information or opinion.

Plan means the plan, generally showing the location of the Premises, attached as Annexure A.

Policeman's Cottage means the existing "policeman's cottage" which is adjacent to the western boundary of the Land and approximately 60 metres north of Reservoir Road.

Practical Completion means the point of time at which, in relation to the Works:

- (a) the Independent Certifier is satisfied that every item shown or called for in the Final Plans and Specifications (except for minor omissions or defects) has been completed or installed in accordance with:
 - (i) the Documentation; and
 - (ii) the obligations of the Developer under this deed, including the Guidelines (except to the extent that the Guidelines are inconsistent with the Documentation);
- (b) the Developer has complied with all of its material obligations under this deed except those obligations set out in clause 25 ("Defects Liability and Final Certificate");
- (c) all compliance reports have been delivered to the relevant Consent Authority (with a copy to WSPT);
- (d) the Works are fit for use and occupation and capable of being lawfully used and occupied for their intended purpose as contemplated in the Lease with the consent of all relevant Authorities;
- (e) (if relevant) a Compliance Certificate for the Works has issued;
- (f) an Occupation Certificate for the Works has issued;
- (g) (if relevant) a Complying Development Certificate for the Works has issued;

- (h) the documents referred to in clause 24.9 ("Prerequisites for Certificate of Practical Completion") relating to the Works have been delivered to WSPT; and
- (i) the Independent Certifier is satisfied that the Developer has obtained all certificates, authorisations and permits required by any law to operate any rides and attractions that the Developer intends to operate at the Premises from the Lease Commencement Date.

Pre-PA Requirement means the subject matter of any reasonable advice, recommendation or comment provided by any relevant Authority as contemplated by clause 8.6 ("Pre-PA Requirements").

Premises means the Land and the Building, Plant and Equipment.

Privacy Laws means:

- (a) the *Privacy Act 1988* (Cwlth); and
- (b) any other law, industry code or policy relating to the handling of Personal Information.

Privacy Statement means a statement containing matters about the Developer's information-handling practices as required by the National Privacy Principle 1 in the *Privacy Act 1988* (Cwlth).

Prohibited Entity means any person or entity which:

- (a) is a "terrorist organisation" as defined in Part 5.3 of the *Criminal Code Act 1995* (Cwlth); or
- (b) is listed by the Minister for Foreign Affairs in the Government Gazette pursuant to Part 4 of the *Charter of the United Nations Act 1945* (Cwlth) which list as at the date of this deed is available from the website of the Australian Department of Foreign Affairs and Trade or such other person or entity on any other list of terrorist or terrorist organisations maintained pursuant to the rules and regulations of the Australian Department of Foreign Affairs and Trade or pursuant to any other Australian legislation.

Project Approval means the project approval or authorisation necessary to enable the carrying out of the Development pursuant to the Project Application, and any Modification of it.

Project Application means an Application made by the Developer to the Minister for approval to carry out the Development pursuant to section 75E of the EP&A Act.

Project Control Group has the meaning given to that term in clause 20.1(a) ("Project Control Group").

Project Proceed Date means the date which is the later of 31 October 2012 and 15 months after the Date of Project Approval, which date may be extended pursuant to clause 23.1 ("Claims for extension of time").

Proposed Part 3A Application Plans means the plans and specifications submitted to WSPT for approval which are intended to form part of the proposed Part 3A Application.

Rates means rates, land taxes, assessments and other charges (including charges for consumption, garbage and waste removal and parking levies) imposed by an Authority, and levies imposed by an owners corporation under the *Strata Schemes Management Act 1996*

(NSW) or a corporation under the *Community Land Development Act 1989* (NSW) or the *Community Land Management Act 1989* (NSW), in respect of the Premises together with any interest, fines and penalties in connection with them.

Receiver includes a receiver or receiver and manager.

Related Entity of an entity means another entity which is related to the first within the meaning of section 50 of the Corporations Act or is an economic entity (as defined in any approved accounting standard) which contains the first.

Relic means:

- (a) minerals of commercial value;
- (b) fossils;
- (c) relics, articles or objects of antiquity or of anthropological or archaeological interest;
- (d) coins and other articles of value;
- (e) historical archaeological sites; and
- (f) Aboriginal archaeological relics.

Remediate means investigate, clean up, remove, abate, dispose of, control, contain, encapsulate or otherwise treat Contamination and includes the monitoring and risk management of Contamination.

Remedy Period means:

- (a) (a) for a breach by the Developer of the obligation to provide the insurances referred to in clause 17, the period from the date a Default Notice is given to the day that is 20 Business Days after that date;
- (b) for a breach by the Developer to pay money to WSPT under this deed, the period from the date a Default Notice is given to the day that is 30 Business Days after that date; and
- (b) for any other breach of this deed by the Developer, the period from the date a Default Notice is given to the day that is 6 months after that date.

Rent Commencement Date means for the purpose of the Lease, the date determined in accordance with clause 36.3.

Required Standard has the meaning given to that term in the Lease.

Road Contribution means \$5,200,000 payable by the Developer to WSPT or the RTA pursuant to clause 5.8.

Road Works means works to be identified and undertaken by RTA to relieve traffic congestion on roads in the vicinity of the Site, including proposed upgrade works to the M4/Prospect Highway interchange.

Road Works Agreement means an agreement or agreements to document the arrangements for the payment of the Road Contribution by the Developer, the carrying out of the Road Works by the RTA and other matters related the Road Contribution and the Road Works.

RTA means the Roads and Traffic Authority of New South Wales constituted under the *Transport Administration Act 1988* (NSW).

Satisfactory Project Proceed Arrangements means each of the following:

- (a) the Developer being given vacant possession of that part of the Land occupied by the Lessees of the Agistment Leases;
- (b) the issue of the Project Approval on terms acceptable to the Developer;
- (c) the Developer having entered into contractual arrangements in relation to:
 - (i) the Civil Works; and
 - (ii) the design, delivery, installation and commissioning of the Majority Improvements;
- (d) the Developer having paid the Road Contribution to WSPT or the RTA (as the case may be);
- (e) a Road Works Agreement having been entered into;
- (f) the Developer having provided the Second Bank Guarantee to WSPT; and
- (g) the Developer notifying WSPT that it has entered into financing arrangements which will ensure that it has sufficient funds available to finance all of its obligations under this deed, including without limitation sufficient funds to procure Practical Completion of the Works.

Second Bank Guarantee means an irrevocable and unconditional undertaking by a bank, and on terms, acceptable to WSPT to pay on demand \$5,000,000.

Services means the services servicing the Premises including power, electricity, gas, water, sewerage and telecommunications and includes all pipes, wires, cables, ducts and other conduits in connection with them.

Signage Policy means the signage policy in connection with the Premises to be agreed by the parties in accordance with clause 29.2 ("Signage").

Site Encumbrances has the meaning given to that term in clause 26.3(a) ("WSPT's entitlement to grant easements over Premises").

Substantially Commenced means that:

- (a) the Developer has entered into an unconditional Building Contract or Building Contracts (as the case may be) (which has not been terminated or suspended) for the Civil Works and the Majority Improvements with the Builder or the Builders (as the case may be); and
- (b) the Independent Certifier has certified that Works to the value of not less than \$1,000,000 have been completed, which may include the following:
 - (i) site establishment;
 - (ii) bulk excavation; and
 - (iii) detailed excavation.

Surveyor means a surveyor who is a member of the Association of Consulting Surveyors NSW Inc having at least five years' experience in surveying premises of the same type as the Premises approved by WSPT (such approval not to be unreasonably withheld).

Sydney Water Proposed Easements means the proposed easements for a water main and the construction of that water main referred to on the deposited plan for the Land (Deposited Plan 1045771) in favour of Sydney Water.

Taxes means taxes, levies, imposts, deductions, charges and duties (including stamp and transaction duties) together with any related interest, penalties, fines and expenses in connection with them, except if imposed on, or calculated having regard to, the net income of WSPT.

Tenant means the Tenant under the Lease.

Term means the period:

- (a) from and including the Commencement Date; and
- (b) to and including the Expiry Date.

Third Bank Guarantee means an irrevocable and unconditional undertaking by a bank, and on terms, acceptable to WSPT to pay on demand \$2,000,000.

Third Party Appeal means legal proceedings which have been commenced by a person other than WSPT or the Developer in relation to the granting of the Project Approval.

The Indemnified Persons means WSPT and WSPT's directors, officers, employees, agents and contractors.

Threatened Species Claim means a claim made or legal proceedings commenced in connection with the existence of a threatened species, population or ecological community or the habitat of a threatened species, population or ecological community as regulated by the *Threatened Species Conservation Act 1995* (NSW), the *National Parks and Wildlife Act 1974* (NSW) or the *Environment Protection and Biodiversity Conservation Act 1999* (Cwlth).

Transaction Documents means:

- (a) this deed;
- (b) the Final Plans and Specifications;
- (c) the Building Contract;
- (d) any side deed entered into by the Financier and WSPT;
- (e) the Independent Certifier's Deed;
- (f) any side deed entered into by a Builder and WSPT; and
- (g) any document which WSPT and the Developer acknowledge in writing to be a Transaction Document.

Western Sydney Regional Parklands has the meaning it has in the WSPT Act.

Works means all work required to be performed or carried out to complete the Development (whether or not on the Premises):

- (a) in accordance with the Documentation; and
- (b) as required by this deed.

WSPT Act means the *Western Sydney Parklands Act 2006* (NSW).

WSPT Environmental Liability means any of the following liabilities:

- (a) all Costs and expenses associated with undertaking any Cleanup ordered or required by any Authority of any land, building or waters;
- (b) any compensation or other monies that an Authority requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and
- (e) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses) damages and Costs and interest, payable under an Environmental Law,

which relates to or is in connection with any Contamination in, on or under the Land other than a Developer Environmental Liability.

WSPT ESD Principles means the provisions relating to ESD at the Premises to be incorporated in the Environmental Guidelines.

WSPT SEPP means State Environmental Planning Policy (Western Sydney Parklands) 2009.

WSPT's Solicitor means Mr Gary Best, Clayton Utz or any other firm of solicitors as advised to the Developer from time to time.

WWG Guidelines for PFP means the Working With Government Guidelines for Privately Financed Projects, December 2006, as updated.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this deed to:

- (a) a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (d) anything (including an amount) is a reference to the whole and each part of it;
- (e) a document (including this deed) includes any variation or replacement of it;

- (f) law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them) and includes any notice issued by, and any requirements of, an Authority;
- (g) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (h) Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia;
- (i) a time of day is a reference to Sydney time;
- (j) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (k) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns; and
- (l) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind.

1.3 Number

The singular includes the plural and vice versa.

1.4 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

1.5 Developer's Employees and Agents

If this deed prohibits the Developer from doing a thing, then:

- (a) the Developer must do everything necessary to ensure that the Developer's Employees and Agents do not do that thing; and
- (b) the Developer may not authorise or cause any person to do that thing.

1.6 Timeline Table

The Parties agree that the timeline table set out in Annexure I:

- (a) is intended to assist the reader to gain a general understanding of the timing of certain activities contemplated under this deed;
- (b) is not intended to have any legal effect; and
- (c) does not have any legal effect.

Part A - Conditions precedent

2. Satisfactory Project Proceed Arrangements

2.1 Notice of satisfaction of Satisfactory Project Proceed Arrangements

Subject to clause 2.5(a), no later than the Project Proceed Date, the Developer must either:

- (a) notify WSPT that it is proceeding with the Development on the basis that it has effected the Satisfactory Project Proceed Arrangements; or
- (b) terminate this deed by notice to WSPT, whether or not it has effected the Satisfactory Project Proceed Arrangements.

2.2 Establishing Satisfactory Project Proceed Arrangements

If the Developer notifies WSPT that the Developer is proceeding with the Development pursuant to clause 2.1(a) ("Notice of satisfaction of Satisfactory Project Proceed Arrangements"), then the Developer must provide with that notification evidence to establish that the Developer has effected the Satisfactory Project Proceed Arrangements.

2.3 Termination by WSPT

If the Developer:

- (a) fails to notify WSPT of its course of action pursuant to clause 2.1 ("Notice of satisfaction of Satisfactory Project Proceed Arrangements"); or
- (b) provides WSPT with evidence pursuant to clause 2.2 which does not satisfy WSPT (acting reasonably) that the Developer has effected the Satisfactory Project Proceed Arrangements; and

then, WSPT may terminate this deed by notice to the Developer given no later than 20 Business Days after the Project Proceed Date. Any dispute in connection with the exercise by WSPT of its termination right pursuant to clause 2.3(a) will be treated as dispute and will be resolved in accordance with clause 32 ("Dispute Resolution").

2.4 No compensation

- (a) Subject to clause 2.4(b), without prejudice to any party's rights under this deed or at law arising prior to termination, no compensation is payable by any party under this clause 2 ("Satisfactory Project Proceed Arrangements").
- (b) Where this agreement is terminated:
 - (i) because WSPT and RTA (and, if relevant, the Developer) have failed to enter into a Road Works Agreement by the Project Proceed Date; and
 - (ii) the Developer has otherwise effected all other Satisfactory Project Proceed Arrangements by the Project Proceed Date and would have proceeded with the Development but for the failure of WSPT and RTA

(and, if relevant, the Developer) to enter into the Road Works Agreement,

then subject to clause 2.4(c) WSPT will reimburse the Developer for the Road Contribution paid by the Developer to WSPT pursuant to clause 5.8(a) within 30 Business Days of such termination.

- (c) WSPT will not be required to reimburse the Developer for any part of the Road Contribution which has been expended by RTA or costs otherwise incurred by RTA which are to be funded by the Road Contribution for the purposes of, and in carrying out the Road Works, including without limitation any site investigations and design works arising from, and in connection with, the Road Works.

2.5 Satisfactory Project Proceed Arrangements not effected

- (a) Subject to clause 2.5(e), no later than the Project Proceed Date, and in lieu of its obligation to provide a notice to WSPT pursuant to clause 2.1, the Developer may notify WSPT that it wishes to proceed with the Development notwithstanding that it has not effected the Satisfactory Project Proceed Arrangements.
- (b) Where the Developer has failed to pay the Road Contribution by the Project Proceed Date, then the Developer has no right to notify WSPT that it wishes to proceed with the Development notwithstanding that the Satisfactory Project Proceed Arrangements have not been effected pursuant to clause 2.5(a) and clauses 2.1(b) and 2.3 will apply.
- (c) Where WSPT and RTA (and, if relevant, the Developer) have not entered into a Road Works Agreement by the Project Proceed Date, then the Parties agree that the Developer has no right to notify WSPT that it wishes to proceed with the Development notwithstanding that the Satisfactory Project Proceed Arrangements have not been effected pursuant to clause 2.5(a) and clauses 2.1(b) and 2.3 will apply.
- (d) The parties agree that if the Developer provides a notice to WSPT pursuant to clause 2.5(a), the Developer's obligation to provide a notice to WSPT in accordance with clause 2.1(a) will be taken to be fully satisfied and discharged.
- (e) The parties agree that where the Developer has served a notice pursuant to clause 2.5(a), the Developer will not be able to proceed with the Development without WSPT's consent, which may be withheld in its absolute discretion.
- (f) The parties agree that in granting its consent, WSPT may impose conditions to ensure that the Developer effects the Satisfactory Project Proceed Arrangements as soon as reasonably possible after the Project Proceed Date.
- (g) The Developer must provide with its notice in clause 2.5(a):
 - (i) details and evidence of those Satisfactory Project Proceed Arrangements that it has effected;
 - (ii) information as to when it reasonably expects to effect the Satisfactory Project Proceed Arrangements; and
 - (iii) any other information requested by WSPT in relation to the Satisfactory Project Proceed Arrangements.

- (h) If requested by WSPT, the Developer and WSPT will meet to discuss in good faith (and both acting reasonably) any actions that WSPT requires the Developer to take to effect the Satisfactory Project Proceed Arrangements as soon as reasonably possible after the Project Proceed Date and to proceed with the Development.
- (i) No later than 20 Business Days after receipt of the notice in clause 2.5(a), WSPT must either:
 - (i) notify the Developer that it consents (with or without conditions) to the Developer proceeding with the Development notwithstanding that the Developer has not effected the Satisfactory Project Proceed Arrangements; or
 - (ii) terminate this deed by notice to the Developer.

2.6 Developer to notify WSPT

For the purposes only of assisting WSPT in relation to its obligation to procure vacant possession of the Land pursuant to clause 11.1(c) and without limiting the Developer's rights under clause 2.1(a), at least 50 Business Days before the Developer may to notify WSPT as to whether it is proceeding with the Development pursuant to clause 2.1(a) ("Notice of satisfaction of Satisfactory Project Proceed Arrangements"), the Developer must give WSPT a notice specifying the date it expects to serve that notice on WSPT.

3. Developer due diligence

3.1 Geotechnical and Environmental Investigation

- (a) The parties acknowledge and agree that the Developer has the right to undertake the Investigation on the Land.
- (b) The Developer must:
 - (i) complete the Investigation; and
 - (ii) procure the Investigation Report,by the Investigation Completion Date.
- (c) Subject to clause 21.3 ("Terms of developer access to Premises"), clause 21.4 ("Pre-conditions to commencement of Works") and 33.7 ("WSPT may terminate"), WSPT must give the Developer access to the Land on the Commencement Date to enable the Developer to carry out the Investigation.
- (d) The Developer must give WSPT:
 - (i) reasonable notice of its intention to access the Land; and
 - (ii) reasonable details of the works to be carried out at the Land,in connection with the Investigation.
- (e) The Developer must carry out the Investigation at its own Cost and risk.

3.2 Investigation Report

- (a) Within 5 Business Days of the earlier of the issue of the Investigation Report and the Investigation Completion Date, the Developer must provide WSPT with a copy of each of the Geotechnical Investigation Report and the Environmental Investigation Report.
- (b) Within 10 Business Days of the Developer providing a copy of the Investigation Report to WSPT, the Developer and WSPT agree to meet to discuss in good faith and assess the extent of:
 - (i) any Contamination referred to or contemplated by the Environmental Investigation Report and the anticipated costs of Remediating that Contamination; and
 - (ii) any structural or geotechnical issues concerning the Land referred to or contemplated by the Geotechnical Investigation Report which may have a Material Adverse Effect upon the Works or the Development and the anticipated costs of accommodating and managing those structural or geotechnical issues.

3.3 Environmental Investigation Report

- (a) In the event that the Developer is reasonably of the opinion that the costs associated with any Remediation of Contamination referred to or contemplated by the Environmental Investigation Report will exceed \$1,000,000, the Developer must as soon as reasonably practicable but in any event no later than 15 Business Days after the Investigation Completion Date notify WSPT of such opinion and request WSPT to meet, within 25 Business Days after the Investigation Completion Date to discuss in good faith and seek to agree the risk and funding allocation between the Developer and WSPT of all work required to carry out such Remediation.
- (b) The parties acknowledge and agree that the Developer will bear all costs associated with Remediation of the Land up to and including \$1,000,000 and any discussions by the parties relating to the risk and funding allocation between the Developer and WSPT referred to in clause 3.3(a) will apply to those works required to carry out such Remediation for any costs in excess of \$1,000,000.
- (c) If the parties fail to agree the risk and funding allocation of all work required to carry out such Remediation for any costs in excess of \$1,000,000 as referred to in clause 3.3(a) and clause 3.3(b), the Developer may terminate this deed upon notice to WSPT.
- (d) Notwithstanding any other provision of this deed, if the Developer fails to provide a notice to WSPT pursuant to clause 3.3(a) within 15 Business Days of the Investigation Completion Date, the Developer will be deemed to:
 - (i) accept all risks in connection with any Contamination at the Land; and
 - (ii) waive its right to terminate this deed pursuant to clause 3.3(c).

3.4 Geotechnical Investigation Report and termination

- (a) In the event that the Developer is reasonably of the opinion that the structural or geotechnical issues with the Land as referred to or contemplated by the Geotechnical Investigation Report cannot be reasonably accommodated or managed in the design and construction of the Works, then the Developer must as soon as

reasonably practicable but in any event no later than 15 Business Days after the Investigation Completion Date notify WSPT of such opinion and request WSPT to meet, within 25 Business Days after the Investigation Completion Date to discuss in good faith (and acting reasonably) how any structural or geotechnical issues with the Land may be accommodated and managed in the design and construction of the Works.

- (b) If the parties fail to agree how to accommodate and manage any structural or geotechnical issues with the Land in the design and construction of the Works as referred to in clause 3.4(a), the Developer may terminate this deed upon notice to WSPT.
- (c) If the Developer fails to provide a notice to WSPT pursuant to clause 3.4(a) within 15 Business Days of the Investigation Completion Date, the Developer will be deemed to:
 - (i) accept all risks in connection with any structural or geotechnical issues with the Land; and
 - (ii) waive its right to terminate this deed pursuant to clause 3.3(c).

3.5 No compensation

Without prejudice to any party's rights under this deed or at law arising prior to termination, no compensation is payable by the Developer to WSPT in respect of termination under this clause 3.

3.6 Developer Excluded Contamination Liability

- (a) Within 15 Business Days after the Investigation Completion Date, the Developer must:
 - (i) notify WSPT if the Environmental Investigation Report refers to or contemplates any Contamination which existed at the Commencement Date and which the Developer determines (acting reasonably) does not and in the future will not require any Remediation:
 - A. as a result of the Developer or Tenant accessing the Land, the Developer's or Tenant's occupation or use of the Land, the carrying out of the Works or the Development (whether or not referred to or contemplated by the Environmental Investigation Report); or
 - B. because that Contamination will not be directly or indirectly disturbed by the carrying out of the Works or by the carrying on of the Business at the Premises under the Lease; and
 - (ii) provide reasonable details to support its opinion in that notice, including without limitation a report from a consultant, who is an expert in environmental investigation matters appointed by the Developer and reasonably acceptable to WSPT, certifying that in its opinion that that Contamination is Developer Excluded Contamination.
- (b) Notwithstanding any other provision of this deed, the Developer will be deemed to accept all risks in connection with any Contamination referred to or contemplated by the Environmental Investigation Report, if the Developer fails to provide a

notice to WSPT pursuant to clause 3.6(a)(i) within 15 Business Days of the Investigation Completion Date.

- (c) Within 20 Business Days of WSPT receiving notification from the Developer in clause 3.6(a), WSPT must notify the Developer whether:
 - (i) it agrees that that Contamination is Developer Excluded Contamination;
or
 - (ii) disagrees that that Contamination is Developer Excluded Contamination.
- (d) If WSPT disagrees that that Contamination is a Developer Excluded Contamination, then that will be treated as a dispute and will be resolved in accordance with clause 32 ("Dispute Resolution").

Part B - Development objectives and risks

4. Development objectives and risks

4.1 Objectives

The parties acknowledge that the objectives of the Development are to procure Building, Plant and Equipment which upon Practical Completion:

- (a) facilitates the delivery of a recreation facility that makes a significant contribution to the recreation opportunities available in the Western Sydney Regional Parklands area;
- (b) supports and promotes a range of positive environmental outcomes in the areas of conservation, water use, energy and greenhouse, material selection and waste management;
- (c) delivers a wide range of social benefits to both the local and wider community and visitors across a wide range of user groups and demographics;
- (d) is economically and financially viable and sustainable;
- (e) offers, or has the opportunity of expansion to offer, a range of experiences and activities including educational activities; and
- (f) satisfies the objectives stated in WSPT SEPP and the Management Vision.

4.2 Risks of Development

Unless otherwise provided in this deed, the Developer accepts all risks in connection with the Development, including as to:

- (a) carrying out the elements of the Development;
- (b) the condition of the Premises as at the Commencement Date;
- (c) whether or not the Premises are suitable for the Development and the Works;
- (d) Developer Environmental Liabilities;
- (e) whether the actual cost of the Development is greater than the cost of the Development as estimated by the Developer;
- (f) whether the actual revenue and profit derived by the Developer from the Development is less than the revenue and profit from the Development estimated by the Developer;
- (g) obtaining any amendments to the Part 3A Approval; and
- (h) obtaining all necessary additional consents or approvals from Authorities.

4.3 WSPT's review of plans and Applications

The Developer acknowledges and agrees that:

- (a) WSPT:
 - (i) is not obliged to critically analyse the Applications or Proposed Part 3A Application Plans;
 - (ii) notwithstanding clause 8.3 ("Agreed Design Documentation") has not critically analysed the Agreed Design Documentation;
 - (iii) is not responsible for any errors, omissions or non-compliance with any law or the requirements of any Authority by reason of not critically analysing the Applications, the Proposed Part 3A Application Plans or Agreed Design Documentation; and
 - (iv) is not liable for any liability, loss or Cost incurred by the Developer because of any defect in the design or construction of any part of the Works; and
- (b) no comment, review or information supplied to the Developer by WSPT alters or alleviates the Developer's obligation to design, construct and complete the Works in accordance with the requirements of this deed.

4.4 Developer relies on own skill and judgment

Neither the requirement to obtain WSPT's consent under this deed, nor any consent given by WSPT, imposes any duty, obligation or liability upon WSPT in relation to the design or construction of the Development. The Developer acknowledges that:

- (a) it is relying on its own skill and judgment, and that of its employees, consultants and agents, in relation to the Works and is not relying upon the skill and judgement of WSPT or any of WSPT's employees, contractors or agents; and
- (b) any consent of WSPT is intended as a procedure to enable WSPT to protect its rights, and perform its obligations, as owner of the Premises and as a statutory authority (including compliance with the Documentation and the Guidelines) and does not relieve the Developer of its obligations under this deed.

4.5 Risk of other developments

- (a) Subject to clause 4.5(b), the Developer acknowledges that WSPT:
 - (i) will continue to consider its development options for other potential development sites within Western Sydney Regional Parklands, and the release of any additional development sites will be at WSPT's sole discretion in terms of timing and process; and
 - (ii) is entitled to pursue any other developments within or outside Western Sydney Regional Parklands.
- (b) WSPT agrees to consult the Developer before it seeks or considers any proposals for the development and operation of any water park facility within Western Sydney Regional Parklands.
- (c) The parties acknowledge and agree that:

- (i) no legal rights arise for the benefit of the Developer by virtue of clause 4.5(b); and
- (ii) WSPT has the right to consider and pursue any development options pursuant to clause 4.5(a) in its sole and unfettered discretion.

4.6 No reliance on Disclosure Materials

The Disclosure Materials are provided for the information of the Developer. WSPT does not warrant the accuracy or completeness of the Disclosure Materials. The Developer acknowledges that it has reviewed the Disclosure Materials and warrants that it has:

- (a) made its own assessment of the Disclosure Materials and their accuracy; and
- (b) not relied on the Disclosure Materials in entering into this deed.

The Developer may not make any claim against WSPT in connection with the Disclosure Materials including in connection with their accuracy or completeness.

4.7 WSPT exercising statutory powers

Nothing in any Transaction Document operates to restrict or otherwise affect WSPT's statutory discretion in exercising its powers as a statutory authority. If there is any conflict between the unfettered discretion of WSPT in the exercise of such powers, and the performance of WSPT's obligations in a Transaction Document, the former prevails. The Developer agrees that WSPT is not liable for, and releases WSPT from, liability or loss arising from, and Costs incurred in connection with, WSPT's exercise of its powers as a statutory authority.

Part C - Payments and Bank Guarantees

5. Developer payments

5.1 Outgoings and other liabilities

- (a) In respect of the period commencing on the Date of Commencement of Works and ending on the Expiry Date, the Developer:
- (i) must pay on time all Outgoings whether imposed on WSPT, the Developer or the Premises and, if required by WSPT, produce to WSPT the receipts for those payments within 20 Business Days after the respective due dates for payment;
 - (ii) unless otherwise provided in this deed, must pay all other costs and expenses that are directly incurred in respect of the Premises and the Development as if the Developer were the owner of the Premises, and WSPT has no responsibility in that regard; and
 - (iii) takes, and is subject to, the same responsibilities and liabilities in regard to the Premises including in respect of:
 - A. persons and property; and
 - B. capital and structural works, repairs and maintenance,which the Developer would take and be subject to if the Developer were the owner of the Premises.
- (b) If the Developer does not pay the Outgoings or other amounts payable under this clause 5.1 when they become due WSPT may, if it thinks fit, pay the same and any sum or sums so paid may be recovered by WSPT on demand.
- (c) The other provisions of this deed do not limit this clause 5.1.

5.2 Payment of Outgoings despite termination

The Outgoings are payable by the Developer notwithstanding that the Term may have expired or been determined before the Outgoings for any particular part of the Term are capable of being calculated. In that case WSPT's reasonable estimate of the Outgoings as at the date of that expiry or determination is, as between WSPT and the Developer, taken to be the actual Outgoings payable by the Developer under clause 5.1 ("Outgoings and other liabilities") without any further adjustment.

5.3 WSPT's right to reimbursement

The Developer must reimburse WSPT on demand for any moneys paid by WSPT in respect of any liability expressly imposed on the Developer under this deed, notwithstanding that any law imposes that liability on WSPT.

5.4 Developer's right to claim

Nothing in this clause 5 limits or restricts the Developer's right to claim damages against WSPT arising from any breach by WSPT of its obligations under this deed.

5.5 Authority Levies

- (a) Subject to paragraph (b) and without limiting clause 5.1 ("Outgoings and other liabilities"), the Developer must pay all Authority Levies for the period commencing on the Project Proceed Date and ending on the Expiry Date.
- (b) Notwithstanding paragraph (a), WSPT agrees to indemnify the Developer for all liabilities of the Developer in respect of any Authority Levy the Developer may be required to pay as the result of a Discriminatory Law.

5.6 Payment of Authority Levies an essential provision

The Developer acknowledges and agrees that the obligation of the Developer under clause 5.5 ("Authority Levies") is essential to WSPT and, but for the inclusion of that clause, WSPT would not have consented to the Development or have entered into this deed, to the intent that WSPT and the Developer each agree that it is their paramount intention, notwithstanding any law to the contrary, that clause 5.5 is fully enforceable by WSPT against the Developer.

5.7 WSPT's Warranty regarding levies

WSPT warrants that other than any developer contributions under section 94 and section 94A of Division 6 of Part 4 of the EP&A Act or as disclosed in writing to the Developer before the date of this deed, WSPT is not aware of any Authority Levies applicable to the Land in the nature of contributions under Division 6 of the EP&A Act or any other similar local, regional or state infrastructure levy or contribution (or of any proposal to introduce any such levies).

5.8 Road Contribution

- (a) The Developer must pay to WSPT the Road Contribution in connection with RTA carrying out the Road Works.
- (b) The Developer must pay the Road Contribution to WSPT in the following instalments:
 - (i) \$500,000 on the Commencement Date; and
 - (ii) \$4,700,000 no later than the Project Proceed Date.
- (c) Upon receipt of each instalment comprising the Road Contribution from the Developer, WSPT must immediately pay the relevant instalment to RTA.
- (d) The parties acknowledge and agree that it is contemplated that:
 - (i) WSPT and RTA will enter into the Road Works Agreement by the Project Proceed Date;
 - (ii) the Road Works Agreement will be consistent with the terms of the RTA letter to the NSW Treasury (and copied to WSPT) dated 26 March 2010 by the Project Proceed Date; and
 - (iii) the Road Works Agreement may be in the form of a voluntary planning agreement pursuant to section 93F of the EP&A Act.

- (e) If the Road Contribution is paid to WSPT, then WSPT must procure RTA to acknowledge in the Road Works Agreement or otherwise receipt of payment by the Developer of the instalment of the Road Contribution specified in clause 5.8(b)(i) and (if relevant) the instalment of the Road Contribution specified in clause 5.8(b)(ii).
- (f) The Developer acknowledges that it may be required to be a party to the Road Works Agreement.
- (g) Where the Developer is required to be a party to the Planning Agreement, the Developer must act reasonably and in good faith in any negotiations or consultations with WSPT and RTA to agree and finalise the Road Works Agreement.
- (h) The parties acknowledge that where the Road Works Agreement is entered into by WSPT, the Developer and RTA before the Project Proceed Date, the Road Works Agreement may provide for the direct payment by the Developer to RTA of the instalment of the Road Contribution specified in clause 5.8(b)(ii). In such circumstances, the provisions of the Road Works Agreement will override this clause 5.8 and the Developer will not be required to comply with its obligation to pay the instalment specified in clause 5.8(b)(ii) to WSPT.

5A Land Tax

5A.1 WSPT to reimburse

Subject to clause 5A.2, WSPT agrees to reimburse the Developer for any of Land Tax paid by the Developer in relation to its interest under this deed.

5A.2 Conditions of reimbursement

- (a) The parties acknowledge and agree that:
 - (i) the Developer may be regarded by the Office of State Revenue as an "Owner" for Land Tax purposes;
 - (ii) before the Developer submits its Land Tax return to the Office of State Revenue, it must consult with WSPT (both parties acting reasonably and in good faith) whether or not its interest under this deed should be included in that Land Tax return; and
 - (iii) if the Developer includes its interest under this deed in its Land Tax return or the Office of State Revenue otherwise raises queries or makes suggestions as to the status of the Developer in relation to this deed for Land Tax purposes, the Developer must:
 - A. keep WSPT informed of its position; and
 - B. if requested by WSPT, supply a copy of any correspondence with the Office of State Revenue

in connection with its interest in this deed for Land Tax purposes.
- (b) The Developer must:
 - (i) provide to WSPT a copy of any proposed submission to the Office of State Revenue in relation to the its Land Tax status;

- (ii) consult with WSPT (both parties acting reasonably and in good faith) before it makes any submissions to the Office of State Revenue in relation to its Land Tax status; and
 - (iii) provide WSPT with a copy of any Land Tax assessment that relates to the Developer's interest under this deed.
- (c) If a Land Tax assessment is issued by the Office of State Revenue, the parties must meet and consult (both parties acting reasonably and in good faith) to determine the course of action to be taken by the Developer in relation to that assessment, including:
- (i) objecting to that assessment;
 - (ii) paying that assessment; or
 - (iii) otherwise making submissions to the Office of State Revenue in relation to that assessment.
- (d) Where the Developer pays a Land Tax assessment pursuant to the consultation procedure in clause 5A.2(c), and that assessment is not challenged or otherwise reversed or withdrawn following consultations with the Office of State Revenue, the Developer must notify WSPT of such payment.
- (e) WSPT must reimburse the Developer for the amount of Land Tax actually paid by the Developer in relation to its interest under this deed within 30 Business Days of notice from the Developer.
- (f) The parties acknowledge and agree that WSPT is not liable to reimburse the Developer for any amount, including without limitation any fines and penalties, incurred by the Developer for late payment of Land Tax, except where that late payment is caused by WSPT.

6. General requirements for payments

6.1 Method of payment

The Developer must make payments under this deed to WSPT (or a person nominated by WSPT in a notice to the Developer) by the method WSPT reasonably requires without set off or counterclaim and without deduction, unless prohibited by law.

6.2 No demand necessary

WSPT need not make demand for any amount required to be paid by the Developer under this deed unless this deed expressly specifies that demand must be made.

6.3 Incorrect amount paid

If the Developer pays an amount and it is found later that the amount payable should have been:

- (a) higher, then WSPT may demand payment of the difference; or
- (b) lower, then WSPT must repay the difference,

even though WSPT has given the Developer a receipt for payment of the incorrect amount.

6.4 Ongoing obligation

Expiry or termination of this deed does not affect the Developer's obligations to make payments under this deed for periods before then.

6.5 When to make payments

The Developer must make payments to WSPT under this deed not later than 3.00 p.m. Sydney time on the due date in immediately available funds.

6.6 If due date not a Business Day

If a payment becomes due for payment on a day which is not a Business Day, then the date for payment is the following Business Day.

6.7 Currency of payment

The Developer waives any right which it has in any jurisdiction to pay an amount in a currency other than the currency payable under this deed.

6.8 Interest on overdue money

The Developer agrees to pay interest at the Interest Rate on any amount under this deed which is not paid on the due date for payment. That interest:

- (a) accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days; and
- (b) is payable on demand from WSPT or, if no such demand is made, on the last day of each calendar month.

6.9 Compounding

Interest payable under clause 6.8 ("Interest on overdue money") which is not paid when due for payment may be added to the overdue amount by WSPT monthly or the last day of each calendar month. Interest is payable on the increased overdue amount at the Interest Rate in the manner set out in clause 6.8 compounding daily.

6.10 Interest on liability merged in judgment or order

If a liability under this deed becomes merged in a judgment or order, then the Developer agrees to pay interest to WSPT on the amount of that liability as an independent obligation. The interest accrues both before and after that judgment or order from the date the liability was due for payment until it is paid, at a rate that is the higher of the Interest Rate and the rate payable under the judgment or order.

6.11 Tender after termination

Money tendered by the Developer after the termination of this deed and accepted by WSPT may be applied in the manner WSPT decides.

7. Bank Guarantees

7.1 Developer to give Bank Guarantees

The Developer must give WSPT:

- (a) the First Bank Guarantee on the Commencement Date;
- (b) the Second Bank Guarantee on or before the earlier of:
 - (i) the Project Proceed Date; and
 - (ii) the date on which the Developer notifies WSPT that it is proceeding with the Development pursuant to clause 2.1(a); and
- (c) the Third Bank Guarantee on the Date of Practical Completion.

7.2 Second Bank Guarantee

- (a) The Developer is entitled to request WSPT's approval to reduce the face value of the Second Bank Guarantee, which may be effected by submitting a new Second Bank Guarantee for a lower face value upon receipt of which WSPT will return the then held Second Bank Guarantee to the Developer.
- (b) Any request by the Developer must be accompanied by a certificate by the Independent Certifier certifying the Cost to Complete the Works as at the date of that certificate.
- (c) WSPT will be obliged to consent to the request for a reduction in the face value of the Second Bank Guarantee on the following basis:
 - (i) the face value of the Second Bank Guarantee may be reduced to \$4,000,000 when WSPT is satisfied (acting reasonably) that the Cost to Complete the Works is no greater than 75% of the Original Cost of the Works;
 - (ii) the face value of the Second Bank Guarantee may be reduced to \$3,000,000 when WSPT is satisfied (acting reasonably) that the Cost to Complete the Works is no greater than 50% of the Original Cost of the Works; and
 - (iii) the face value of the Second Bank Guarantee may be reduced to \$2,000,000 when WSPT is satisfied (acting reasonably) that the Cost to Complete the Works is no greater than 25% of the Original Cost of the Works.

7.3 Calling on a Bank Guarantee

The Developer acknowledges and agrees that WSPT may call on:

- (a) the First Bank Guarantee if the Developer fails to comply with or perform any of its obligations under this deed; and
- (b) the Second Bank Guarantee or the Third Bank Guarantee if the Developer fails to perform any of its obligations under this deed or any Transaction Document.

7.4 Replacement of the Bank Guarantees after call

If WSPT calls on any of the Bank Guarantees, the Developer must, no later than 10 Business Days after WSPT gives notice to the Developer requesting any of those bank guarantees to be replaced, provide a replacement or additional bank guarantee so that the amount held by WSPT is the full amount of the relevant Bank Guarantee.

7.5 Replacement of expiring Bank Guarantee

If a Bank Guarantee has an expiry date, the Developer must, if WSPT has not returned the Bank Guarantee to the Developer in accordance with clause 7.6 ("Returning the Bank Guarantees"), provide WSPT with a replacement Bank Guarantee in the same amount no later than 10 Business Days prior to that expiry date. If the Developer fails to provide WSPT with the replacement Bank Guarantee as required, WSPT:

- (a) may call on the full amount of the relevant Bank Guarantee without notice to the Developer;
- (b) must hold the amount of that particular Bank Guarantee as a cash deposit ("**Cash Deposit**") in a separate bank account in the name of WSPT ("**Cash Deposit Account**") (and, if WSPT calls on more than one Bank Guarantee under this clause 7.5, each Cash Deposit must be in a separate Cash Deposit Account);
- (c) may withdraw money (including accrued interest) from a Cash Deposit Account and use that money:
 - (i) in accordance with clause 7.3 ("Calling on a Bank Guarantee") as if the Cash Deposit were the amount secured by the relevant Bank Guarantee; and
 - (ii) to pay all Costs and Taxes payable in connection with that Cash Deposit Account; and
- (d) must return the amount held in the relevant Cash Deposit Account (including accrued interest but less any amounts payable to or by WSPT under clause 7.5(c)) to the Developer in accordance with clause 7.6 ("Returning the Bank Guarantees") as if the amount in that Cash Deposit Account were the relevant Bank Guarantee.

7.6 Returning the Bank Guarantees

- (a) Subject to clause 7.6(b), WSPT must, within 10 Business Days of receiving a request from the Developer made at any time:
 - (i) after the Project Proceed Date, return the First Bank Guarantee;
 - (ii) after the Date of Practical Completion, return the Second Bank Guarantee; and
 - (iii) following the later of:
 - A. the Date of Practical Completion; and
 - B. the Rent Commencement Date,return the Third Bank Guarantee,(or such amount as remains following a call upon that Bank Guarantee made by WSPT in accordance with this deed) to the Developer.

- (b) WSPT is not required to return any of the First Bank Guarantee, the Second Bank Guarantee or the Third Bank Guarantee to the Developer unless and until the Developer has provided to WSPT the Second Bank Guarantee or the Third Bank Guarantee (as the case may be) in accordance with this clause 7 ("Bank Guarantees").

7.7 Bank Guarantee under the Lease

Despite anything in this deed or the Lease to the contrary, the Developer is not required to provide the Bank Guarantee required by the Lease unless WSPT has returned the Third Bank Guarantee to PAI.

Part D - Applications and Approvals

8. Preparation of Applications

8.1 Developer to prepare Applications

The Developer agrees to prepare at its Cost all Applications.

8.2 Design responsibility

The Developer agrees to:

- (a) design the Works;
- (b) perform its Design Obligations with the skill, care and diligence expected of a professional designer experienced in projects of a similar nature to the Development; and
- (c) ensure that each member appointed to the Developer's design team performs its design responsibilities with the skill, care and diligence expected of a professional designer experienced in carrying out those responsibilities.

8.3 Agreed Design Documentation

- (a) The Developer agrees to prepare at its Cost the Design Documentation.
- (b) The Developer must lodge with WSPT for its consent (such consent not to be unreasonably withheld) the proposed Design Documentation within 5 months after the date of this deed.
- (c) WSPT and the Developer acknowledge and agree that the Design Documentation must include detailed concept plans and specifications for the renovation and protection of the Policeman's Cottage, including without limitation the stabilisation and securing of the structure of the Policeman's Cottage and the retaining and protection of the pine trees within the curtilage of the Policeman's Cottage.
- (d) WSPT must give or refuse its consent to the proposed Design Documentation within 20 Business Days after it receives the proposed Design Documentation from the Developer.
- (e) Without limiting any other provision of this deed, the Developer acknowledges that WSPT may withhold its consent to the proposed Design Documentation if the proposed Design Documentation does not comply with the Design Principles.
- (f) If WSPT withholds its consent to the Design Documentation, it will promptly notify the Developer of its reasons.
- (g) Upon receipt by the Developer of any notice referred to in clause 8.3(f), the Developer must as soon as practicable, make such changes to the proposed Design Documentation as WSPT reasonably requires.

- (h) For the purposes of this deed, the parties acknowledge that where WSPT consents to the proposed Design Documentation in accordance with this clause 8.3 ("Agreed Design Documentation"), that Design Documentation will be the Agreed Design Documentation.

8.4 Development of Agreed Design Documentation

The Developer must:

- (a) develop the Agreed Design Documentation in accordance with this deed into plans and specifications suitable for inclusion in an Application for a Part 3A Approval and to a level of detail satisfactory to WSPT acting reasonably; and
- (b) prepare a consolidated set of those plans and specifications and have them marked for identification by WSPT and the Developer as the Approved Plans and Specifications.

8.5 Consultation with WSPT and Authorities

The Developer must:

- (a) consult and discuss with WSPT and all other relevant Authorities, and (subject to clause 8.6 ("Pre-PA Requirements")) pay all due regard to any reasonable comments or suggestions WSPT or any relevant Authority may make in respect of:
 - (i) the proposed terms and conditions of an Application;
 - (ii) terms and conditions the relevant Authority indicates may be imposed on any consent; and
 - (iii) terms and conditions the relevant Authority indicates are required as a matter of policy or as a matter of best industry practice; and
- (b) (unless otherwise agreed) give WSPT at least 3 Business Days' notice of any proposed meeting with a relevant Authority for the purpose of discussing an Application, giving details of the time, date and the matters to be discussed. WSPT may attend any proposed meeting.

8.6 Pre-PA Requirements

If, during the consultation process referred to in clause 8.5 ("Consultation with WSPT and Authorities"), the Developer receives advice, comments, or recommendations from a relevant Authority (which are confirmed in writing, whether by the Authority or by correspondence or minutes) in relation to matters that ought to be taken into account when preparing the Part 3A Application, it must pay all due regard to any reasonable advice, comments or recommendations in its Part 3A Application.

8.7 Requirements for proposed Applications

The Developer agrees to ensure that the proposed Part 3A Application and, to the extent relevant, any other Application, that the Developer lodges with WSPT pursuant to clause 9.1 ("Applications must be lodged with WSPT"):

- (a) is developed to a level necessary to support an application for the Part 3A Approval or other relevant Approval;
- (b) is consistent with:

- (i) the Agreed Design Documentation and the Transaction Documents (except to the extent that WSPT expressly waives compliance with this clause 8.7 in relation to any element of the proposed Part 3A Application arising from any pre-lodgement consultation between WSPT and the Developer); and
- (ii) the Guidelines;
- (c) (subject to clause 8.6 ("Pre-PA Requirements")) pays all due regard to all Pre-PA Requirements;
- (d) complies with:
 - (i) the Environmental Management Plan; and
 - (ii) all Environmental Laws;
- (e) has been approved by a qualified and independent ESD consultant (with evidence of such approval being provided to WSPT); and
- (f) ensures the completed Works are suitable for their intended purpose.

8.8 Preparation of Asset Management Plan

- (a) At least three months prior to the Anticipated Date for Practical Completion, the Developer must provide a draft Asset Management Plan to WSPT for its approval.
- (b) Within 20 Business Days from receiving the draft Asset Management Plan, WSPT agrees to either:
 - (i) approve the Asset Management Plan prepared by the Developer; or
 - (ii) issue to the Developer a notice containing amendments required to be made to the Asset Management Plan provided by the Developer.
- (c) The Developer must accommodate the amendments reasonably required by WSPT in its notice in the draft Asset Management Plan and re-submit that plan to WSPT for its approval.

9. WSPT's consent to Applications

9.1 Applications must be lodged with WSPT

The Developer must, in the identical form it is proposed to be lodged with the Consent Authority, lodge with WSPT for its consent (such consent not to be unreasonably withheld) (as landowner):

- (a) the proposed Part 3A Application by the date which is 2 months after the Commencement Date;
- (b) the proposed environmental assessment pursuant to section 745H of the EP&A Act by the date which is

6 months after the Developer receives the environmental assessment requirements from the Consent Authority (or otherwise known as the Director-General's requirements); and

- (c) any other proposed Application at least 10 Business Days before it is lodged with the relevant Authority.

9.2 Developer to keep WSPT informed of timing

The Developer agrees to keep WSPT informed regarding the likely timing of lodgement with WSPT, and the contents, of all Applications which this deed contemplates will be lodged with WSPT.

9.3 Non-conforming Applications

The Developer agrees to disclose to WSPT each aspect of a proposed Application submitted for WSPT's approval pursuant to clause 9.1 ("Applications must be lodged with WSPT") that is not in conformity with relevant requirements of clause 8.7 ("Requirements for proposed Applications").

9.4 Timing for WSPT consent

Where WSPT's consent is required under clause 9.1 ("Applications must be lodged with WSPT"), that consent must be given or refused:

- (a) in relation to the proposed Part 3A Application, within 20 Business Days; and
- (b) in relation to all other proposed Applications, within 10 Business Days, after WSPT receives:
 - (i) a notice from the Developer requesting WSPT's consent;
 - (ii) a copy of the proposed Application;
 - (iii) all relevant supporting documentation which the relevant Consent Authority reasonably requires in connection with the Application; and
 - (iv) any further information and documentation which WSPT, acting reasonably, requires to consider the Application.

9.5 Capacity of WSPT and conditional consents

The Developer acknowledges that:

- (a) in giving or withholding its consent to an Application, WSPT is not acting in the capacity of a consent or approvals authority; and
- (b) in giving its consent to an Application, WSPT may impose reasonable conditions that are appropriate for a development of the type contemplated by the Design Documentation.

9.6 Subsequent consents

WSPT acknowledges that, once it has consented to an Application, it will not, subject to any conditions it attaches to that consent, be entitled to revoke that consent except to the extent any such Application may be adversely impacted by any further Application for which WSPT's consent is required under this deed.

9.7 Withholding consent to Applications

Without limiting any other provision of this deed, the Developer acknowledges that WSPT may reasonably withhold its consent to a proposed Application which:

- (a) is not accompanied by such documentation (including plans and specifications) and other information in respect of the Works as WSPT reasonably requires;
- (b) (together with any accompanying documentation and information) does not disclose that the Works the subject of the Application conform with all planning laws that apply to the Works and the Premises;
- (c) if it is a proposed Application for a Part 3A Approval, is inconsistent with the Agreed Design Documentation (except as otherwise agreed in writing by WSPT);
- (d) does not specify the external design, appearance, material and finishes of the building to be constructed in carrying out the Works;
- (e) is materially inconsistent with other relevant requirements of clause 8.7 ("Requirements for proposed Applications"); or
- (f) is inconsistent with the Developer's obligations under this deed, and such withholding of consent will not be unreasonable.

9.8 Consequences of withholding consent to proposed Part 3A Application

- (a) If WSPT withholds its consent to any proposed Part 3A Application, it will promptly notify the Developer of its reasons.
- (b) Upon receipt by the Developer of any notice referred to in clause 9.8(a), the Developer must either:
 - (i) as soon as practicable, amend the proposed Part 3A Application taking WSPT's reasons into account, and re-submit the amended proposed Part 3A Application to WSPT for its approval; or
 - (ii) promptly advise WSPT that it disagrees with WSPT's reasons, in which case the matter must be resolved in accordance with clause 32 ("Dispute Resolution").
- (c) If, following referral of the matter to dispute resolution, an expert determines that:
 - (i) WSPT was entitled to withhold its consent to that proposed Part 3A Application, then clause 9.8(b)(i) will apply; or
 - (ii) WSPT was not entitled to withhold its consent to that proposed Part 3A Application, then WSPT must reconsider that proposed Part 3A Application in accordance with the terms of this deed.

9.9 WSPT not liable in connection with consents

Except to the extent that WSPT is in breach of any provision of this clause 9, the Developer releases WSPT from, and agrees that WSPT is not liable for, liability or loss arising from, and any Costs incurred in connection with, WSPT ejecting or consenting to an Application or any delay in giving or refusing that consent.

9.10 WSPT's consent to lodgement (as landowner)

If WSPT's consent has been obtained in relation to the Part 3A Application or other Application under clause 10.1, then promptly upon any request from the Developer for the landowner's consent to lodgement of that application with the relevant Authority, WSPT agrees to provide its consent (as landowner).

10. Part 3A Approval and other Approvals

10.1 Lodgement of Part 3A Application

After receiving WSPT's consent to the Part 3A Application, the Developer agrees to:

- (a) promptly finalise the Part 3A Application paying all regard to any reasonable comments or suggestions WSPT may make in respect of the proposed terms and conditions of an Application; and
- (b) submit the Part 3A Application to the Consent Authority no later than 10 Business Days after WSPT consents to that Application or such longer period as may be reasonably required having regard to any comments or conditions of WSPT's consent.

10.2 Part 3A procedures

Without limiting any of the Developer's other obligations under this deed, the Developer agrees that it must regularly consult with WSPT and keep WSPT fully informed in relation to all its dealings with the Consent Authority, the Department of Planning and the Director-General in connection with or relating to the Part 3A Application and must seek WSPT's prior written approval, acting reasonably, to:

- (a) any environmental assessment and revised environmental assessment the Developer submits to the Director-General pursuant to section 75H of the EP&A Act;
- (b) any submission the Developer may make in relation to the environmental assessment made publicly available by the Director-General pursuant to section 75H(3);
- (c) any response to issues raised, any preferred project report, any revised statement of commitments or any other document which the Developer submits to the Director-General pursuant to section 75H(6) of the EP&A Act; and
- (d) all details of any significant changes, modifications or conditions of which the Developer becomes aware, which the Director-General or the Consent Authority may consider in relation to the Part 3A Application or the proposed Part 3A Approval.

In giving or withholding its approval to any such documents or matters, the provisions of clause 9.1, 9.2, 9.4, 9.5, 9.6, 9.7 and 9.8 shall apply *mutatis mutandis*.

10.3 Obtaining other Approvals

The Developer agrees to:

- (a) after receiving WSPT's consent to any environmental assessment and revised environmental assessment to be submitted to the Director-General pursuant to section 75H of the EP&A Act:

- (i) promptly finalise that environmental assessment and revised environmental assessment paying all regard to any reasonable comments or suggestions WSPT may make in respect of that environmental assessment and revised environmental assessment; and
- (ii) submit that environmental assessment and revised environmental assessment to the Consent Authority no later than 10 Business Days after WSPT consents to that environmental assessment and revised environmental assessment;
- (b) obtain other required Approvals promptly; and
- (c) ensure that those Approvals are consistent with the Part 3A Approval,

but in any event upon the basis that all conditions of the Part 3A Approval are fully satisfied.

10.4 Assistance by WSPT

Subject to the Developer complying with the provisions of clause 9 ("WSPT's consent to Applications") and this clause 10, WSPT, in its capacity as landowner, agrees to sign all documents and promptly provide all authorisations, consents and approvals as may be reasonably required to enable the Developer to lodge any Application with a Consent Authority.

10.5 Not used

10.6 WSPT to be informed of progress

The Developer must:

- (a) at the request of WSPT, inform WSPT of the progress of, and give WSPT other information in connection with, the Applications; and
- (b) use its reasonable endeavours to identify, and keep WSPT informed of, the anticipated timing of Applications required to be made to the relevant Authorities.

10.7 Copies of Applications, Approvals and associated documents

The Developer must promptly give WSPT a copy of:

- (a) each Application as lodged with any Consent Authority;
- (b) all correspondence between the Developer (or any person on behalf of the Developer) and any Consent Authority in connection with any Application, proposed Application, Approval or proposed or draft determination of any Application;
- (c) all environmental assessment requirements issued by the Director-General in relation to the Development and the Part 3A Application;
- (d) all submissions received, and any report provided to the Developer by the Director-General pursuant to section 75H(5) of the EP&A Act;
- (e) any response to issues raised in submissions, preferred project report and revised statement of commitments or other document provided by the Developer, to the Director-General pursuant to section 75H(6) of the EP&A Act;

- (f) all written submissions in relation to any Application which are received by the Developer or of which it has a copy; and
- (g) all Approvals received and notices gazetted in relation to any Application.

10.8 Copies of Final Plans and Specifications

The Developer must give WSPT and the Independent Certifier:

- (a) a consolidated set of the Final Plans and Specifications promptly after the Developer receives any Construction Certificate or, if no Construction Certificate is required by law, prior to commencement of any works on the Premises; and
- (b) written details of any changes to the Final Plans and Specifications (including copies of the changed plans and specifications), promptly after the Developer receives any other Approval.

10.9 Project Approval

- (a) Within 5 Business Days of receiving the Project Approval, the Developer must provide a copy of the Project Approval to WSPT.
- (b) For the purposes only of facilitating discussions and consultations between the Developer and WSPT pursuant to clause 10.9(c) and clause 10.9(d), and without limiting the Developer's rights under clause 10.9(e), within 20 Business Days of receiving the Project Approval, the Developer must:
 - (i) notify WSPT whether or not, in the Developer's opinion, any conditions in the Project Approval are unacceptable to the Developer (acting reasonably);
 - (ii) provide reasonable details to support its opinion; and
 - (iii) indicate its proposed course of action with respect to those conditions.
- (c) No later than 10 Business Days of receiving the notice in clause 10.9(b), WSPT may request the Developer to meet to discuss with WSPT the conditions in the Project Approval which in the Developer's opinion are not on acceptable terms.
- (d) The parties must:
 - (i) act reasonably;
 - (ii) consult each other; and
 - (iii) discuss in good faith any proposals advanced by the other party,to consider a proposed course of action with respect to the Project Approval.
- (e) Within 3 months of receiving the Project Approval the Developer must give formal notice to WSPT whether or not, in the Developer's opinion, the Project Approval is on terms acceptable to the Developer.
- (f) For the avoidance of doubt, the notice given by the Developer pursuant to clause 10.9(b)(i) will not affect in any way whether the Satisfactory Project Proceed Arrangements have been met by the Developer.

10.10 Third Party Appeals

If a Third Party Appeal occurs, WSPT and the Developer agree that promptly after either WSPT or the Developer becomes aware of the Third Party Appeal, the Developer and WSPT must meet and discuss in good faith (both acting reasonably) the most appropriate action to be taken in respect of that Third Party Appeal, which may include:

- (a) lodging a new (and amended) Part 3A Application with the Consent Authority;
- (b) lodging an application for a Modification; and
- (c) taking whatever action necessary to object to the Third Party Appeal.

10.11 Proceedings

- (a) If proceedings relating to an Application or an Approval are commenced by a person other than WSPT or the Developer, the Developer must defend those proceedings unless the Developer terminates this deed under clause 10.11(b).
- (b) The Developer may terminate this deed if the defence of those proceedings will not be feasible.
- (c) The defence of those proceedings will not be feasible only where at any time (including where the Developer has commenced defending the proceedings):
 - (i) the Developer (at the Cost of the Developer) has obtained a written legal opinion from a barrister, who is a Queen's Counsel or Senior Counsel regularly practising in the relevant jurisdiction, to the effect that any defence of those proceedings does not have reasonable prospects of success; or
 - (ii) the Developer forms the view, acting reasonably, that irrespective of the prospects of success of a defence of those proceedings, the proceedings cannot be concluded at a reasonable cost to the Developer or within a reasonable time.
- (d) Where the Developer defends those proceedings pursuant to clauses 10.11(a), the Developer indemnifies WSPT against any liability or loss arising from and any reasonable Costs incurred in connection with those proceedings.
- (e) Where the Developer terminates this deed pursuant to clause 10.11(b), that termination is without prejudice to any party's rights under this deed or at law arising prior to termination and no compensation is payable by any party under this clause 10.11 ("Proceedings").

10.12 Developer must comply with all Approvals

The Developer must:

- (a) subject to the terms of this deed, comply on time with all Approvals and all laws in connection with the carrying out of the Works and the construction and use of the Development; and
- (b) do everything necessary to ensure that:
 - (i) the Part 3A Approval and, if applicable, any new Part 3A Approval; and

- (ii) any other Approval, does not expire or become invalid due to any circumstance within the reasonable control of the Developer.

10.13 Changes to Documentation

If changes to the Documentation are required under a law, then subject to clause 9.1 ("Applications must be lodged with WSPT ") the Developer must at its own cost:

- (a) subject to obtaining the prior written consent of WSPT (such consent not to be unreasonably withheld), cause the Works to be redesigned to accommodate the changes;
- (b) obtain all necessary Approvals for the changes; and
- (c) incorporate those changes into the Works.

10.14 WSPT not liable

Except to the extent that WSPT is in breach of any provision of this clause 10, the Developer releases WSPT from, and agrees that WSPT is not liable for, liability or loss arising from, and any Costs incurred in connection with:

- (a) any conditions attaching to an Approval; or
- (b) anything contained in the Documentation or the Guidelines.

11. Vacant possession

11.1 WSPT to procure vacant possession

- (a) It is acknowledged that WSPT may give notice to any Lessees in order to obtain vacant possession of the Land at any time in its sole discretion. Without limitation, that notice may be given at some point after receipt by WSPT of the Developer's notice pursuant to clause 2.6 ("Developer to notify").
- (b) If requested by the Developer, WSPT will provide all reasonable information to the Developer in relation to WSPT's progress in obtaining vacant possession of the Land.
- (c) WSPT must procure vacant possession of the Land by the Project Proceed Date.

11.2 Mitigation

- (a) In the event vacant possession of the whole of the Land is not available by the Date of Commencement of Works:
 - (i) WSPT agrees to give to the Developer possession of such part of the Land:
 - A. as is vacant as at that date; and
 - B. where such part of the Land is not vacant as at that date, as soon as reasonably practicable after WSPT procures vacant possession of such part of the Land; and
 - (ii) the Developer agrees to proceed with the Works in accordance with the Development Program on that part of the Land as is vacant from time to

time as at that date so far as it is able, as though the Developer had been given vacant possession for the whole of the Land.

- (b) In the event that vacant possession of the whole of the Land is not available by the Date of Commencement of Works and the Developer is reasonably of the opinion that:
 - (i) the Let Areas cannot be reasonably accommodated or managed during the Works; and
 - (ii) it cannot proceed with the Works pursuant to clause 11.2(a)(ii),then the Developer must redesign those parts of the Works that are affected by the Let Areas (**Affected Works**) in accordance with the Design Principles and the Developer's Design Obligations.
- (c) The Developer must as soon as reasonably practicable and from time to time, having regard to discussions and consultations between WSPT and the Developer, notify WSPT of such opinion and request WSPT to meet within 20 Business Days after such notice to discuss and consult in good faith (and acting reasonably):
 - (i) the reasons why the Developer cannot proceed with the Works in accordance with clause 11.2(a)(ii);
 - (ii) whether the Let Areas can in fact be reasonably accommodated or managed during the Works and if so, how the Let Areas can be reasonably accommodated or managed during the Works; and
 - (iii) the Developer's proposed redesign of the Affected Works.
- (d) The Developer must provide with its notice in clause 11.2(c) details of:
 - (i) the reasons why it cannot proceed with the Works in accordance with clause 11.2(a)(ii); and
 - (ii) its proposed redesign of the Affected Works.

11.3 Damages in connection with breach

- (a) The parties acknowledge and agree that the damages the Developer can recover from WSPT for any failure by WSPT to procure vacant possession of the whole of the Land by the Project Proceed Date pursuant to clause 11.1(c) are limited to damages for the Developer's Direct Loss.
- (b) The Developer's entitlement to recover damages from WSPT for its Direct Loss pursuant to clause 11.3(a) is subject to the Developer doing all things reasonably available to it to mitigate its loss, including without limitation to continue to carry out so much as the Works as it is able to do and to redesign the Affected Works notwithstanding failure by WSPT to procure vacant possession of the whole of the Land.

11.4 No claim by Developer

Except for a claim under clause 11.3 ("Damages in connection with breach") and claims for an extension of time pursuant to clause 23.1(f) and clause 23.1(g), the Developer acknowledges and agrees that it is not entitled to make a claim:

- (a) against WSPT for any Costs, losses or damages; or
- (b) for an extension of time to achieve any Major Milestone pursuant to clause 23.1 ("Claims for extension of time"),

in connection with any failure by WSPT to provide vacant possession of the whole of the Land by the Project Proceed Date.

Part E - Condition and use of Premises and surrounding areas

12. Use of Premises during Term

12.1 Use of Premises for Development

- (a) The Developer must only use the Premises during the Term, or allow them to be used:
 - (i) to carry out the Works and complete the Development in accordance with the requirements of clause 21.3 ("Terms of Developer access to the Premises") and its obligations under this deed; and
 - (ii) for any other use which WSPT approves in its absolute discretion provided:
 - A. the Developer has obtained the consent for that use from the relevant Consent Authority at its expense;
 - B. that consent is current; and
 - C. the Developer is not in breach of any of the terms of that consent.
- (b) Clause 12.1(a)(ii) does not limit the operation of clause 9.1 ("Applications must be lodged with WSPT").

12.2 No warranty as to purpose

WSPT does not warrant that the Premises are suitable, or may be used, for any purpose. The Developer represents and warrants that:

- (a) it has made its own appraisal of, and has satisfied itself in all respects in connection with, the suitability of the Premises for the Developer's proposed use of the Premises;
- (b) it has had the opportunity to investigate, and has entered into this deed with full knowledge of and subject to, all prohibitions and restrictions applying to the Premises (including their use) under any law, as referred to in the folio of the register of the Premises as at the date of this deed and as disclosed by WSPT prior to the Developer entering into the deed;
- (c) it has satisfied itself in all respects in connection with the timetable for the completion of the Development, including the requirements of the Development Program;
- (d) the Encumbrances affecting the Premises which are registered in the folios of the register for the lots of which the Premises form part will not prejudice the Developer's ability to complete the Works; and
- (e) it will complete the Works with due skill, care and diligence.

12.3 Condition of Premises

The Developer:

- (a) represents and warrants to WSPT that, because of the Developer's own inspection and enquiries (including the Investigation), the Developer:
 - (i) is satisfied as to the nature, quality, condition and state of repair of the Premises; and
 - (ii) accepts the Premises as it is and subject to all defects (latent or patent) and all dilapidation and infestation; and
- (b) subject to clause 23.1 ("Claims for extension of time"), may not make any objection or claim for compensation, delay the carrying out of the Works or terminate this deed because of anything in connection with:
 - (i) any of the matters referred to in clause 12.3(a);
 - (ii) loss, damage, dilapidation, infestation, defect (latent or patent) or mechanical breakdown which may affect the Premises during the Term;
 - (iii) the presence in, on, or under the Land of Contamination;
 - (iv) the condition or existence or non-existence of Services;
 - (v) any action or non-action by any person, other than those circumstances entitling the Developer to an extension of time pursuant to clause 23.1; or
 - (vi) any restriction, stipulation, easement or covenant referred to in the folio of the register for the Premises before or after the date of this deed.

12.4 WSPT Site co-ordination - other developments

The Developer:

- (a) acknowledges that:
 - (i) land adjoining the Premises or in the vicinity of the Premises may be the subject of construction activities; and
 - (ii) WSPT may establish a process to manage site coordination issues during the construction phase of other developments within Western Sydney Regional Parklands and during the long term operation of completed developments; and
- (b) agrees to liaise and co-operate with, and assist WSPT in that process.

12.5 No claims by Developer

The Developer acknowledges and agrees that:

- (a) the matters referred to in clause 12.4 ("Site co-ordination - other developments") may have an effect on the conduct of the Works and the Development; and

- (b) it is not entitled to object to, or make a claim against WSPT (including a claim for an extension of time to achieve any Major Milestone pursuant to clause 23.1 ("Claims for extension of time")) because of, the occurrence of any of the matters referred to in clause 12.4.

12.6 No derogation from express rights

Nothing in clause 12.4 derogates from the Developer's express rights under this deed.

13. Environmental, native title and heritage obligations

13.1 Environmental Laws

Without limiting clause 16.1 ("Obligations of the Developer"), the Developer must comply with and observe all Environmental Laws, including without limitation any laws relating to Contamination and the Remediation of any Contamination.

13.2 Environmental Guidelines

- (a) The parties must agree the Environmental Guidelines in accordance with the provisions of this clause 13.2 ("Environmental Guidelines").
- (b) No later than 45 Business Days after the date of this deed, WSPT must prepare and submit a draft of the Environmental Guidelines to the Developer.
- (c) The parties acknowledge and agree that the Environmental Guidelines will include:
 - (i) the WSPT ESD Principles; and
 - (ii) provisions which satisfy WSPT (acting reasonably) relating to the existing heritage and parkland setting of the Land including, but not limited to, visual amenity and connectivity.
- (d) The parties must:
 - (i) act reasonably;
 - (ii) consult each other; and
 - (iii) discuss in good faith any proposals advanced by the other party,to agree and finalise the Environmental Guidelines no later than 60 Business Days after the date of this deed.
- (e) Any failure by the parties to agree the Environmental Guidelines will be treated as a dispute and will be resolved in accordance with clause 32 ("Dispute resolution").
- (f) The Developer must comply with the Environmental Guidelines in carrying out its obligations under this deed.
- (g) The Developer acknowledges and agrees that any development within Western Sydney Regional Parklands must comply with the Environmental Guidelines.

13.3 Environmental Management Plan

The Developer must:

- (a) prepare and submit the Developer's draft Environmental Management Plan for approval by WSPT within 45 Business Days of the finalisation of the Environmental Guidelines;
- (b) make such changes to the Developer's draft Environmental Management Plan as WSPT reasonably requires; and
- (c) comply with the Environmental Management Plan.

13.4 ESD consultant and Environmental matters

In addition to the other requirements under this deed, the Developer agrees to:

- (a) appoint a qualified practising ESD consultant in connection with the Works; and
- (b) keep WSPT informed in connection with all material Environmental aspects of the Works including by the provision of reports in a form and with a regularity required by WSPT (acting reasonably).

13.5 Environmental risk

The Developer bears the risk of complying with the Environmental Management Plan (including without limitation the WSPT ESD Principles) and is not entitled to:

- (a) make a claim, objection or requisition or delay, rescind or terminate any Transaction Document; or
- (b) request any extension of time to perform its obligations under any Transaction Document,

by reason of any of the matters disclosed or referred to in clauses 13.1 ("Environmental Laws") and this clause 13.5.

13.6 Finding of Relics

The Developer:

- (a) acknowledges and agrees that:
 - (i) Relics may be found on, in or under the surface of the Premises; and
 - (ii) as between WSPT and the Developer, any such Relics are and will remain the property of WSPT; and
- (b) must, upon the discovery of a Relic:
 - (i) promptly notify WSPT;
 - (ii) take all practicable steps to prevent the Relic being disturbed, removed, damaged or lost; and
 - (iii) comply with all laws.

13.7 Native Title Applications and Threatened Species Claims

The Developer agrees that if:

- (a) there is a Native Title Application; or
- (b) a Threatened Species Claim is commenced, affecting any part of the Premises or the carrying out of the Works,

the Developer must:

- (c) continue to perform its obligations under this deed and the other Transaction Documents unless otherwise:
 - (i) directed by WSPT;
 - (ii) ordered by any court or tribunal; or
 - (iii) required by law;
- (d) take all reasonable steps to mitigate any loss or Cost to WSPT in complying with its obligations under clause 13.7(c); and
- (e) for this purpose, comply with all reasonable directions of WSPT concerning the matters the subject of that application or claim.

13.8 No claim by Developer

The Developer may not make a claim against WSPT for any Costs, losses or damages incurred by the Developer arising from or in connection with any of the matters referred to in clauses 13.6 ("Finding of Relics") and 13.7 ("Native Title Applications and Threatened Species Claims").

14. General requirements for carrying out Works

14.1 Works to comply

- (a) The Developer must develop the Premises by carrying out or procuring the Works to be carried out in accordance with:
 - (i) the Documentation;
 - (ii) the Development Program;
 - (iii) all laws;
 - (iv) the Codes; and
 - (v) the Transaction Documents.
- (b) The Developer and WSPT agree that should any requirement of the Transaction Documents be inconsistent with any requirement under paragraphs (i) to (iv) inclusive, then the Transaction Documents will prevail to the extent of the inconsistency.

14.2 Services

The Developer:

- (a) must, at its sole Cost, contract for, acquire or otherwise procure and provide all Services and all fuel and other materials required for the Development and the carrying out of the Works; and
- (b) may not:
 - (i) terminate this deed; or
 - (ii) stop or reduce payments under this deed, because of an interruption or failure in the supply of a Service or in respect of the connection to or amplification of any Service.

14.3 WSPT not liable for Services failure

The Developer agrees that WSPT is not liable for, and the Developer releases WSPT from, any liability any loss, injury, damage or Cost incurred by the Developer or any other person at any time in connection with the interruption to, or the failure of, the Services, except to the extent of any interruption or failure caused or contributed to by the negligent acts or omissions of WSPT or its officers, servants, agents or contractors.

14.4 Developer's obligation for care of Works

Except as otherwise provided in this deed, the Developer is responsible for the care of the Works at all times.

14.5 Developer to rectify damage to Works

The Developer must:

- (a) promptly notify WSPT of:
 - (i) any material loss or damage to or defects in the Works or the Premises; or
 - (ii) any circumstances reasonably likely to occasion any such loss, damage or defects; and
- (b) at its Cost, promptly rectify any loss or damage to or defects in the Works and the Premises so that the Works conform in every respect with the requirements of this deed.

14.6 Securing of the Premises

The Developer acknowledges that WSPT is not responsible nor liable in any manner whatsoever (including any responsibility or liability for which WSPT might otherwise be responsible or liable because of the intentional acts of WSPT or its officers, servants, agents or contractors) for security of or within the Premises, or in respect of any unauthorised entry to or misdemeanour within the Premises.

14.7 No noxious use

The Developer will not during the Term permit any illegal act, trade, business, occupation or calling at any time during the Term to be exercised carried on, permitted or suffered in or on the Premises.

15. Care of surrounding areas and safety

15.1 Developer bears risk

The Developer agrees that:

- (a) from the Date of Commencement of Works (or, if it commences any part of the Works, from the time it commences, and for so long as it is carrying out, those works) it is solely responsible for, and bears all risk and cost in relation to, the protection of people and property;
- (b) it must, to the extent consistent with the execution of the Works in accordance with this deed, take reasonable steps to avoid unnecessary interference with the movement of people and vehicles in Western Sydney Regional Parklands; and
- (c) it is solely responsible for, and bears all risk and cost in relation to any nuisance or unreasonable noise and disturbance caused as a result of carrying out the Works.

15.2 Surrounding areas

The Developer must:

- (a) use all reasonable endeavours not to cause:
 - (i) the streets adjoining the Premises to be in an unclean or untidy condition throughout construction of the Works; or
 - (ii) any damage to the existing streets, kerbs, services and public utilities and any property located in the vicinity of the Premises, except as reasonably necessary for the purposes of the Works;
- (b) not wash or permit the washing of concrete trucks or other vehicles or machinery employed in relation to the Works in the streets or areas surrounding the Premises;
- (c) promptly make good any damage, as a result of, or in connection with, the Developer (or the Builder) carrying out the Works, to any part of Western Sydney Regional Parklands including public utilities and services owned or controlled by WSPT, as soon as practicable after the damage occurs or such longer time as WSPT permits in its absolute discretion, it being acknowledged that:
 - (i) fair wear and tear to any such land or utilities and services is not damage; and
 - (ii) the assessment of any damage to any such land or utilities and services must have regard to the former condition of the land or utilities and services; and
- (d) on completion of the Works, ensure that any adjoining structures or infrastructure, fencing, footpaths or other roadways that are damaged as a consequence of the Works are repaired or replaced to the reasonable satisfaction of any relevant

Authority, in compliance with all laws and otherwise to the reasonable satisfaction of WSPT it being acknowledged that:

- (i) fair wear and tear to any such land or utilities and services is not damage; and
- (ii) the assessment of any damage to any such land or utilities and services must have regard to the former condition of the land or utilities and services.

15.3 Safety of persons

The Developer must:

- (a) before commencing the Works ensure that appropriate safety measures including safety fencing, barriers, barricades, hoardings and protective coverings are in place to prevent public access to the Premises;
- (b) during the construction of the Works shore up, maintain, underpin and support adjoining structures (including the buildings, fencing, footpaths and roadways) to ensure:
 - (i) stability and continued use of these structures; and
 - (ii) the safety of persons;
- (c) cause the Works to be carried out in a safe manner; and
- (d) promptly notify WSPT of any circumstances reasonably likely to occasion any injury occurring within the Premises or otherwise as a result of the Works.

15.4 Noise

The Developer must use its reasonable endeavours, having regard to the nature of the Works, to:

- (a) ensure that any person involved in the carrying out of the Works utilises reasonable and practicable available noise suppression methods for all building or construction machinery; and
- (b) minimise the inconvenience or interference to any owner or occupier of adjoining land.

15.5 Rights of WSPT to protect persons and property

If the Developer fails to comply with its obligations under this clause 15, then in addition to WSPT's other remedies, WSPT may after giving reasonable written notice to the Developer (except where WSPT determines that urgent action is required to protect persons or property), carry out or procure the carrying out of the necessary work. All Costs incurred by WSPT are a debt due from the Developer to WSPT payable on demand.

16. Compliance with laws

16.1 Obligations of the Developer

The Developer must on time comply with, and observe at the Developer's expense, all laws in connection with:

- (a) the Premises;
- (b) the Works;
- (c) the Developer's Property; and
- (d) the use or occupation of the Premises, whether or not those laws are imposed on WSPT or the Developer.

16.2 Effect of compliance

The Developer expressly acknowledges and agrees that in complying with the laws referred to in clause 16.1 ("Obligations of the Developer"), the Developer may be required to effect demolition, structural or capital works, alterations, additions and improvements to the Premises.

16.3 Copies of notices

The Developer must give WSPT a copy of any notice relating to the Environment or public safety of the Premises notified to, or served on, the Developer or any other notice relating to the Premises which is materially relevant to WSPT.

16.4 Acceptance of risk

Except in respect of a Discriminatory Law and clause 5.5(b) ("Authority Levies"), the effect of any law on the Developer's use of the Premises is at the sole risk of the Developer.

Part F - Insurance and OH&S

17. Insurances

17.1 Contract works all risks insurance

Without limiting or affecting the Developer's other obligations under this deed, before commencement of the Works the Developer must (at its own Cost) procure that a contract works all risks insurance policy is effected and maintained covering the usual insurable risks, including loss, damage or destruction (including, without limitation, by earthquake, fire, flood, lightning, storm and tempest, theft, malicious damage and resulting in loss or damage arising from faulty material, workmanship or design) of:

- (a) the Works (including any associated temporary works);
- (b) all materials and things (including plant and equipment used in execution of the Works) brought onto or in storage on the Premises by the Developer or its employees or contractors for the purpose of the Development other than constructional plant and equipment of contractors and subcontractors unless it is to be incorporated into the Works;
- (c) the Improvements; and
- (d) all materials and things associated with the Works in storage off-site or in transit to the Premises, occurring during the period when the Developer is responsible for their care including under the terms of any maintenance or defects liability conditions.

17.2 Amount of insurance

The insurance cover referred to in clause 17.1 ("Contract works all risks insurance") must be for an amount not less than the full value of the Works and the Improvements on a full reinstatement and replacement basis (including costs of demolition and removal of debris and an amount necessary to cover fees to all consultants), which amount must be approved reasonably by WSPT.

17.3 Broadform public liability insurance

Without limiting or affecting the Developer's other obligations under this deed, before the Developer first has access to the Premises under clause 21.3(a) ("Terms of Developer access to the Premises"), the Developer must procure that a policy of broadform public liability insurance is effected and maintained which covers:

- (a) liabilities to third parties for destruction of, loss of or damage to property (other than property required to be insured under clause 17.1 ("Contract works all risks insurance")) and the death of, disease or illness to (including mental illness) or injury to any person other than a person deemed to be an employee of the Developer in any way connected with the Works;
- (b) the Developer's liability to WSPT and WSPT's liability to the Developer for destruction of, loss of or damage to property (other than property required to be insured under clause 17.1, but including any property of WSPT in the care, custody

or control of the Developer) and the death of, disease or illness to (including mental illness) or injury to any person other than a person deemed to be an employee of the Developer in any way connected with the Works; and

- (c) subject to standard exclusions generally contained in policies of insurance, the Developer's liabilities under clauses 15.2(c) ("Surrounding areas") and clauses 35.2(a), 35.2(b) and 35.2(c) ("General indemnities").

17.4 Amount for broadform public liability insurance

The policy of broadform public liability insurance must be written on an occurrence basis for an amount not less than \$50,000,000 (or such other reasonable amount nominated from time to time by WSPT) in respect of any one occurrence (unlimited in any period of insurance) arising out of or in the course of or caused by the execution of the Works.

17.5 Employees

Before commencing the Works, the Developer must insure against liability for death of, or any injury, damage, expense, loss or liability suffered or incurred by any person employed or deemed to be employed by the Developer including all liabilities required to be insured by the *Workers Compensation Act 1987* (NSW), any other legislation relating to workers' or accident compensation in New South Wales (as well as each other state or territory where the Developer's employees normally reside or where their contract of employment was made) or imposed at common law. The insurance cover must be effected and maintained for a period ending when the Works (including rectification work) are completed. The Developer must ensure that the Builder also insures itself (and must require the Builder to require that subcontractors or contractors engaged by it in connection with, or arising out of, the Works insure themselves) against all liabilities which the *Workers Compensation Act 1987* (NSW) (or any other relevant workers' or accident compensation legislation) requires it to insure against.

17.6 Workers compensation indemnity

The Developer indemnifies WSPT against any liability or loss arising from, and any costs, charges and expenses incurred by WSPT in connection with, the Developer failing to comply with the Developer's obligations under the *Workers Compensation Act 1987* (NSW) (and all other relevant workers' or accident compensation legislation), including as a result of:

- (a) any claim made against WSPT under section 20(1) of the *Workers Compensation Act 1987* (NSW); or
- (b) any increase in the premium payable by WSPT under WSPT's own workers compensation insurance.

17.7 Professional indemnity insurance

Before commencing the Works, the Developer must supply WSPT with evidence that the Developer and each person providing advice to, or otherwise retained by, the Developer in relation to the Design Obligations has effected a professional indemnity insurance policies which:

- (a) so far as the professional indemnity insurance for the Builder is concerned, is for an amount not less than \$20,000,000 in any one claim and \$20,000,000 in the aggregate for all claims during any twelve month period of insurance;
- (b) so far as any other person is concerned, is for such amount as is reasonably consistent with current market practice in relation to professional indemnity

insurance policies taken out by persons providing substantially comparable services in similar circumstances;

- (c) covers liability of the person providing advice or being retained by the Developer arising from breach of duty owed in a professional capacity, whether owed in contract or by reason of any act or omission of that person, its employees, subcontractors, consultants or agents; and
- (d) must have a definition of profession wide enough to include all services to be provided by the Developer in the performance of its obligations under this deed and by such other person contemplated by this clause as requiring insurance in the performance of their duties and responsibilities in relation to the Design Obligations.

17.8 Motor vehicle insurance

Throughout the course of the Works, the Developer must (at its own cost) cause to be effected and maintained:

- (a) insurance which covers third party property damage related to any plant (including mobile construction plant) and vehicles (registered or unregistered) owned, leased or hired by the Developer or the Developer's Employees and Agents or the Builder or the Builder's Employees and Agents as the case may be, in connection with, or arising out of, the performance of the Works under the deed or the Developer's other obligations under this deed and which covers injury to, illness of or death to the Developer or the Developer's Employees and Agents or the Builder or the Builder's Employees and Agents as the case may be, related to any plant and unregistered vehicles in the performance of the Works under this deed for not less than \$20,000,000 for any one occurrence; and
- (b) compulsory third party motor vehicle insurance in respect of all registrable vehicles used by the Developer or the Developer's Employees and Agents or the Builder or the Builder's Employees and Agents as the case may be, in connection with, or arising out of, the performance of the Works under the deed or the Developer's other obligations under this deed.

17.9 Other insurance

If it becomes Australian insurance industry standard practice to require that insurance other than the types of insurance prescribed in this clause 17 be effected and maintained for activities substantially the same as the Works, WSPT may require the Developer to effect, or cause to be effected and maintain such other policies as are consistent with industry practice at the time, having regard to the nature and scope of the Works.

17.10 Insurance requirements generally

- (a) All insurances which the Developer effects and maintains or causes to be effected and maintained under this deed:
 - (i) must be with reputable insurers (reasonably accepted to WSPT) with a rating of BBB+ or better by Standard and Poors or the equivalent rating with another ratings agency (reasonably acceptable to WSPT) (or in the case of workers compensation insurance, WorkCover NSW) and who are reasonably approved by WSPT;

- (ii) (other than statutory insurances) must be on terms and conditions (including deductible amounts) approved in writing by WSPT (acting reasonably);
 - (iii) the Insurance specified in clause 17.3 ("Broadform public liability insurance") must:
 - A. name as insureds WSPT, and the Developer (and its employees), and operate as if there was a separate policy of insurance covering WSPT (for its vicarious liability for the acts or omissions of the insureds) and the Developer (and its employees);
 - B. include cover for all consultants, contractors and subcontractors employed from time to time in relation to the Works;
 - C. provide that failure by any one insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured; and
 - D. provide that the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy); and
 - (iv) in respect of the Insurance specified in clause 17.1 ("Contract Works all risks insurance"), must provide that:
 - A. all insurance agreements and endorsements (with the exception of limits of liability) name as insureds WSPT, the Financier and the Developer (and its employees), and operate as if there was a separate policy of insurance covering WSPT, the Financier and the Developer (and its employees) for their respective rights and interests;
 - B. include cover for all consultants, contractors and subcontractors employed from time to time in relation to the Works;
 - C. failure by any one insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured; and
 - D. the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy).
- (b) In the event that such a requirement becomes available in the insurance market, the Developer must use its reasonable endeavours (including paying a reasonable additional premium) to ensure that all insurances which the Developer effects and maintains or causes to be effected and maintained under this deed contain a term which provides that if the insurer (or the Developer) cancels any such insurance for any reason, such cancellation will not be effective before 20 Business Days after receipt by WSPT of written notice from the insurer advising of the cancellation.

- (c) Once any Insurance policy is approved by WSPT, the terms of that insurance policy must not be changed without WSPT's prior written approval (acting reasonably). The Developer must indemnify WSPT for its reasonable legal and other costs (if any) associated with determining whether or not to approve any such change.

17.11 Notices from or to the insurer

The Developer must ensure that the Insurances referred to in clauses 17.1 ("Contract works all risks insurance") and 17.3 ("Broadform public liability insurance") contain provisions acceptable to WSPT that will:

- (a) provide that a notice to the insurer by one insured party is deemed to be notice by all of the insured parties; and
- (b) provide that disclosure to the insurer by one insured party is deemed to be disclosure by all of the insured parties.

17.12 Policy endorsements

The Developer must use reasonable endeavours (including paying a reasonable premium having regard to the insurance history of the Developer) to have each policy, other than the policy referred to in clause 17.5 ("Employees"), endorsed to the effect that, subject to the *Insurance Contracts Act 1984* (Cwlth), the insurer waives its right to avoid the policy or any liability under the policy by reason of inadvertent non-disclosure or inadvertent inaccurate disclosure in the proposal relating to that policy.

17.13 Cross liability

Any insurance required to be effected in accordance with this deed by the Developer in joint names shall include a cross liability clause in which the insurer agrees:

- (a) to waive all rights of subrogation or action against any of the persons comprising the insured;
- (b) that the term "insured" applies to each of the persons comprising the insured as if a separate policy of insurance had been issued to each of them (subject to the overall sum insured not being increased as a result); and
- (c) that any non-disclosure by one insured does not prejudice the right of the other insured to claim under any insurance.

17.14 Periods of insurance

The Developer must maintain:

- (a) the insurance policies that comply with clauses 17.1 ("Contract works all risks insurance"), 17.5 ("Employees"), 17.8 ("Motor vehicle insurance") and 17.9 ("Other insurance") until the issue of the Final Certificate;
- (b) the insurance policy that complies with clause 17.3 ("Broadform public liability insurance") until the Date of Practical Completion; and
- (c) the insurance policy that complies with clause 17.7 ("Professional indemnity insurance") in the first instance until the issue of the Final Certificate and then for a further period of six years after the issue of the Final Certificate.

17.15 Premiums

The Developer must ensure that all premiums and excesses in respect of all Insurances (including any increased premiums payable after claims) are paid on time.

17.16 Payment of proceeds

If permitted by the insurance policy effected in accordance with clause 17.1 ("Contract works all risks insurance"), WSPT and the Developer will be joint loss payees in respect of any benefit payable under that policy and all proceeds will be paid to an account in the names of the Developer, the Financier and WSPT, which proceeds will then be used for the purpose of reinstatement.

17.17 Providing information to WSPT

Before the Developer commences the Works and whenever requested in writing by WSPT (but no more frequently than twice each year), the Developer must, in respect of each Insurance required to be effected and maintained under this clause 17:

- (a) give WSPT certified copies of all:
 - (i) cover notes and policies;
 - (ii) renewal certificates; and
 - (iii) endorsement slips,

as soon as the Developer receives them from the Insurer or within 5 Business Days of WSPT making a request (whichever is the later); and

- (b) produce evidence satisfactory to WSPT that the Insurances have been effected and maintained prior to the cover being required.

17.18 Failure to produce proof of insurance

If after being requested in writing by WSPT to do so, the Developer fails to produce evidence of compliance with its obligations under this clause to the satisfaction of WSPT, WSPT may effect and maintain the Insurances and pay the premiums. The amount paid shall be a debt due from the Developer to WSPT payable on demand.

17.19 Notices of potential claims

In addition to the obligations to notify the insurer under any policy, the Developer must, as soon as practicable, inform WSPT in writing of any occurrence that may give rise to a claim under the Insurances referred to in clause 17.1 ("Contract works all risks insurance") and must keep WSPT informed of subsequent developments concerning the claim. The Developer must ensure that consultants, contractors and subcontractors similarly inform WSPT. The Developer may not compromise, settle, prosecute or enforce a claim under any Insurance without the prior written consent of WSPT or otherwise on such basis as WSPT and the Developer agree in writing from time to time.

17.20 Additional obligations of Developer

In relation to the insurance policies referred to in this clause 17, the Developer must:

- (a) ensure that insurance premiums are paid on time, deductibles are paid promptly and the conditions of insurance are otherwise complied with;

- (b) comply with the terms of each insurance policy and not do or omit to do anything which if done or not done might vitiate, impair, derogate or prejudice in any way the cover under any Insurance or which might prejudice any claim under any insurance policy;
- (c) if necessary, rectify anything which might prejudice any insurance policy;
- (d) subject to clause 17.15 ("Premiums"), reinstate an insurance policy if it lapses;
- (e) not cancel, vary or allow an insurance policy to lapse without the prior consent of WSPT (that consent not to be unreasonably withheld);
- (f) immediately notify WSPT in writing if an insurer gives notice of cancellation or other notice in respect of any insurance policy;
- (g) immediately notify WSPT of any event which may result in:
 - (i) an insurance policy lapsing or being cancelled or avoided; or
 - (ii) the insurer's liability for a claim being able to be reduced (including to nil) or denied; and
- (h) give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance policy.

17.21 Liabilities of Developer not affected

The effecting of Insurances does not limit the liabilities or obligations of the Developer under this deed.

17.22 Developer options

If all or any part of the Works or the Improvements are damaged or destroyed, the Developer must:

- (a) consult WSPT regularly with respect to its proposed course of action in relation to the damaged or destroyed Works and Improvements; and
- (b) within 60 Business Days of such damage or destruction, either:
 - (i) elect to repair or reinstate the Works and Improvements in accordance with clause 17.23; or
 - (ii) terminate this deed by notice to the WSPT.

17.23 Application of insurance proceeds

- (a) If the Developer elects to repair or reinstate the Works and the Improvements pursuant to clause 17.22(b)(i):
 - (i) the Developer must apply all insurance proceeds, including any which are deposited in an account in the joint names of the Developer, the Financier and WSPT as required by clause 17.16 ("Payment of proceeds"), in respect of that damage or destruction to repair or reinstate the Works and the Improvements; and

- (ii) if the insurance proceeds received under the insurance policies effected in accordance with this clause 17 in respect of the damage to or destruction of the Works or the Improvements are less than the cost of repairing or replacing the Works or the Improvements (or those Insurances are void or unenforceable or in accordance with their terms do not cover the particular damage or destruction), the Developer must complete the repair and replacement of the Works or the Improvements at its own cost.
- (b) Upon settlement of a claim under the Insurance required under clause 17.1 ("Contract works all risks insurance"), if the Developer has not completed reinstatement of the relevant part of the Works or the Improvements, the insurance proceeds shall be paid into a bank nominated by WSPT in an account in the joint names of the Developer, the Financier and WSPT. As the Developer proceeds to reinstate the loss or damage, WSPT will consent to moneys being progressively withdrawn from the joint account for the purposes of satisfying the costs of such reinstatement (to be confirmed by the Independent Certifier).
- (c) The Developer must ensure that:
- (i) the Insurances required by this deed do not prejudice the Developer's obligations under this clause 17.23 ("Application of Insurance Proceeds"); and
 - (ii) compliance with the provisions of this clause 17.23 ("Application of Insurance Proceeds") by the Developer will not prejudice the Developer's or any other insured's right to indemnity under the Insurances.

17.24 No compensation

If the Developer terminates this deed pursuant to clause 17.22(b)(ii), such termination will be without prejudice to any party's rights under this deed or at law arising prior to termination and no compensation is payable by either party to the other in respect of termination under clause 17.22(b)(ii).

17.25 Withdrawing money from joint account

- (a) The parties agree that amounts will not be withdrawn from the joint account referred to in clause 17.16 ("Payment of proceeds") unless WSPT is reasonably satisfied that the moneys remaining in that joint account are not less than the amount which WSPT from time to time reasonably determines or otherwise accepts is sufficient to pay all costs of completing all such reinstatement works.
- (b) If as a result of the application of 17.22(b)(ii), the Works or Improvements are not to be replaced or reinstated, then any proceeds of an insurance (if any) which are held in the joint account referred in clause 17.16 ("Payment of proceeds") will be paid:
- (i) first, to settle claims arising from or in connection with the event insured against;
 - (ii) second, to the Developer to demolish and remove from the Premises all Works and to comply with its obligations pursuant to clause 34; and
 - (iii) third, subject to the Developer complying with its obligations pursuant to clause 17.25(b)(ii), the balance to the Developer.

18. Occupational health and safety

18.1 Appointment of principal contractor

For the purposes of Chapter 8 of the OH&S Regulation, WSPT:

- (a) appoints the Developer as the principal contractor for the Works; and
- (b) authorises the Developer to exercise such authority of WSPT as is necessary to enable the Developer to discharge the responsibilities imposed on a principal contractor under Chapter 8 of the OH&S Regulation.

18.2 OH&S Plan

The Developer agrees that it will be the principal contractor for the Works or will otherwise fulfil and exercise the functions and obligations of principal contractor in respect of such activities as if the Developer had been appointed as principal contractor and must:

- (a) within 45 Business Days after the Project Proceed Date (and in any event, not less than 20 Business Days before the Commencement of the Works) prepare the OH&S Plan and submit that plan to WSPT for its approval (which must not be withheld unreasonably);
- (b) maintain the OH&S Plan in accordance with Part 8.3 of Chapter 8 of the OH&S Regulation;
- (c) promptly provide any updated OH&S Plan to WSPT; and
- (d) comply with the NSW Government "Occupational Health and Safety Management Systems Guidelines".

18.3 Developer warranty

The Developer warrants that compliance with the OH&S Plan will enable the Developer to discharge its obligations as a principal contractor under Chapter 8 of the OH&S Regulation.

18.4 Discharge of obligations

If it is not feasible to do the Works in accordance with the OH&S Plan, the Developer must:

- (a) use such occupational health and safety plans and systems as may be necessary to discharge its obligations as a principal contractor under Chapter 8 of the OH&S Regulation; and
- (b) design and implement any such plans and systems in conformity with the general duties imposed on persons under Division 1 of Part 2 of the OH&S Act.

18.5 Copies of documents

The Developer must provide WSPT, quarterly or more frequently on request from WSPT, with a copy of all registers, records and documents that the Developer is required to prepare or maintain as a principal contractor under the OH&S Regulation.

18.6 Compliance

- (a) In addition to its duties as principal contractor, during the performance of the Works and its other obligations under this deed, the Developer must:

- (i) comply with, and ensure that all persons for whom it is responsible or over whom it is capable of exercising control while doing the Works comply with, the OH&S Plan and all statutory obligations of the Developer; and
 - (ii) comply with any direction of WSPT given following a perceived breach of the OH&S Regulation or the OH&S Plan.
- (b) The Developer must take all measures necessary to protect people and property on or adjacent to the Premises and the Works.

18.7 WSPT may carry out obligations

- (a) If the Developer fails to comply with an obligation under this clause 18, WSPT may perform, or have performed, the obligation on the Developer's behalf and recover the costs and expenses incurred as a debt.
- (b) If and to the extent that WSPT (acting reasonably) considers it necessary to undertake any activity, give any direction or otherwise perform any of the works or services pursuant to clause 18.7(a) for which the Developer is responsible under this clause 18, the parties acknowledge and agree that in doing so, WSPT is not acting as a principal contractor, nor is WSPT to be taken, for any purpose, to be the principal contractor. In these circumstances, the Developer indemnifies WSPT against any loss, expense or damage of any nature, including financial loss and lawyers' fees and expenses on an indemnity basis, suffered or incurred by them arising out of the performance or authorisation of the performance of any of the Works or services referred to in this clause 18.7.

18.8 Appointment of additional principal contractors

- (a) The parties acknowledge and agree that for the purposes of the OH&S Regulation, the Developer may make arrangements for the appointment of a principal contractor for the Works or any part of the Works, as the case may be, to exercise any authority of WSPT that is necessary for that principal contractor to discharge the responsibilities imposed on a principal contractor by Part 8 of the OH&S Regulation if:
- (i) WSPT is satisfied (acting reasonably) that any arrangements made by the Developer for the appointment of a principal contractor (other than the Developer pursuant to clause 18.1) will satisfy the provisions of the OH&S Regulation in relation to the discharge of responsibilities imposed on a principal contractor under Chapter 8 of the OH&S Regulation;
 - (ii) the proposed principal contractor enters into a Deed of Appointment, before the Works are commenced, between WSPT and the proposed principal contractor in the form reasonably required by WSPT; and
 - (iii) the Developer procures that the proposed principal contractor complies with the obligations of the Developer in this clause 18 as if that principal contractor was a party to this deed.
- (b) WSPT will be under no obligation to consent to the appointment of a principal contractor other than the Developer where WSPT is not satisfied that any such appointment would not result in a breach in compliance with the OH&S Regulation or where such an appointment could result in WSPT being liable for any failure to comply with the OH&S Regulation in relation to the Development.

Part G - Commencing and completing the Development

19. Contractors and Independent Certifier

19.1 Appointment of Builder

- (a) The Developer must provide to WSPT all details and information relating to the proposed delivery structure of the Works, including details of each Builder, the portion of Works to be undertaken by each Builder and the proposed contractual arrangements between the Developer and each Builder in relation to the design and construction of the Works on the earlier of:
 - (i) the Project Proceed Date; and
 - (ii) the date on which the Developer notifies WSPT that it is proceeding with the Development pursuant to clause 2.1(a).
- (b) The Developer must not:
 - (i) appoint any person as the Builder; or
 - (ii) agree any delivery structure of the Works, including the portion of Works to be undertaken by each Builder and the proposed contractual arrangements between the Developer and each Builder in relation to the design and construction of the Works,

without the prior approval of WSPT, which approval must not be unreasonably withheld.
- (c) The Developer warrants to WSPT that each Builder will be a person that the Developer is satisfied, after due enquiry, has the capacity, financial resources, experience and expertise to comply with all the Developer's obligations under this deed in relation to the carrying out of the relevant Works for which each Builder is contracted to carry out.
- (d) If requested by WSPT, the Developer must procure that each Builder enters into a side deed with WSPT on terms and conditions reasonably acceptable to WSPT. Such side deed will, inter alia, entitle WSPT to receive notices from the Builder in relation to any defaults by the Developer under the Building Contract and will also entitle WSPT to rectify any such defaults or exercise step in rights upon default by the Developer under the Building Contract. The parties will act reasonably in negotiating such side deed.
- (e) If the Developer proposes to appoint more than one Builder in order to carry out the Works, the provisions of this clause 19.1 and clause 19.2 will apply to each Builder and each Building Contract.

19.2 Providing information about Building Contract

- (a) Before entering into a Building Contract, the Developer must give WSPT evidence satisfactory to WSPT (acting reasonably) that:

- (i) the Building Contract includes provisions requiring the Builder to comply with this deed to the extent the Building Contract relates to the execution of the Works;
 - (ii) under the Building Contract the Builder may not assign the Building Contract or any payment, right, benefit or interest under it without the consent of WSPT, which consent may not be unreasonably withheld; and
 - (iii) the relevant Insurances are in force and that WSPT is named as an insured on all policies.
- (b) The Developer must give WSPT evidence satisfactory to WSPT (acting reasonably) that the relevant Insurances are in force and that WSPT is named as an insured on all policies before entering into a building contract for a value of less than \$3,000,000.

19.3 Provisions in third party contracts

All contracts entered into by the Developer in connection with the carrying out of the Works must contain provisions which:

- (a) require that, if WSPT exercise a right to terminate this deed (other than pursuant to clause 2.3 ("Termination by WSPT") or clause 2.5(i)(ii) ("Satisfactory Project Proceed Arrangements not effected")), the Developer and the contractor must, at the election of WSPT, promptly execute a deed of novation novating the contract in favour of WSPT; and
- (b) are sufficient to enable the Developer to grant the licence required under clause 40.2 ("Licence to use intellectual property").

19.4 Quality assurance systems

- (a) The Developer must carry out or procure that the Works are carried out in accordance with quality assurance systems conforming to the ISO 9000 or AS3900 series of standards.
- (b) The Developer must ensure that all major contractors engaged in respect of the Development have certified quality assurance systems and have achieved substantial implementation of a quality assurance system conforming to the ISO 9000 series.

19.5 Developer liable for acts of contractors

The entry into a contract in respect of the Works does not relieve the Developer from any liability or obligation under this deed. The Developer is liable to WSPT for the acts and omissions of any contractor or person engaged by the Developer in connection with the Works.

19.6 Choice of Independent Certifier

At any time the Developer may nominate up to three persons who it believes each have the necessary expertise, experience and resources to carry out the responsibilities and functions of the Independent Certifier for the purposes of this deed, and request WSPT to approve each of those three persons. Once so approved, the Developer may nominate any one of those persons to be the Independent Certifier for the purposes of this deed.

19.7 Appointment of Independent Certifier

Promptly after the Project Proceed Date, the Developer must appoint the Independent Certifier in connection with the Works and that appointment must be in the form of the Independent Certifier's Deed. If the Independent Certifier is dismissed then the Developer must appoint another Independent Certifier as soon as possible after that dismissal.

19.8 Independent Certifier to certify

The Developer must procure (at its Cost) that the Independent Certifier certifies at or about the Date for Substantial Commencement all Costs and expenses reasonably anticipated to be incurred by the Developer in achieving Practical Completion of the Works ("**Original Cost of the Works**").

20. Progress of Development - reporting and meetings

20.1 Project Control Group

- (a) The parties must, within one month after the Commencement Date, establish the Project Control Group consisting of a maximum of two representatives appointed by the Developer and two representatives appointed by WSPT.
- (b) The Project Control Group must meet monthly until the Date of Practical Completion.
- (c) The Project Control Group will be responsible for reviewing:
 - (i) the progress of the Works and the timing of Practical Completion; and
 - (ii) the Developer's compliance with its obligations under this deed.
- (d) The Developer is responsible for preparing minutes of meetings of the Project Control Group and for preparation of action lists of matters that need to be undertaken or pursued following each such meeting.
- (e) No member of the Project Control Group has any power to bind the parties to any act, matter or thing otherwise than pursuant to an express written authority to do so given from time to time by any party.

20.2 Bi-monthly Reports

- (a) On and from the Commencement Date and until the Date of Practical Completion, the Developer must prepare and provide to the Project Control Group, every 2 months (commencing on the 65th Business Day after the Commencement Date), a report ("**Bi-monthly Report**") in a form reasonably required by WSPT, which contains:
 - (i) details of the Works carried out in the previous quarter; and
 - (ii) details of the progress towards achieving the Major Milestones.
- (b) Where an event occurs which impacts on the timing of the Works as set out in the Development Program ("**Delay Event**"):
 - (i) the Developer must provide reasonable details of the Delay Event to the Project Control Group; and

- (ii) the Project Control Group must consider the details and make recommendations to the Developer about any remedial action which is reasonably necessary to address the consequences of the Delay Event.
- (c) After consulting with the Project Control Group, the Developer will take such action as is reasonably necessary to address the consequences of the Delay Event, having regard to the recommendations of the Project Control Group.
- (d) The Developer must include details of any action taken by it in respect of a Delay Event in the Bi-monthly Report immediately following the occurrence of a Delay Event.

20.3 Keeping WSPT informed

- (a) The Developer must provide to WSPT any information reasonably requested by WSPT at any time in connection with the performance of the Works in accordance with the requirements of this deed.
- (b) WSPT may, on reasonable notice, require the Developer to attend (and may also require the Developer to procure that any or all of the Builder, the Financier and the Independent Certifier attend) a meeting with WSPT to discuss any aspect of the performance of the Works in accordance with the requirement of this deed.

21. Access to Premises

21.1 Access Guidelines

- (a) The parties must agree the Access Guidelines in accordance with the provisions of this clause 21.1 ("Access Guidelines").
- (b) No later than the Project Proceed Date, WSPT must prepare and submit the Access Guidelines to the Developer.
- (c) The parties must:
 - (i) act reasonably;
 - (ii) consult each other; and
 - (iii) discuss in good faith any proposals advanced by the other party, to agree and finalise the Access Guidelines.
- (d) Any failure by the parties to agree the Access Guidelines will be treated as a dispute and will be resolved in accordance with clause 32 ("Dispute resolution").
- (e) The Developer must comply with the Access Guidelines.

21.2 Licence to access Premises

WSPT grants to the Developer, and the Developer accepts the grant of a licence to access to the Premises on the terms set out in clause 21.3 ("Terms of Developer access to the Premises").

21.3 Terms of Developer access to the Premises

- (a) WSPT must give the Developer access to the Premises:

- (i) from the Commencement Date to the Project Proceed Date after giving reasonable notice and details, but only in connection with obtaining Approvals or to drill bore holes and to carry out further investigations of the Premises and survey work or to carry out the Investigation in accordance with clause 3 ("Developer Due Diligence"); and
 - (ii) subject to clause 21.4 ("Pre-conditions to commencement of Works") and 33.7 ("WSPT may terminate"), on and from the Date of Commencement of Works, to carry out the Works.
- (b) The Developer acknowledges that:
- (i) the right of access granted under clause 21.3(a) is non-exclusive;
 - (ii) WSPT is entitled to continue to use the Premises for its own purposes until such time as clause 21.3(a)(ii) applies;
 - (iii) access to the Premises under clause 21.3(a)(ii) confers on the Developer a right only to such use and control as is necessary to carry out the Works (and to authorise the Builder and the other contractors, agents, employees and consultants to execute the Works, and to enter into sub-licences for that purpose);
 - (iv) access to the Premises under clause 21.3(a)(i) does not confer any right on the Developer to control the Land, which control remains with WSPT; and
 - (v) it must comply with the Access Guidelines when accessing the Premises.
- (c) In the event that the Developer accesses the Premises before the Access Guidelines have been finalised and agreed by the parties pursuant to clause 21.1 ("Access Guidelines"), the Developer must:
- (i) access the Premises at such access points and at such times nominated in writing by WSPT from time to time (acting reasonably); and
 - (ii) make good any damage to the Premises caused by the Works or investigations to the reasonable satisfaction of WSPT.
- (d) Access granted under this clause 21.3 terminates at midnight on the day immediately before the Lease Commencement Date.

21.4 Pre-conditions to commencement of Works

The Developer must not commence the Works:

- (a) before the Date for Commencement of Works and the notices contemplated under clause 21.5(c) have been given in accordance with that clause; and
- (b) until:
 - (i) it has notified WSPT that all Approvals necessary for commencement of the Works have been obtained and has provided WSPT with copies of those Approvals;
 - (ii) evidence reasonably satisfactory to WSPT has been provided that the Developer has entered into a Building Contract for the construction of the Works or components of the Works, and, to the extent relevant, the

date by which the Works are to be brought to Practical Completion by virtue of that contract is consistent with the Developer's obligations under this deed; and

- (iii) it has effected the Insurances referred to in clause 17 ("Insurances") and provided WSPT with evidence, as reasonably required by WSPT, of such compliance.

21.5 Notice of Date for Commencement of Works

- (a) At least 20 Business Days before the Developer wishes to commence the Works on the Premises (other than investigation works under clause 21.3(a) ("Terms of Developer access to the Premises", the Developer must give WSPT a notice specifying the date it expects to commence those works (including any site establishment), in accordance with the Development Program. The Developer must not give WSPT a notice under this clause 21.5(a) until it believes, acting reasonably, that all of the pre-conditions in clause 21.4 ("Pre-conditions to commencement of Works") have been satisfied.
- (b) The Developer may change the date in its notice to WSPT under clause 21.5(a) one or more times by giving a further notice to WSPT.
- (c) Two Business Days before the Developer wishes to commence the Works on the Premises (other than investigation works under clause 21.3(a) ("Terms of Developer access to the Premises"), the Developer must give WSPT a notice specifying the it expects to commence those works (including any site establishment, erection of hoardings and works on Services), two Business Days after the date of any such notice.

21.6 Restriction on entry to Premises after Date of Commencement of Works

Subject to WSPT's rights of entry under clause 22 ("WSPT's rights to enter, inspect, and carry out work"), no person may enter onto the Premises at any time after the Date of Commencement of Works unless they fully comply with all site safety requirements implemented by the Builder, including:

- (a) the OH&S Plan;
- (b) any safe work method statement;
- (c) any clothing requirements;
- (d) any supervision requirements;
- (e) any training requirements; and
- (f) any safety directions issued by the Builder.

21.7 Special conditions

The Developer agrees:

- (a) that no toxic materials will be stored on the Premises other than those necessary to develop the Premises in accordance with this deed;

- (b) the Premises will not be sprayed with any chemical substance that may damage the environmental quality of the Premises other than to the extent necessary to comply with this deed;
- (c) to advise the Minister within 24 hours of any pollution incident occurring on the Premises or any suspected ground or water contamination; and
- (d) not to Contaminate the Premises.

21.8 Caveat

- (a) The Developer may not lodge a caveat against the title to:
 - (i) the Land; or
 - (ii) if the Land is not a separate parcel of land, the land of which the Land forms part of.
- (b) The Developer irrevocably appoints WSPT and each Authorised Officer of WSPT individually as the Developer's attorney to sign and lodge a withdrawal of any caveat showing the Developer as caveator against the title to the Land or against the title to the land of which the Land forms part, if the Developer does not comply with clause 21.8(a).
- (c) The Developer agrees to ratify anything an attorney does under clause 21.8(b).
- (d) The Developer indemnifies WSPT against any liability or loss arising from, and any Costs incurred in connection with, any caveat lodged against the title to the Land for or by the Developer.

22. WSPT's rights to enter, inspect, and carry out work

22.1 WSPT's right to enter and inspect

- (a) Subject to clause 22.1(b), WSPT may, at its cost, enter onto the Premises and inspect the Works.
- (b) Subject to clause 22.5 ("Emergencies"), where no such notice or restrictions apply, WSPT may only exercise its right to enter onto the Premises pursuant to clause 22.1(a) after giving not less than two Business Days' prior notice.

22.2 WSPT's notice to remedy

- (a) If at any time prior to Practical Completion WSPT reasonably believes that any part of the Works, or any materials for incorporation into the Works, are materially inconsistent with:
 - (i) the Final Plans and Specifications (as amended pursuant to this deed); or
 - (ii) the standards required under this deed, then WSPT may provide the Developer with a notice containing full details of any such inconsistency to the extent of the information available to WSPT.
- (b) The Developer must upon receiving a notice from WSPT under clause 22.2(a) provide WSPT with a plan for remedying any materials or workmanship identified by WSPT in its notice and implement that plan subject to WSPT's reasonable requirements and conditions.

- (c) If the Developer reasonably requires any additional details to those contained in WSPT's notice under clause 22.2(a), it may request that those details be provided, and WSPT must provide those details within a further 5 Business Days of such request.
- (d) If the Developer disputes the contents of any notice issued by WSPT pursuant to clause 22.2(a), then it must give WSPT a notice to that effect within 5 Business Days after the later of the date it receives that notice and the date WSPT provides further details following a request under clause 22.2(c), and the provisions of clause 32 ("Dispute resolution") will apply to that dispute.

22.3 WSPT may take action

Subject to clause 22.4 ("Notice of exercise of rights"), WSPT:

- (a) may do anything which should have been done by the Developer under this deed but which has not been done, or which WSPT reasonably considers has not been done properly;
- (b) may (and WSPT's servants, contractors and agents may) enter and remain on the Premises for so long as it is reasonably necessary for that purpose; and
- (c) must use reasonable endeavours not to interfere with the parts of the Premises not required by WSPT under this clause 22.3.

22.4 Notice of exercise of rights

WSPT may not exercise its rights under clause 22.3 ("WSPT may take action") unless:

- (a) the Developer has not remedied the relevant non-compliance in accordance with any plan for remedy agreed between WSPT and the Developer pursuant to clause 22.2(b) ("WSPT's notice to remedy") or otherwise within a reasonable time after it occurs; and
- (b) WSPT has first given the Developer reasonable notice of its intention to do so (except in the case of emergencies when no notice is required).

22.5 Emergencies

If there is, or WSPT or the Developer has grounds for believing there is, an emergency of any nature in connection with the Works or the Premises:

- (a) on becoming aware of the emergency or possible emergency, the Developer must immediately advise and cooperate with WSPT, and keep WSPT fully informed about the nature of the emergency and any actions being taken by, or on behalf of, the Developer to address the emergency and ameliorate any risks; and
- (b) whether or not the Developer is aware of the emergency or possible emergency or is taking any action, WSPT is permitted to have reasonable access to the Premises, having regard to the nature of the emergency or possible emergency, and to take whatever action it considers is reasonably necessary to eliminate the emergency or assist the Developer to eliminate the emergency.

22.6 Costs of taking action

WSPT's rights under clause 22.3 ("WSPT may take action") and 22.5 ("Emergencies") are in addition to any other remedies of WSPT for the Developer's non-compliance. The reasonable

Costs and liabilities incurred or suffered by WSPT in taking the action constitute a debt due from the Developer to WSPT payable on demand.

22.7 WSPT may carry out Service works

WSPT may at any time carry out works to install, vary, maintain, use, repair, alter, replace and to pass or convey Services through any pipes, ducts, conduits or wires leading through the Premises, provided that:

- (a) any works carried out by WSPT pursuant to this clause 22.7 do not materially adversely affect the Works or the Developer's ability to carry out the Works; and
- (b) in carrying out those works, WSPT must:
 - (i) give the Developer reasonable notice of its intention to perform those works;
 - (ii) act reasonably in taking any reasonable requirements of the Developer into account; and
 - (iii) cause as little inconvenience to the Developer as is reasonably practicable.

22.8 WSPT not liable

The Developer:

- (a) acknowledges that it is not entitled to make a claim against WSPT, including a claim for an extension of time to achieve any Major Milestone pursuant to clause 23.1 ("Claims for extension of time"), in respect of anything arising out of; and
- (b) agrees that WSPT is not liable for, and releases WSPT from liability and loss arising from, and Costs incurred in connection with, anything WSPT is permitted to do under this clause 22.

23. Extensions of time

23.1 Claims for extension of time

The Developer may only claim an extension of time to the Project Proceed Date, the Date for Substantial Commencement and the Date for Practical Completion if the Developer is or is likely to be delayed in achieving a Major Milestone as a result of one of the following:

- (a) Force Majeure occurs;
- (b) an act or omission of WSPT resulting in a breach of this deed by WSPT, or because of the negligent act or omission of WSPT;
- (c) a delay in WSPT giving access to the Premises in accordance with clause 3.1(c) or clause 21.3 ("Terms of Developer access to the Premises");
- (d) the Developer suspending or ceasing to perform the Works (in compliance with the provisions of this deed) by reason of a Native Title Application or Threatened Species Claim;
- (e) delays due to the discovery of Relics;

- (f) a delay to the Developer effecting the Satisfactory Project Proceed Arrangements by the Project Proceed Date due to a failure by WSPT to procure vacant possession of that part of the land occupied by the Lessees of the Agistment Leases;
- (g) subject to clause 11.2 ("Mitigation"), a delay to WSPT procuring vacant possession of any part of the Land;
- (h) a Discriminatory Law comes into effect, a delay in the Developer obtaining the Project Approval by the date specified in the Development Program, so long as the Developer has used all reasonable endeavours to submit the Project Application to the Consent Authority by the date specified in the Development Program;
- (i) the presence in or on the Land of Contamination that was not referred to or contemplated in the Environmental Investigation Report;
- (j) the time taken to resolve in accordance with clause 32 ("Dispute Resolution") any dispute regarding the Environmental Guidelines under clause 13.2 ("Environmental Guidelines"); and
- (k) the Independent Certifier unreasonably withholds or delays the granting of a Certificate of Practical Completion.

23.2 Claims for extension of time to Last Date for Practical Completion

The Developer may only claim an extension of time to the Last Date for Practical Completion if the Developer is or is likely to be delayed in achieving a Major Milestone as a result of the occurrence of Force Majeure.

23.3 Conditions precedent to extensions of time

The Developer may only claim an extension of time if:

- (a) the Developer gives to WSPT details of the number of days claimed, the date the cause of the delay first arose, and the date the delay ceased, within:
 - (i) 20 Business Days (for delays not arising by virtue of matters contemplated by the Building Contract); and
 - (ii) 40 Business Days (for all other delays), unless the Building Contract specifies a shorter period within which the Developer is to be notified of cessation of a cause of delay, in which case that period, after the earlier of the day the Developer became aware, and the day the Developer ought to have become aware, of the cause of the delay ceasing;
- (b) (and to the extent) the delay has not been caused or contributed to by the Developer or any of its contractors, employees, agents or any subcontractor (save in respect of clause 23.1(h));
- (c) the Developer has used its reasonable endeavours to remedy the cause of the delay and to minimise the delay;
- (d) the Developer has actually been delayed in carrying out the Works; and
- (e) in respect of any proposed extension of time pursuant to clause 23.1("Claims for extension of time"), the Developer has used its best endeavours to prepare (or procure the preparation of) any such report in a prompt manner, provided always

that the Developer will only be entitled to an extension of time to the Last Date for Practical Completion if the Developer is diligently proceeding with the carrying out of the Works.

23.4 Concurrent delays

If more than one event causes concurrent delays, and the cause of at least one of those events is an event not referred to in clause 23.1 ("Claims for extensions of time"), then to the extent that the delays are concurrent the Developer is not entitled to an extension of time.

23.5 Not used

23.6 Matters for consideration

In determining whether the Developer is or is likely to be delayed in achieving a Major Milestone, the Independent Certifier:

- (a) may take into account whether the Developer has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the delay; and
- (b) may not take into account whether the Developer can reach Practical Completion by the Date for Practical Completion without an extension of time.

23.7 Determination of extensions of time

WSPT and the Developer acknowledge and agree that the Developer will be entitled to an extension of time if the Independent Certifier determines that the Developer is entitled to an extension of time.

23.8 Dispute over extensions of time

If, in the reasonable opinion of the Developer, the Independent Certifier fails to make its determination in accordance with clause 23.6 ("Matters for consideration") or fails to give sufficient reason for refusing to grant an extension of time, then the Developer may regard the circumstances as constituting a dispute between WSPT and the Developer for the purposes of clause 32 ("Dispute resolution").

23.9 Changes to the Development Program - extensions of time

If the Developer obtains an extension of time under to this clause 23, then within 10 Business Days of being granted that extension of time, the Developer must update the Development Program to reflect the impact of the extension of time on the anticipated timing for achieving Practical Completion and provide a copy of the revised Development Program to WSPT.

23.10 Liquidated damages

If Practical Completion does not occur by the Date for Practical Completion, the Developer must pay WSPT liquidated damages at the rate of \$5,000 per day for every day after the Date for Practical Completion to and including the earlier of:

- (a) the Date of Practical Completion;
- (b) the date that this deed is terminated under clause 33 ("Default"); or
- (c) the date which is 80 days after the Date for Practical Completion.

23.11 Amount is genuine pre-estimate

The Developer:

- (a) acknowledges and agrees that:
 - (i) the amount specified in clause 23.10 ("Liquidated damages") is a genuine pre-estimate of the damage which will be suffered by WSPT if Practical Completion is not achieved by the Date for Practical Completion; and
 - (ii) in calculating the amount for liquidated damages WSPT has:
 - A. carefully considered the amount of liquidated damages, relying on the agreement of the Developer that it is a genuine pre-estimate of those damages; and
 - B. taken into account the damage which will be suffered by WSPT, the Government and the State of New South Wales if Practical Completion is not achieved by the Date for Practical Completion; and
- (b) agrees to irrevocably waive, and forever surrender, give up and release, any right they may have, whether at law or in equity, to challenge any demand WSPT makes for payment of any such amounts upon the basis that payment of those amounts constitutes a penalty, or is invalid, or unenforceable for any reason whatever.

23.12 Occurrence of event for which Developer has Insurance

- (a) If:
 - (i) the Works are damaged;
 - (ii) WSPT is reasonably satisfied it is entitled to receive proceeds from the Developer's Insurance sufficient to reinstate the Works; and
 - (iii) the time required to obtain the Insurance proceeds and reinstate the Works is likely to prevent the Developer achieving Practical Completion by the Last Date for Practical Completion,

WSPT must, if requested by the Developer, meet with the Developer and discuss in good faith any proposals advanced by the Developer to deal with such circumstances and the potential delay to Practical Completion, including any proposal by the Developer to extend the Last Date for Practical Completion in accordance with clause 23.2.

- (b) The Developer acknowledges and agrees that nothing in clause 23.12(a) imposes any obligation on WSPT to contribute to Costs or other liabilities incurred or suffered by the Developer by reason of the occurrence of any such circumstances.

24. Achieving Practical Completion

24.1 Developer must progress the Works

- (a) The Developer must:

- (i) carry out the Works in an expeditious, proper and workmanlike manner under adequate and competent supervision, and in accordance with the best practices of the various trades involved, using good quality new materials; and
 - (ii) Substantially Commence the Works by the Date for Substantial Commencement.
- (b) WSPT acknowledges and agrees that notwithstanding any provision of this deed, WSPT will have no right to terminate this deed in the event the Works do not reach Practical Completion by the Date for Practical Completion.

24.2 Developer must achieve Major Milestones

The Developer must achieve the Major Milestones by each date for the relevant Major Milestone as specified in the Development Program.

24.3 Notice of anticipated Practical Completion

The Developer must give WSPT and the Independent Certifier at least 20 Business Days' notice of the date on which the Developer anticipates that Practical Completion of the Works will be reached.

24.4 Requesting Certificate of Practical Completion

When the Developer is of the opinion that Practical Completion has been reached, the Developer must:

- (a) request the Independent Certifier to issue a Certificate of Practical Completion in relation to the Works; and
- (b) at the same time give WSPT a copy of that request.

24.5 Independent Certifier to certify

Within 10 Business days after the receipt of the Developer's request, the Independent Certifier must give the Developer (with a copy to WSPT at the same time) either:

- (a) a Certificate of Practical Completion certifying the Date of Practical Completion; or
- (b) the reasons for not issuing that certificate, and provide a detailed list of work required to be completed in order for that certificate to be issued.

24.6 Dispute where no Certificate of Practical Completion

If within 10 Business Days after receipt of the Developer's request the Independent Certifier does not:

- (a) issue the Certificate of Practical Completion; or
- (b) give the Developer reasons for not issuing the certificate,

then either WSPT or the Developer may regard the circumstances as constituting a dispute between WSPT and the Developer for the purposes of clause 32 ("Dispute resolution").

24.7 Carrying out required work

On receipt of the detailed list referred to in clause 24.5(b) ("Independent Certifier to certify"), the Developer must carry out the work referred to in that list and, on completion of that work, request the Independent Certifier to issue a Certificate of Practical Completion, and clauses 24.5, 24.6 ("Dispute where no Certificate of Practical Completion") and this clause 24.7 will re-apply.

24.8 Effect of Certificate

The issue of a Certificate of Practical Completion is evidence that Practical Completion has been achieved, but not an acknowledgment that otherwise the Developer has complied with its obligations under this deed.

24.9 Prerequisites for Certificate of Practical Completion

Despite clause 24.5 ("Independent Certifier to certify"), a Certificate of Practical Completion for the Works may not issue unless and until:

- (a) the Developer has given WSPT a survey prepared by a Surveyor showing that the Works are within the Premises;
- (b) the Independent Certifier has issued a certificate addressed to WSPT stating that the Works have been completed in accordance with the Documentation and otherwise in accordance with this deed;
- (c) all compliance reports have been delivered to the relevant Consent Authority and WSPT;
- (d) copies of all necessary documents and Approvals issued by the relevant Authority acknowledging completion of the Works, and permitting use and occupation of the Development (including a Compliance Certificate and an Occupation Certificate) have been delivered to WSPT;
- (e) copies of all other certificates (including any Part 4A Certificate and any Complying Development Certificate), consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of each part of the Works have been delivered to WSPT; and
- (f) the ESD Consultant has certified to the Independent Certifier and WSPT that the WSPT ESD Principles as contained in the Environmental Guidelines have been incorporated, and reflected in the Final Plans and Specifications.

24.10 Providing documents to WSPT

Promptly, and in any event within three months after Practical Completion, the Developer must do all things required to procure the issue and delivery to WSPT of copies of the following items in relation to the Works:

- (a) a copy of as-built drawings of the Works;
- (b) all surveys of the Premises in the possession or control of the Developer which have not previously been delivered to WSPT, including a survey of the completed Development by a Surveyor in form and substance satisfactory to WSPT;

- (c) all certificates issued by any Authority in relation to any part of the Works which have not previously been delivered to WSPT; and
- (d) a copy of a building certificate under Part 8 of the EP&A Act in respect of the Works.

25. Defects Liability and Final Certificate

25.1 Developer to rectify defects

As soon as possible after the Date of Practical Completion the Developer must rectify any defects or omissions in the Works.

25.2 Inspections by WSPT

At any time during the Defects Liability Period WSPT may inspect the Works for the purpose of ascertaining what defects and omissions (if any) in the Works are required to be made good by the Developer.

25.3 Defects Notice given by WSPT

- (a) After each inspection WSPT may give a notice ("**Defects Notice**") to the Developer of all defects and omissions (if any) which in the reasonable opinion of WSPT are required to be made good.
- (b) Any Defects Notice:
 - (i) must identify the defect or omission and state a date by which the Developer must complete the rectification work. The dates specified in the Defects Notice must be reasonable having regard to the relevant defect or omission; and
 - (ii) may provide that in respect of the rectification work there shall be a separate Defects Liability Period of a stated duration not exceeding 12 months. The separate Defects Liability Period commences on the date the rectification work is completed.

25.4 Obligations of Developer

The Developer must:

- (a) promptly make good the defect or omission specified in the Defects Notice within the relevant time specified in the Defects Notice; and
- (b) give notice to WSPT when, in the Developer's opinion, all defect or omission specified in the Defects Notice have been made good.

25.5 WSPT may rectify defects

If the Developer does not complete the rectification work by the specified dates, WSPT may have the rectification work carried out (and for that purpose WSPT may call on the Second Bank Guarantee and the Third Bank Guarantee) without prejudice to any other rights that WSPT may have against the Developer in connection with the defect or omission. The reasonable cost of the rectification work incurred by WSPT is a debt due from the Developer to WSPT payable on demand.

25.6 Final Certificate

The provisions of clauses 24.3 ("Notice of anticipated Practical Completion") to 24.8 ("Effect of Certificates") apply *mutatis mutandis* to the issue of the Final Certificate as if the reference in those clauses to:

- (a) the Certificate of Practical Completion were a reference to the Final Certificate; and
- (b) the reference to Practical Completion were a reference to Final Completion.

25.7 Access to remedy defects

WSPT must ensure the Developer has access to the Development for the purposes of remedying defects in accordance with this clause 25.

Part H - Easements and subdivision

26. Easements

26.1 Easements required by Developer

- (a) The parties acknowledge and agree that the Developer may require easements benefiting the Premises, including for the construction, retention, maintenance, repair and use of the Services and utilities for the construction and operation of the Building, Plant and Equipment and accordingly WSPT undertakes, on request from the Developer, but subject to clause 26.2 ("Non-granting of easement"), to:
- (i) grant to the Developer; and
 - (ii) permit any relevant providers of Services to obtain,
- on reasonable terms and at no Cost to WSPT, such easements as are reasonably required by the Developer.
- (b) The Developer must notify WSPT of the exact location and dimensions of any easement it requires under this clause 26.1 as soon as practicable.

26.2 Non-granting of easement

WSPT is not obliged to grant an easement referred to in clause 26.1 ("Easements required by Developer") if:

- (a) that easement would materially interfere with the normal use and enjoyment of the land to be burdened; or
- (b) WSPT is not the registered proprietor of the land to be burdened by the easement provided that, if WSPT is the registered proprietor but ceases to be the registered proprietor of that land prior to the Lease Commencement Date then, prior to the date it ceases to be the registered proprietor, WSPT must procure that the proposed new registered proprietor of that land enters into such agreements as the Developer may reasonably require binding the new proprietor to observe and perform the obligations of WSPT under clause 26.1.

26.3 WSPT's entitlement to grant easements over Premises

- (a) WSPT shall be entitled to grant easements and other rights over the Premises and restrictions on use burdening the Premises ("**Site Encumbrances**") provided that:
- (i) the proposed Site Encumbrance does not materially interfere with the Developer's rights under this deed or the Lease; and
 - (ii) WSPT notifies the Developer of its intention to grant the Site Encumbrance, giving reasonable details of the proposed location and terms of the Site Encumbrance.
- (b) If the Developer reasonably believes that it has or will incur additional Costs in carrying out the Works by reason of any such Site Encumbrance, the Developer

may, by notice to WSPT ("**Claim Notice**") within 10 Business Days of WSPT's notice, make a claim for reimbursement from WSPT of such Costs or anticipated Costs, giving sufficient detail for WSPT to assess the reasonableness of the claim and the Costs.

- (c) WSPT must within 10 Business Days of receipt of a Claim Notice from the Developer notify the Developer whether it accepts or disputes the claim and/or the amount of the Costs. Any such dispute will be resolved in accordance with clause 32 ("Dispute resolution").
- (d) Any amount that becomes payable by WSPT to the Developer under this clause 26.3 must be paid by WSPT to the Developer within 65 Business Days of the later of:
 - (i) the amount of the Costs being agreed by WSPT or determined pursuant to clause 32; and
 - (ii) the grant of the Site Encumbrance.
- (e) The Developer acknowledges that it shall not be entitled to make any claims on WSPT or any other person in respect of any Costs, liabilities or damage incurred or suffered by reason of the creation of any Site Encumbrance other than as set out in the Claim Notice.

26.4 Compliance with easements and restrictions

- (a) The Developer must at all times ensure that the restrictions, stipulations, easements and covenants referred to in the folio of the register (including, without limitation, the Sydney Water Proposed Easements) for the Premises before or after the date of this deed are observed or performed by any person who occupies the Premises, as if that person were the registered proprietor of the Premises. The Developer and any person who occupies the Premises must not interfere with WSPT's performance of those restrictions, rights, stipulations, easements and covenants as registered proprietor of the Premises.
- (b) Each of WSPT and the Developer indemnifies the other against any liability or loss arising from, and any Costs incurred in connection with, a breach by the indemnifying party of any of the provisions of any such restrictions, stipulations, easements and covenants, except to the extent the liability, loss or Costs arises from the negligent act or omission of the party indemnified or its employees.

27. Not used

Part I - Naming and marketing the Premises

28. Naming the Premises

28.1 Naming rights

WSPT acknowledges:

- (a) and agrees that the Developer has the naming rights in respect of the Premises; and
- (b) it has approved the use of names referred to in the Approved Plans and Specifications and/or the Part 3A Application. If the Developer wishes to use any other name, the Developer must obtain WSPT's consent (not to unreasonably be withheld) prior to the proposed name being used.

29. Marketing the Premises

29.1 Developer's obligations

The Developer:

- (a) is responsible for all aspects of the marketing and promotion of the Premises;
- (b) is not authorised to make reference to "Western Sydney Regional Parklands" in any marketing materials or advertising when referring to the address of the Premises without the prior written approval of the WSPT;
- (c) must ensure that all marketing materials are generally in accordance with the highest standards of industry practice; and
- (d) take all reasonable steps to ensure that the marketing material and communications by the Developer's representatives are correct, complete and do not contain misrepresentations.

29.2 Signage

- (a) The parties must agree the Signage Policy in accordance with the provisions of this clause 29.2 ("Signage").
- (b) No later than 45 Business Days after the date of this deed, WSPT must prepare and submit a draft of the Signage Policy to the Developer.
- (c) The parties must:
 - (i) act reasonably;
 - (ii) consult each other; and
 - (iii) discuss in good faith any proposals advanced by the other party,to agree and finalise the Signage Policy within 85 Business Days after the date of this deed.

- (d) The parties acknowledge and agree that the Signage Policy will deal with:
 - (i) the size, nature, content, colour and location of all of the signs or advertisements that the Developer may erect in connection with the Development at the Premises and in the Western Sydney Regional Parklands, both parties having regard to the business to be carried out by the Developer under the Lease;
 - (ii) signs and advertisements that WSPT may erect on the perimeter of the Premises; and
 - (iii) the inclusion of appropriate references to WSPT and WSPT's role in the Development and the Premises on signs and advertisements in connection with the Development that are erected at the perimeter of the Premises.
- (e) Any failure by the parties to agree the Signage Policy will be treated as a dispute and will be resolved in accordance with clause 32 ("Dispute resolution").
- (f) The parties must comply with the Signage Policy.

Part J - Dealing with interests

30. Developer - restrictions on alienation

30.1 Developer may not alienate without consent

Subject to clauses 30.2 ("Stock exchange listing") and 30.7 ("Financing documents"):

- (a) the Developer may not assign, transfer, novate, grant rights in connection with, enter into a joint venture regarding or otherwise deal with its interest under this deed in any way;
- (b) a person may not become or cease to become the Parent of the Developer; and
- (c) a change in Control of the Developer may not take place,

(each being a "**Dealing**"), without the consent of WSPT (which may not be unreasonably withheld).

30.2 Stock exchange listing

Clause 30.1 ("Developer may not alienate without consent") does not apply to:

- (a) the initial listing of shares of the Developer or a Parent of the Developer on a recognised stock exchange;
- (b) any transaction on a recognised stock exchange involving the Developer or a Parent of the Developer while listed; or
- (c) where a Parent of the Developer is a company that is listed in the recognised stock exchange, any transaction involving the change in Control of any entity which holds shares in the Parent.

30.3 Requirements for consent regarding assignment

WSPT may not unreasonably withhold its consent to a Dealing under clause 30.1(a) if the Developer:

- (a) has remedied any Event of Default which has occurred before the date of the proposed Dealing, but only to the extent required by clause 33.2 and clause 33.6;
- (b) has satisfied WSPT (acting reasonably) that the other party to the Dealing meets each of the Assignment Tests;
- (c) procures the other party's entry into a deed in a form satisfactory to WSPT (acting reasonably) by which:
 - (i) the other party becomes liable for performance of the obligations of the Developer under this deed on and from the date of the Dealing as if it had been named as Developer; and

- (ii) the proposed new tenant agrees for any Event of Default which is not relating to the payment of a monetary sum and for which WSPT has given notice under clause 33.3 to:
 - A. rectify the Event of Default within the Remedy Period so that except for that Event of Default, no other Events of Default exist as at the date of assignment; and
 - B. be bound by any arrangements agreed between WSPT and the Developer in connection with the Event of Default;
- (d) procures that the proposed new tenant provides to WSPT the security or securities required to replace the securities existing in favour of WSPT under this deed as at the date of the assignment; and
- (e) pays WSPT's reasonable Costs in connection with the Dealing and WSPT's exercise of its rights under this clause 30.3.

30.4 Requirements for consent regarding change in control

WSPT may not unreasonably withhold its consent to a Dealing under clause 30.1(b) and clause 30.1(c) if the Developer:

- (a) has remedied any Event of Default which has occurred before the date of the proposed Dealing;
- (b) has satisfied WSPT (acting reasonably) that the Developer, or the new Parent (or persons who between them Control the Developer) meets each of the Assignment Tests;
- (c) procures the security or securities required to replace the securities existing in favour of WSPT under this deed as at the date of the assignment (if necessary); and
- (d) pays WSPT's reasonable Costs in connection with the Dealing and WSPT's exercise of its rights under this clause 30.4.

30.5 Encumbering the Developer's interest in the Premises

- (a) The Developer may not mortgage, charge or otherwise encumber the Developer's interest in the Premises or this deed without prior consent of WSPT.
- (b) WSPT agrees to act reasonably in determining whether to provide its consent to the Developer for the purposes of this clause 30.5 where the provision of such mortgage, charge or other encumbrance is reasonably required by the Developer in order to raise funds for the purposes of carrying out its obligations under this deed.

30.6 Leasing and charging Developer's Property

The Developer must not mortgage, charge, lease or otherwise deal with any Developer's Property which requires WSPT to sign a waiver without first obtaining the consent of WSPT, which consent may not be unreasonably withheld if:

- (a) the Developer is entering into a proper and bona fide mortgage, charge or lease as a means of financing the Works and provides sufficient evidence to WSPT (acting reasonably) that it is doing so;

- (b) the Developer uses the standard form of right of entry waiver document prepared by WSPT; and
- (c) the Developer pays WSPT's reasonable Costs (including legal Costs where applicable).

30.7 Financing documents

WSPT acknowledges that:

- (a) the Developer or its Related Entities may be obtaining financial accommodation to fund the Development; and
- (b) it may be a condition of that financing that WSPT enters into a financier's side deed and other agreements with the Financier.

30.8 Negotiating terms of financing documents

WSPT agrees to:

- (a) enter into a financier's side deed; and
- (b) be reasonable in negotiating the terms of that financier's side deed and other agreements referred to in clause 30.7(b) ("Financing documents") provided that:
 - (i) there is no material derogation of WSPT's rights under this deed or the Lease; and
 - (ii) the Developer pays all Costs reasonably incurred by WSPT arising out of or in connection with those agreements (including negotiating their terms).

31. WSPT's right to assign

31.1 WSPT may assign

WSPT may at any time assign its interest in this deed to any person provided that the assignee:

- (a) has the necessary powers to enable it to perform WSPT's obligations under this deed;
- (b) has title to the Premises following the assignment; and
- (c) agrees to enter into a deed of covenant with the Developer under which the assignee agrees to comply with WSPT's obligations under this deed except such deed of covenant will not be required in circumstances where WSPT's obligations under this deed are vested in the assignee by statute.

31.2 Change of landlord

If WSPT:

- (a) transfers title to the Premises; or
- (b) grants a concurrent lease over the Premises,

so that the Developer becomes obliged to perform its obligations under this deed in favour of another person ("**New Landlord**"), then:

- (c) WSPT is released from its obligations under this deed arising after the Developer receives notice of that event;
- (d) the Developer must procure that the New Landlord is substituted for WSPT as a named insured under the Insurances;
- (e) the Developer must give the New Landlord a replacement Bank Guarantee for each Bank Guarantee held by WSPT (or which WSPT is entitled to hold) at that time, such Bank Guarantee to be in the same form (except that the New Landlord is named as favouree) and for the same amount as the Bank Guarantee it replaces;
- (f) within a reasonable time after the Developer has complied with clause 31.2(e), WSPT must return the Bank Guarantees held by it to the Developer (subject to exercising any rights to call on a Bank Guarantee which it may have at that time);
- (g) the Developer must enter into those documents and assurances WSPT or the New Landlord reasonably requires to enable the New Landlord to enforce the benefit of all obligations owed under this deed in the New Landlord's name;
- (h) WSPT must procure the New Landlord to enter into such documents as are required to ensure that the New Landlord is bound by all Transaction Documents executed by WSPT and any consents; and
- (i) WSPT must pay the reasonable Costs incurred by the Developer in complying with the Developer's obligations under clauses 31.2(d), (e) and (g).

Part K - Disputes and breaches - rights and remedies

32. Dispute resolution

32.1 Notice of dispute

If a dispute between the Developer and WSPT arises in connection with this deed or its subject matter, then the disputing party must give to the other a notice adequately identifying and providing details of the dispute.

32.2 Continuing to perform obligations

All parties to this deed must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter the subject of the dispute, unless the party requiring that matter to be completed indemnifies the other party against reasonable Costs and losses suffered in completing that matter if the dispute is not resolved in favour of the indemnifying party.

32.3 Parties to consult

Any dispute between the parties arising in connection with this deed or its subject matter must first be referred to the chairman of WSPT and the chief executive officer, Village Roadshow Theme Parks to meet in good faith within 10 Business Days after the date of the notice for resolution of the dispute. If these persons cannot agree within 10 Business Days then the remaining provisions of this clause 32 apply.

32.4 Further steps required before proceedings

Any dispute between the parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation first be the subject of mediation by a mediator agreed by the disputing parties and, if the parties cannot agree within 10 Business Days, by a mediator appointed by LEADR.

32.5 Disputes for expert determination

If the mediation referred to in clause 32.4 ("Further steps required before proceedings") has not resulted in settlement of the dispute and has been terminated, and the subject matter of such dispute does not relate to the legal interpretation of this deed (including, but not limited to the termination of this deed), then either party may refer that matter to expert determination in accordance with clause 32.6 ("Choice of expert").

32.6 Choice of expert

A dispute to be referred to an expert in accordance with clause 32.5 ("Disputes for expert determination") must be determined by an independent expert of at least five years immediate past experience in the relevant field:

- (a) agreed between and appointed jointly by the parties; or
- (b) in the absence of agreement within 10 Business Days after the matter is referred to expert determination, appointed by the President or other senior officer for the time being of the body administering the relevant field.

32.7 Agreeing the relevant field

If the parties cannot agree as to the relevant field, either party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.

32.8 Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one party's business or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform each disputing party before being appointed the extent of the expert's understanding of each party's business or operations. If that information indicates a possible bias, then that expert must not be appointed except with the approval of both parties.

32.9 Agreement with expert

The parties must enter into an agreement with the expert appointed under clause 32.6 ("Choice of expert") setting out the terms of the expert's determination and the expert's fees.

32.10 Directions to expert

In reaching a determination in respect of a dispute under clause 32.5 ("Disputes for expert determination"), the expert must give effect to the intent of the parties entering into this deed and the purposes of this deed.

32.11 Role of expert

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) not accept verbal submissions unless both parties are present;
- (d) on receipt of a written submission from one party ensure that a copy of such submission is given promptly to the other party;
- (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
- (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (g) issue a draft certificate stating the expert's intended determination giving each party 10 Business Days to make further submissions;
- (h) issue a final certificate stating the expert's determination within 2 months of being so appointed, or such other time as agreed by the parties; and

- (i) act with expedition with a view to issuing the final certificate as soon as practicable.

32.12 Complying with directions of expert

The disputing parties must comply with all directions given by the expert in relation to the resolution of the dispute, and must within the time period specified by the expert, give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

32.13 Expert may convene meetings

The expert will hold a meeting with all the parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

32.14 Meeting not a hearing

The parties agree that a meeting under clause 32.13 ("Expert may convene meetings") is not a hearing and is not an arbitration.

32.15 Confidentiality of information

The parties agree, and must procure that each of the mediator and expert agrees as a condition of its appointment:

- (a) subject to clause 32.15(b), to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation;
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as clause 32.15(a); or
 - (ii) if required by law to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

32.16 Confidentiality in proceedings

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
- (b) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and

- (c) information, documents or other material concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts shall have been otherwise discoverable in judicial or arbitral proceedings.

32.17 Final determination of expert

The parties agree that the final determination by an expert is final and binding upon them unless the determination involves a cost (excluding the Costs incurred by a party in the course of the mediation or determination) to either disputing party (whether by way of payment of money or the carrying out of work) exceeding \$1,000,000.

32.18 Expert's costs

If any expert does not award costs, the disputing parties must each pay an equal share of the expert's costs in making the determination.

32.19 Expert generally not liable

The parties agree that other than where the expert has engaged in fraud, the expert will not be liable to them in any respect in connection with the carrying out of the expert's functions in accordance with this deed.

32.20 Commencement of litigation

For the avoidance of doubt, and subject to clause 32.3 and clause 32.4, the parties may commence litigation for any dispute arising in connection with the legal interpretation of this deed (including, but not limited to termination of this deed).

33. Default

33.1 Events of Default

The Developer must ensure that no Event of Default occurs.

33.2 Developer to notify WSPT

The Developer must notify WSPT within 5 Business Days after it becomes aware that an Event of Default occurs, giving WSPT full details of the Event of Default.

33.3 Notice of Breach

- (a) Before exercising any right under clause 33.7, WSPT must give notice to the Developer setting out details of the relevant Event of Default which has occurred and requiring that within the Remedy Period:
 - (i) the Developer rectifies the Event of Default if, in the reasonable opinion of WSPT, it is capable of rectification; or
 - (ii) the Developer pays compensation to WSPT instead of rectification if, in the reasonable opinion of WSPT, the Event of Default is not capable of rectification by the Developer but WSPT can, in the reasonable opinion of WSPT, be restored by the payment of compensation to the position in which WSPT would have been had the Event of Default not occurred.

- (b) Despite any other provision of this lease, WSPT may not exercise any right under clause 33.7 as a result of an Event of Default if the Developer complies with a notice given under this clause 33.3.

33.4 WSPT may rectify

WSPT may, but is not obliged to, remedy (including by entering upon the Premises for the purpose of doing so) any Event of Default. All Costs incurred by WSPT (including legal Costs) in remedying an Event of Default are a debt owing by the Developer to WSPT payable on demand.

33.5 Method of Rectification

- (a) If WSPT gives a notice under clause 33.3 requiring the Developer to pay compensation (instead of rectifying the Event of Default):
 - (i) WSPT must specify the amount of compensation WSPT requires and the basis on which the calculation has been made; and
 - (ii) the Developer will be taken to have complied with the notice if, instead of paying compensation, the Developer rectifies the Event of Default to the satisfaction of WSPT.
- (b) Any dispute as to the amount of reasonable compensation is to be determined under clause 32.

33.6 Assignment when in Breach

WSPT will not be able to terminate this deed pursuant to clause 33.7 if the Developer, within the Remedy Period effects an assignment of this deed to any person on terms acceptable to WSPT provided that:

- (a) the Developer establishes that the proposed assignee satisfies the criteria for assignment and transfer in clause 30;
- (b) the proposed assignee or transferee undertakes to be bound by the provisions of this deed and to rectify, or pay reasonable compensation to WSPT (as appropriate) in relation to, the Event of Default specified in the notice given under clause 33.3 before the end of the Remedy Period; and
- (c) if the Event of Default is the failure of the Developer to pay a monetary sum, WSPT may insist that that sum is paid before the assignment or transfer takes effect.

33.7 WSPT may terminate

- (a) If an Event of Default occurs then, subject to clause 33.3 ("Notice of breach"), WSPT may terminate this deed by notice.
- (b) WSPT acknowledges and agrees that its right to terminate this deed under clause 33.7(a) is without prejudice to the rights (if any) of the Developer under any statute or under general law including seeking relief against forfeiture, subject always to any defences, counterclaims and other rights available to WSPT from time to time.

33.8 Indemnity in connection with breach

The Developer:

- (a) indemnifies WSPT against any liability or Direct Loss arising from, and any Costs incurred in connection with:
 - (i) an Event of Default;
 - (ii) the Developer's breach of its obligations under a Transaction Document to which WSPT is a party;
 - (iii) any payment required to be made under this deed not being made on its due date;
 - (iv) WSPT acting in good faith in accordance with facsimile or telephone instructions purporting to originate from the offices of the Developer or to be given by an Authorised Officer of the Developer; and
 - (v) WSPT rectifying the Developer's breach of its obligations under this deed, including any liability, loss or Costs on account of funds borrowed, contracted for or used to fund any amount payable under any Transaction Document and including in each case legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher; and
- (b) agrees to pay WSPT an amount equal to any liability, Direct Loss or Cost of the kind referred to in clause 33.8(a) incurred by any employee, officer, agent or contractor of WSPT including legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher,

except to the extent that such Direct Loss or damage is caused or contributed to by the breach of this deed by WSPT or the negligent act or omission of WSPT or its employees

33.9 Rights not affected

The indemnity under clause 33.8 ("Indemnity in connection with breach") is not affected or limited, and WSPT's entitlement to recover damages from the Developer or any other person is not affected or limited, by:

- (a) WSPT terminating this deed;
- (b) WSPT accepting the Developer's repudiation; or
- (c) the Developer abandoning or vacating the Premises.

33.10 Waiver

Subject to clause 45.6 ("Waiver and variation"), WSPT and the Developer agree that:

- (a) WSPT's failure to enforce any breach of covenant on the part of the Developer is not to be construed as a waiver of that breach, nor shall any custom or practice which may grow up between the parties in the course of administering this deed be construed to waive or lessen the right of WSPT to insist upon the performance by the Developer of any term, covenant or condition of this deed, or to exercise any rights given to WSPT on account of any such default; and
- (b) a waiver by WSPT of a particular breach will not be deemed to be a waiver of the same or any other subsequent breach or default.

33.11 Consequences of WSPT breach

Should WSPT breach an obligation imposed on it by this deed, the Developer must provide written notice to WSPT describing the nature of WSPT's breach and when the breach occurred.

34. Developer's obligations on termination

If this deed is terminated before Practical Completion, the Developer must:

- (a) vacate the Premises on the date this deed is terminated;
- (b) at the request of WSPT (but not otherwise), within 3 months after the date of that termination, demolish and remove from the Premises all Works which:
 - (i) have not been carried out in accordance with the Approvals; or
 - (ii) have not been carried out in a proper and workmanlike manner and otherwise in accordance with this deed;
- (c) within 10 Business Days after the completion of that demolition and removal, give WSPT a structural engineer's certificate certifying that the Improvements are stable and safe;
- (d) leave the Premises in a safe and secure condition;
- (e) remove all rubbish from the Premises and leave them clean and tidy;
- (f) remove from the Premises furniture, loose equipment, goods and other items owned by the Developer but which do not form part of the relevant part of the Premises or which are not affixed (or intended to be affixed) to the relevant part of the Premises. The Developer must not remove anything affixed to the Premises, or anything intended to be affixed to them, without WSPT's consent; and
- (g) assign to WSPT all of the Developer's interest in any Approvals obtained by the Developer, and any design documents prepared by or for the Developer, in connection with the Works in accordance with clauses 40.1 ("Ownership of intellectual property") and 40.2 ("Licence to use intellectual property").

35. Releases and indemnities

35.1 Release of WSPT from liability

The Developer agrees that the Works and all property in the Premises during the continuance of this deed, are at the sole risk of the Developer. The Developer releases and forever discharges WSPT from all actions, suits, claims, demands, causes of actions, costs and expenses, equitable or under statute and otherwise and all other liabilities of any nature (whether or not the parties were or could have been aware of them) which the Developer:

- (a) now has;
- (b) at any time had;
- (c) may have now or in the future; or
- (d) but for this deed, could or might have had,

against WSPT in any way relating to or arising out of or in connection with:

- (e) any injury, damage or loss that the Developer or the Developer's Employees and Agents suffer by reason of:
 - (i) the carrying out of the Works;
 - (ii) any construction within the Premises;
 - (iii) any overflow, leakage or condensation from the water supply or from any sprinkler system or device or apparatus from the roof, walls, gutters, downpipes or other parts of the Premises;
 - (iv) the condition of or from any defect in the gas, electricity or water supply, connections or fittings within the Premises; or
 - (v) the flooding of any part of the Premises;
- (f) loss of or damage to any property or effects of the Developer or any other person howsoever occurring;
- (g) injury to or the death of any person how ever occurring;
- (h) security of or within the Premises;
- (i) any unauthorised entry to the Premises; and
- (j) any loss, injury or damage sustained by the Developer or any other person because of the interruption or failure of any of the Services, except to the extent that such injury, loss or damage is caused or contributed to by the breach of this deed by WSPT or the negligent act or omission of WSPT or its employees.

35.2 General indemnities

The Developer indemnifies WSPT and WSPT's directors, employees, agents, officers and contractors from and against any claim, action, damage, Direct Loss, liability, cost or expense incurred or suffered by any of The Indemnified Persons or arising from any claim, suit, demand, action or proceeding by any person against any of The Indemnified Persons to the extent such Direct Loss was caused or contributed to by:

- (a) loss of or damage to the Premises or to any property on or in the vicinity of the Premises, or injury to or the death of any person on or in the vicinity of the Premises, arising from any matter in connection with this deed or the Development;
- (b) the negligent or careless use, misuse, waste or abuse of any Services by the Developer or the Developer's Employees and Agents or any other person claiming through or under the Developer;
- (c) overflow or leakage of water emanating from the Premises, or from any sprinkler system or device in the Premises or arising from any defect in the Services (or any connections or equipment for the Services); and
- (d) any breach by the Developer or the Developer's Employees and Agents of any Transaction Document to which WSPT is a party,

except to the extent that such Direct Loss or damage is caused or contributed to by the breach of this deed by WSPT or the negligent act or omission of WSPT or its employees or relates to WSPT Environmental Liability.

35.3 Environmental Liabilities

- (a) The parties acknowledge and agree that:
 - (i) the Developer is responsible for the Developer Environmental Liability; and
 - (ii) WSPT is responsible for the WSPT Environmental Liability.
- (b) Without limiting any other provision of this clause 35 ("Release and Indemnities"), the Developer:
 - (i) indemnifies WSPT against;
 - (ii) releases WSPT from; and
 - (iii) agrees WSPT is not liable for,

any liability or loss arising from, and Costs incurred in connection with, Developer Environmental Liability.

35.4 Continuation of liability

The obligations of the Developer under this clause 35 continue after the Expiry Date or other determination of this deed in connection with any act, matter or thing occurring before the Expiry Date or determination.

35.5 Conduct of proceedings

- (a) In connection with any indemnity provided by the Developer under clause 35.2 ("General indemnities") or clause 35.3 ("Environmental Liabilities"), WSPT agrees to act reasonably in considering any request by the Developer with respect to the manner in which any claim that may be made against WSPT or any legal proceedings that may be commenced against WSPT are to be conducted, including considering in good faith any request by the Developer that the Developer should have the carriage and conduct of the manner in which any such claims or proceedings are defended, upon the basis that all Costs and risks (including the risks of adverse judgments) that may arise in connection any such claim or proceeding are accepted by the Developer.
- (b) Without limiting WSPT's obligations under this clause 35.5, WSPT agrees that it will not compromise or settle any such claim without the Developer's prior approval. The Developer must act reasonably and promptly in relation to any request received from WSPT as to the manner in which any such claim ought to be settled or compromised.

35.6 WSPT's ability to enforce the indemnity

The Developer agrees that WSPT may enforce any indemnity or other covenant in this clause 35 ("Releases and Indemnities") in favour of the person specified in this clause 35 ("Releases and Indemnities") for the benefit of each such person in the name of WSPT or such person.

Part L - Grant of Lease

36. Lease

36.1 Grant of Lease

WSPT must grant, and the Developer must accept, the Lease with effect from the Date of Practical Completion.

36.2 Term of Lease

The term of the Lease will commence on the date it is granted under clause 36.1 ("Grant of lease").

36.3 Rent Commencement Date

- (a) If Practical Completion occurs on a date which is within the Operational Year, the Rent Commencement Date for the purposes of the Lease will be 1 September in that Operational Year.
- (b) If Practical Completion occurs on a date which is not within the Operational Year, the Rent Commencement Date for the purposes of the Lease will be 1 September in the Operational Year which immediately follows the Date of Practical Completion.

36.4 Ongoing obligations

The Developer's obligations under this deed continue and the terms of this deed do not merge after the Lease is granted.

36.5 Delivery of Lease

At least 10 Business Days before the Date of Practical Completion the Developer must:

- (a) deliver to WSPT the Lease in duplicate signed by the Developer;
- (b) deliver to WSPT cheques for the payment of all stamp duty and registration fees; and
- (c) procure and deliver to WSPT a certification addressed to WSPT by WSPT's Solicitor that the Lease is identical to the form of lease annexed to this deed, other than in relation to any amendments permitted by this deed and those matters contemplated by clause 36.6 ("Completion of Lease").

36.6 Completion of Lease

WSPT must complete the Lease by inserting:

- (a) the date of the Developer's execution of the Lease;
- (b) the up-to-date particulars of title in the Lease cover sheet for the Premises demised under the Lease;

- (c) the Lease Commencement Date when ascertained pursuant to clause 36.2 ("Term of Lease"); and
- (d) such other details, additions or alterations as may be necessary to complete and stamp the Lease and comply with any requisition of LPI.

36.7 Parties bound

WSPT and the Developer named in the Lease are bound by the Lease from and including its grant, even though a party may not have executed it, it may not have been completed in accordance with clause 36.6 ("Completion of Lease") or it may not have been stamped or registered.

36.8 Rights of WSPT to vary Lease

WSPT may make any necessary alterations to the Lease in form or layout to comply with any requirements of LPI.

36.9 Registration of Lease

WSPT and the Developer agree that within 20 Business Days after the Lease commences, WSPT must execute and stamp the Lease, lodge it with LPI (at its cost) for registration and do all things necessary to procure LPI to register the Lease.

Part M - Representations, warranties and undertakings

37. Representations and warranties

37.1 Head lease and other interests

The Developer must permit persons having an estate or interest in the Premises concurrent with WSPT's to exercise WSPT's or that other person's rights, and otherwise perform their obligations, in connection with the Premises.

37.2 Warranties by Developer

The Developer represents and warrants in relation to itself that:

- (a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) it has, or will have (in respect of those Transaction Documents still to be executed as at the date of this deed), power to enter into the Transaction Documents to which it is a party and comply with its obligations under them;
- (c) it has, or will have (in respect of those Transaction Documents still to be executed as at the date of this deed) in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, to comply with its obligations under them and to allow them to be enforced;
- (d) its obligations under the Transaction Documents (once executed) are valid and binding and are enforceable against it in accordance with their terms;
- (e) the Transaction Documents and the transactions under them which involve it do not contravene its constituent documents or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;
- (f) it benefits by entering into the Transaction Documents to which it is a party;
- (g) it has filed all corporate notices, and effected all registrations with the Australian Securities and Investments Commission (or similar office in its place of incorporation, or the jurisdiction in which it carries on business) and all such filings and registrations are current, complete and accurate;
- (h) its most recent audited Financial Statements last given to the Financier are a true and fair statement of its financial position as at the date to which they are prepared and disclose or reflect all its actual and contingent liabilities as at that date;
- (i) if it is required to prepare consolidated Financial Statements under the Corporations Act, the most recent audited consolidated Financial Statements of the economic entity constituted by it and the entities which it controls last given to the Financier are a true and fair statement of the economic entity's financial position as at the date to which they are prepared and disclose or reflect all the economic entity's actual and contingent liabilities as at that date;

- (j) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (k) it is not in breach of a law or obligation affecting it or its assets in a way which is, or is likely to have, a Material Adverse Effect;
- (l) there has been no change in its financial position since the date to which its Financial Statements last given to WSPT were prepared which is, or is likely to have, a Material Adverse Effect;
- (m) if it is required to prepare consolidated Financial Statements under the Corporations Act, there has been no change in the consolidated financial position of the economic entity constituted by it and the entities which it controls since the date to which the consolidated Financial Statements of the economic entity last given to WSPT were prepared which is, or is likely to have, a Material Adverse Effect;
- (n) it does not have immunity from the jurisdiction of a court or from legal process;
- (o) there is no pending or threatened proceeding (relating to an amount of greater than \$100,000) affecting it or any of its assets before a court, Authority, commission or arbitrator which may adversely affect its ability to perform their its obligations under any Transaction Document;
- (p) no person has contravened or will contravene section 208 or section 209 of the Corporations Act by entering into any Transaction Document or participating in any transaction in connection with a Transaction Document;
- (q) it has satisfied itself in all respects in connection with the suitability of the Premises for its intended purpose;
- (r) it is aware of all prohibitions or restrictions on the use of the Premises under any laws;
- (s) it is satisfied with the timetable set out in this deed for the completion of the Works; and
- (t) that the Encumbrances which are registered in the folio of the register for the Premises will not prejudice the Developer's ability to complete the Works.

37.3 Warranties by WSPT

WSPT represents and warrants in relation to itself that:

- (a) it has power to enter into the Transaction Documents to which it is a party and comply with its obligations under them;
- (b) it has in full force and effect the authorisations necessary for it to enter into the Transaction Documents to which it is a party, to comply with its obligations under them and to allow them to be enforced;
- (c) its obligations under the Transaction Documents are valid and binding and are enforceable against it in accordance with their terms;
- (d) the Transaction Documents and the transactions under them which involve it do not contravene its constituent documents or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers or the powers of its directors to be exceeded;

- (e) it benefits by entering into the Transaction Documents to which it is a party;
- (f) it does not enter into any Transaction Document in the capacity of a trustee of any trust or settlement;
- (g) it is a statutory body validly existing under the under the WSPT Act;
- (h) it is legally entitled and has all statutory power to enter into and perform its obligations under each Transaction Document to which it is a party, to carry out the transactions contemplated by those documents, and the entry into of each such document is a proper exercise of its power; and
- (i) it has unencumbered, good and sufficient title to the Premises to enter into and perform its obligations under each Transaction Document to which it is a party and to carry out the transactions contemplated by those documents.

37.4 Developer's privacy warranty

The Developer represents and warrants that disclosures of Personal Information which it makes to WSPT (and which it has consented to WSPT using and disclosing) are consistent with any Privacy Statement or policy which it has issued and all Privacy Laws by which it is bound.

37.5 Repetition

The representations and warranties in clause 37.2 ("Warranties by Developer ") and clause 37.3 ("Warranties by WSPT") are taken to be made on the Commencement Date and are taken to be repeated at all times during the currency of this deed with reference to the facts and circumstances subsisting.

37.6 Obligations not affected

The Developer acknowledges that the warranties in clause 37.2 ("Warranties by Developer ") and the Developer's obligations under the Transaction Documents to which they are a party remain unaffected notwithstanding:

- (a) the design carried out by or on behalf of WSPT in connection with the Development; and
- (b) any receipt or review of, or comment or direction on, documentation prepared by the Developer.

37.7 Trust representations and warranties

If the Developer is entering into this deed as a trustee of a trust ("**Trust**"), the Developer further represents and warrants to WSPT:

- (a) it has power to enter into this deed in its capacity as trustee of the Trust;
- (b) the Trust has been validly created and is in existence at the date of this deed;
- (c) it has been validly appointed as trustee of the Trust and is presently the sole trustee of the Trust;
- (d) the Trust is solely constituted by the Trust Deed, a true copy of which has been provided to WSPT or its agent before the date of this deed;

- (e) a date has not been declared under the Trust Deed as the date on which the Trust will be vested or come to an end;
- (f) no proceedings of any description have been or are likely to be commenced or threatened which could have a material adverse effect on the assets or financial position of the Trust or its trusteeship of the Trust;
- (g) it has not done, or failed to do, any act whereby any of the assets of the Trust have been acquired by any other person, no assets of the Trust are presently registered in the name of any other person, and no person other than the beneficiaries previously notified to WSPT has acquired any right of any kind whether vested or contingent in any asset of the Trust;
- (h) it is to the commercial benefit of the Trust that the Developer enters into this deed in its capacity, inter alia, as trustee of the Trust; and
- (i) it has valid rights of indemnity and exoneration against the assets of the Trust, which rights are available for satisfaction of all liabilities and other obligations incurred by the Developer under this deed.

37.8 Trustee obligations

The Developer will:

- (a) immediately notify WSPT in writing if it ceases to be the trustee of the Trust, and procure that any new trustee executes in favour of WSPT any documents or guarantees which WSPT requires and which are no more onerous than those required or obtained by WSPT under or in relation to this deed; and
- (b) notify WSPT immediately in writing if the Trust is determined or for any reason ceases to exist, or if it is required or directed by any of the beneficiaries of the Trust to do any act or thing in relation to the Trust or the trust funds of the Trust.

37.9 Trustee further representations and warranties

The Developer in its personal capacity and in its capacity as trustee of the Trust represents and warrants to WSPT that:

- (a) as at the date of this deed the Developer has the right to be fully indemnified out of the assets of the Trust in respect of obligations incurred by it under this deed; and
- (b) there are and will remain at all times while the Developer has obligations under this deed, sufficient assets within the Trust to ensure that the Developer is able to comply with those obligations.

38. Undertakings by Developer

38.1 Undertakings by Developer

The Developer undertakes:

- (a) to notify WSPT promptly if any representation or warranty made or taken to be made by or on behalf of the Developer in connection with a Transaction Document is found to be incorrect or misleading when made or taken to be made;
- (b) to notify WSPT promptly after it occurs of full details of an Event of Default or an event which with the giving of notice, lapse of time or fulfilment of any condition

would be likely to become an Event of Default, and the steps taken to remedy it;
and

- (c) to keep WSPT fully and promptly advised at all times as to all material circumstances and events relating to the Development.

38.2 Developer's privacy obligations

The Developer agrees to:

- (a) comply with all Privacy Laws in connection with the use or disclosure of Personal Information disclosed by it to WSPT in connection with the Development;
- (b) give WSPT after the Commencement Date, copies of any updates of Personal Information which the Developer has disclosed to WSPT except where to do so would put the Developer in breach of any Privacy Laws;
- (c) notify WSPT if the Developer becomes aware that the Developer is in breach of any Privacy Law relating to Personal Information disclosed by the Developer under a Transaction Document; and
- (d) notify WSPT if the Developer does something which may cause WSPT to be in breach of any Privacy Law.

38.3 Consent to use and disclose Personal Information

The Developer consents to the Personal Information of third persons it gives to WSPT being:

- (a) used by WSPT in connection with WSPT's functions or business, including in connection with:
 - (i) internal reporting;
 - (ii) reporting to any adviser of WSPT or to any Authority;
 - (iii) the management of the Development; and
 - (iv) any use specified in any Privacy Statement; and
- (b) disclosed by WSPT:
 - (i) if required or authorised by law;
 - (ii) to any adviser of WSPT or any Authority; or
 - (iii) if the third person consents.

Part N - Miscellaneous and general

39. WSPT Representatives

39.1 WSPT's representative

WSPT may from time to time appoint an individual or individuals to exercise any functions of WSPT under this deed. The appointment of a representative does not prevent WSPT from exercising any function.

39.2 Notification by WSPT

WSPT must notify the Developer of:

- (a) the appointment and the name of WSPT's representative and the functions delegated to that representative; and
- (b) the termination of the appointment of a representative.

39.3 Developer's representative

The Developer must appoint a competent representative in respect of the Development.

39.4 Notification by Developer

The Developer must immediately notify WSPT of the name of its representative and of any subsequent changes. A direction of WSPT given to a representative of the Developer prior to WSPT's receipt of a notification that that person is no longer the Developer's representative shall be taken to have been given to the Developer.

39.5 Knowledge of representative attributed to Developer

Matters within the knowledge of a representative of the Developer are taken to be within the knowledge of the Developer.

39.6 Objection by WSPT

If WSPT makes a reasonable objection to the appointment of a representative, the Developer must terminate the appointment and appoint another representative.

40. Intellectual property

40.1 Ownership of intellectual property

The Developer:

- (a) warrants that the Developer has or will have a transferable right to use all design, materials, documents and methods of working produced by or on behalf of the Developer for the purpose of the Works, including the right to use such items for the purpose of operating, maintaining, repairing, rectifying, adding to and altering the Works; and

- (b) indemnifies WSPT against any liability or loss arising from and any Costs incurred in connection with any design, materials, documents and methods of working provided by, or on behalf of, the Developer infringing any patent, copyright, registered design, trademark, name or other protected right.

40.2 Licence to use intellectual property

If WSPT exercise a right to terminate this deed (other than pursuant to clause 2.3 ("Termination by WSPT") or clause 2.5(i)(ii) ("Satisfactory Project Proceed Arrangements not effected"), the Developer:

- (a) grants WSPT a royalty-free, irrevocable, transferable licence to use and modify the items referred to in clause 40.1 ("Ownership of intellectual property") in connection with WSPT's rights under this deed in respect of the Works, including any additions, alterations and repairs to, and rectification and maintenance of, the Works;
- (b) agrees that such licence will include sufficient rights:
 - (i) in any Approval, and all plans referred to in any such Approval; and
 - (ii) in any design work relating to the Development which is not incorporated in any Approval,for WSPT to:
 - (iii) complete any part of the Works which are not complete at the date of termination, and use such Approvals, plans and design work to operate, maintain, repair, rectify, make additions to, and alter the Works, in the manner contemplated by this deed; and
 - (iv) sublicense its rights to third parties engaged by WSPT to provide goods or services in connection with the Works, including any additions, alterations and repairs to, and rectification and maintenance of, the Works; and
- (c) must deliver to WSPT all documentation the subject of the licence under this clause 40.2 as is reasonably required by WSPT, including such documentation as may be required to lodge appeals, or making Applications, in respect of any Part 3A Approval.

40.3 Moral rights warranty and indemnity

The Developer:

- (a) warrants that it has or will obtain an undertaking, from each individual author employed by each party performing any design work in relation to the Works, not to enforce any Moral Rights that author may have, now or in the future, in any such design work in which copyright subsists, so that WSPT may freely exercise its rights pursuant to the licence granted under clause 40.2 ("Licence to use intellectual property");
- (b) indemnifies WSPT against any liability or loss arising from, and any Costs incurred in connection with, an allegation which, if true, would amount to a breach of the warranty in clause 40.3(a);

- (c) must, as soon as reasonably practicable after the date of this deed, procure each individual author employed by each party performing any design work in relation to the Works to sign the Moral Rights letter of consent comprising Annexure L; and
- (d) must provide to WSPT all original Moral Rights letters of consent signed by the relevant individual authors pursuant to clause 40.3(c) as soon as those signed letters of consent are received from the individual authors.

40.4 No interest in names

WSPT acknowledges and agrees that clause 40.2 does not operate to give WSPT a licence to use, or any other interest in, any names in respect of which the Developer or any Related Entity of the Developer has intellectual property rights (whether by way of business name, trade mark or otherwise), except to the extent those names refer to, contemplate or include references to any part of the Western Sydney Regional Parklands or any other areas in the vicinity of the Western Sydney Regional Parklands.

41. Costs

41.1 Obligations of the Developer

Except as otherwise specified in this deed, the Developer must pay or reimburse WSPT on demand for:

- (a) the reasonable Costs of WSPT in connection with:
 - (i) any consent or approval sought by the Developer, or anyone claiming through the Developer, which is not related to any Application (whether or not that consent or approval is given);
 - (ii) the exercise or non-exercise of rights arising from a breach by the Developer of its obligations under this deed;
 - (iii) the actual or (in circumstances where a default by the Developer has occurred or is suspected by WSPT, on reasonable grounds, to have occurred) contemplated enforcement by WSPT of its rights under this deed or any Transaction Document; and
 - (iv) a waiver, variation, release, surrender or discharge of or in connection with any Transaction Document,but excluding in all cases WSPT's internal administrative costs;
- (b) without limiting clause 41.1(a), the reasonable Costs incurred by WSPT in connection with anything WSPT does at the request of the Developer (including considering plans (which do not relate to an Application), varying documents, negotiating anything in connection with the Development not specifically dealt with in this deed and negotiating with financiers); and
- (c) Taxes and fees (including registration fees) and fines and penalties in respect of fees, which may be payable or determined to be payable in connection with any Transaction Document or a payment or receipt or any other transaction excluding any fine or penalty incurred due to the default of WSPT,

including in each case legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher.

41.2 Costs of negotiating this deed

Each party agrees to pay its own Costs of and incidental to the negotiation and execution of this deed.

41.3 Costs for consultants

The Developer agrees that the Costs referred to in clause 41.1(a) ("Obligations of the Developer") include those reasonable costs payable to any independent consultant or contractor or other person appointed to evaluate any matter of concern or WSPT's agent.

41.4 Developer to pay its costs

Unless otherwise provided, anything which the Developer does in connection with a Transaction Document must be done at the Developer's cost.

41.5 Third party consents

If WSPT has agreed to obtain a person's consent before WSPT gives its consent under this deed or to pay Costs incurred by that person in giving consent, then the consent from that person is a consent in connection with this deed.

41.6 Developer indemnity

The Developer indemnifies WSPT against any liability or loss arising from, and any Costs incurred in connection with the payment, omission to make payment or delay in making payment of an amount referred to in clause 41.1 ("Obligations of the Developer") including legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher.

41.7 Employees of WSPT

The Developer agrees to pay to WSPT an amount equal to any liability, loss or Cost of the kind referred to in clause 41.6 ("Developer indemnity") incurred by any employee, officer, agent or contractor of WSPT.

42. Goods and services tax

42.1 Consideration does not include GST

Subject to clause 42.3 ("Non-monetary consideration"), any consideration expressed in this deed is, unless otherwise specified, GST exclusive and does not include any amount for, or on account of, GST.

42.2 GST payable

Subject to clause 42.3 ("Non-monetary consideration"), if any supply under or in connection with this deed constitutes a taxable supply made for GST exclusive consideration, the supplier may, subject to issuing a tax invoice, recover from the recipient of the supply an amount on account of the GST payable in respect of that taxable supply ("**GST Amount**").

The GST Amount is:

- (a) equal to the value of the supply calculated in accordance with the GST Act multiplied by the applicable GST rate; and

- (b) subject to clauses 42.3 and 42.4 ("Adjustment for Consideration in Kind Supplies"), payable at the same time and in the same manner as any monetary consideration for the supply concerned but no later than the end of the tax period to which the GST payable on the relevant taxable supply is attributable under the GST Act.

The supplier of a taxable supply made under or in connection with this deed must issue a tax invoice for the supply in accordance with the GST Act to the recipient of the supply.

42.3 Non-monetary consideration

If any party makes a supply to the other for consideration which is wholly non-monetary consideration or partly non-monetary and partly monetary consideration, then:

- (a) if the consideration is wholly non-monetary ("**Consideration in Kind Supply**"):
- (i) the consideration for the Consideration in Kind Supply is GST inclusive and will not be increased on account of GST under clause 42.2 ("GST payable");
 - (ii) to the extent permitted by law, the parties agree that the GST inclusive market value of each of the Consideration in Kind Supply and the consideration for that supply (being, in turn, a Consideration in Kind Supply) are equal;
 - (iii) to the extent permitted by law, the parties will each include in any tax invoice, issued by it in respect of a Consideration in Kind Supply made by it in return for a Consideration in Kind Supply by the other, the same amount on account of the GST inclusive market value of the supply to which the tax invoice relates being the price for that supply;
 - (iv) prior to the issue of the tax invoices referred to in clause 42.3(a)(iii) the parties shall use their best endeavours to agree upon the GST inclusive market value of the reciprocal Consideration in Kind Supplies and, failing agreement within a period of 30 Business Days from the date of this deed, shall accept as final and binding the GST inclusive market value of the reciprocal Consideration in Kind Supplies determined (at the cost of the parties shared equally between them) by an independent expert nominated by the President or other most senior officer of the Institute of Chartered Accountants in Australia; and
 - (v) if the consideration is, in part, monetary and, in part, non-monetary then:
 - A. to the extent that the supply is made for the non-monetary consideration, it shall for the purposes of this clause 42.3 be a Consideration in Kind Supply and shall be subject to the operation of clause 42.3(a); and
 - B. the monetary consideration will be GST exclusive and subject to the operation of clause 42.2 ("GST payable").

42.4 Adjustment for Consideration in Kind Supplies

If the Commissioner of Taxation or a Court determines for any reason whatsoever that the Consideration in Kind Supplies referred to in clause 42.3(a) ("Non-monetary consideration") which each of the parties make in return for the other do not have an equal GST inclusive market value for GST purposes, or, if clause 42.3(a)(v) applies, that there is a disparity

between the value of the sum of the GST exclusive market value of the Consideration in Kind Supplies and the GST exclusive monetary consideration (if any) being provided by the recipient to the supplier, and the sum of the GST exclusive market value of the Consideration in Kind Supplies and the GST exclusive monetary consideration (if any) provided by the supplier and in return for the Consideration in Kind Supplies and monetary consideration being provided by the recipient, then:

- (a) if the sum of the GST-exclusive market value of the Consideration in Kind Supply made, and the GST-exclusive monetary consideration (if any) provided, by WSPT to the Developer is determined to have a greater value than the sum of the GST-exclusive market value of the reciprocal Consideration in Kind Supply made, and the GST-exclusive monetary consideration (if any) provided, by the Developer to WSPT, then WSPT will pay to the Developer an additional amount equal to any additional net GST payable by the Developer within 10 Business Days of the date the relevant determination is made;
- (b) if the sum of the GST-exclusive market value of the Consideration in Kind Supply made, and the GST-exclusive monetary consideration (if any) provided, by the Developer to WSPT is determined to have a greater value than the reciprocal sum of the GST-exclusive market value of the Consideration in Kind Supply made, and the GST-exclusive monetary consideration (if any) provided, by WSPT to the Developer, then the Developer will pay to WSPT an additional amount equal to any additional net GST payable by the WSPT within 10 Business Days of the date the relevant determination is made; and
- (c) the parties will do all things required, including issuing new tax invoices and adjustment notes (if necessary), to give effect to the relevant determinations by the Commissioner or Court.

42.5 Adjustment event

If an additional amount on account of GST has been paid by a party under this clause 42 and, in relation to the relevant taxable supply under or in connection with this deed an adjustment event occurs that gives rise to an adjustment, then the GST Amount will be adjusted accordingly and, where necessary, a payment will be made to reflect the change in the GST Amount (by the recipient to the supplier in respect of an increase in the GST Amount and by the supplier to the recipient in respect of a decrease in the GST Amount). If a payment is required, it will be made within 10 Business Days of the issue of an adjustment note by the payee who must issue an adjustment note immediately upon becoming aware of the adjustment event concerned.

42.6 Reimbursement

Notwithstanding any other provision of this deed, any amount payable under or in connection with this deed, which is calculated by reference to a cost, expense or amount paid or incurred by a party to this deed, will be reduced by an amount equal to any input tax credit to which that party, or the representative member of a GST Group of which the party is a member, is entitled in respect of that cost, expense or amount.

42.7 Defined GST terms

Words and expressions used in this clause 42 have the meaning given to them in the GST Act.

43. Notices

43.1 Form

Unless expressly stated otherwise in the Transaction Document, all notices, certificates, consents, approvals, waivers and other communications in connection with a Transaction Document must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified:

WSPT

Name: Western Sydney Parklands Trust
Address: Level 4, 10 Valentine Avenue, Parramatta NSW 2150
Telephone No: (02) 9895 7500
Facsimile No: (02) 9895 7580
Attention: Suellen Fitzgerald

Developer

Name: Prospect Aquatic Investments Pty Ltd
Address: Jam Factory, Level 1, 500 Chapel Street, South Yarra VIC 3141
Facsimile No: (03) 9660 1763
Attention: Simon Phillipson - General Counsel
Facsimile No: (03) 9660 1764
Attention: Phil Leggo - Company Secretary

and:

Name: Herbert Geer
Address: Level 20, 385 Bourke Street, Melbourne VIC 3000
Facsimile No: (03) 9670 5670
Attention: Steven Smith

43.2 Delivery

Notices must be:

- (a) left at the addresses referred to in clause 43.1 ("Form");
- (b) sent by prepaid post (airmail, if appropriate) to the addresses referred to in clause 43.1 ("Form"); or
- (c) sent by fax to the fax number referred to in clause 43.1 ("Form").

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

43.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

43.4 Receipt - postal

If sent by post, notices are taken to be received 3 Business Days after posting (or 5 Business Days after posting if sent to or from a place outside Australia).

43.5 Receipt - fax

If notices are sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

43.6 Waiver of notice period

WSPT may waive a period of notice required to be given by the Developer under this deed.

44. Anti-Terrorism

The Developer:

- (a) represents and warrants that it is not a Prohibited Entity and is not owned or controlled by, or acts on behalf of, any Prohibited Entity; and
- (b) undertakes to ensure that it complies with all anti-terrorism legislation in Australia including, without limitation, Part 4 of the *Charter of the United Nations Act 1945* (Cwlth) and Part 5.3 of the *Criminal Code Act 1995* (Cwlth).

45. General

45.1 Certificate

A certificate signed by WSPT or WSPT's Solicitor about a matter or about a sum payable to WSPT in connection with this deed is sufficient evidence of the matter or sum stated in the certificate unless the matter or sum is proved to be false.

45.2 Exercise of rights

WSPT may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy.

45.3 Partial exercise of rights

A single or partial exercise of a right, power or remedy by WSPT does not prevent a further exercise of that or an exercise of any other right, power or remedy.

45.4 Delay in exercising rights

Failure by WSPT to exercise or delay in exercising a right, power or remedy does not prevent its exercise.

45.5 WSPT not liable

WSPT is not liable for any loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising a right, power or remedy.

45.6 Waiver and variation

A provision of or a right created under this deed may not be waived or varied except in writing signed by the party or parties to be bound.

45.7 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Developer in connection with this deed with the result that WSPT's rights, powers or remedies are adversely affected (including by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

45.8 Approvals and consent

WSPT may give conditionally or unconditionally or withhold its approval or consent in its absolute discretion unless this deed expressly provides otherwise.

45.9 Remedies cumulative

The rights, powers and remedies provided in this deed are cumulative with and not exclusive of the rights, powers or remedies provided by law independently of this deed.

45.10 Set-off

WSPT may set off any amount owing by it to the Developer under this deed against any amount owing by the Developer to WSPT.

45.11 Indemnities

Each indemnity in this deed is a continuing obligation, separate and independent from the other obligations of the Developer and survives expiry or termination of this deed. It is not necessary for WSPT to incur expense or make payment before enforcing a right of indemnity conferred by this deed.

45.12 Further assurances

If asked by WSPT, then the Developer must, at its own expense:

- (a) execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the Developer and its successors under this deed; and
- (b) use its best endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this deed.

45.13 Continuing breaches

The expiry or termination of this deed does not affect the rights of the parties to this deed for a breach of this deed by the other party or parties before the expiry or termination.

45.14 Antecedent obligations

The expiry or termination of this deed does not affect the Developer's obligations:

- (a) to make payments under this deed in respect of periods before the expiry or termination of this deed; or
- (b) to provide information to WSPT to enable it to calculate those payments.

45.15 Confidentiality

All information provided under or in relation to the Transaction Documents:

- (a) by the Developer to WSPT; or
- (b) by WSPT to the Developer,

and which is identified as confidential at the time it is provided, or which by its nature is confidential, is to be kept confidential by the recipient of the information and not disclosed to any person, and the recipient of the information must do all things necessary to ensure that its respective employees, legal advisers, auditors and other consultants keep the information confidential and not disclosed it to any person, except:

- (c) with the consent of the disclosing party;
- (d) if allowed or required by law or required by any stock exchange;
- (e) in connection with legal proceedings relating to the Transaction Documents or the Premises; or
- (f) if the information is generally and publicly available.

45.16 Severability

If the whole or any part of a provision of this deed is void, unenforceable or illegal in a jurisdiction:

- (a) it is severed for that jurisdiction; and
- (b) the remainder of this deed has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

This clause 45.16 has no effect if the severance alters the basic nature of this deed or is contrary to public policy.

45.17 Entire agreement

The Transaction Documents represent the entire agreement between the parties.

45.18 Construction

No rule of construction applies to the disadvantage of a party because that party was responsible for the preparation of, or seeks to rely on, this deed or any part of it.

45.19 Effect of moratorium

To the extent permitted by law the application to this deed of any moratorium or other Act whether State or Federal having the effect of extending the term or otherwise affecting the operation of the terms of this deed is expressly excluded and negated.

45.20 Governing law, jurisdiction and service of process

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

45.21 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them.

45.22 Waiver

Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

45.23 Counterparts

This deed may consist of a number of counterparts and the counterparts taken together constitute one and the same instrument.

Executed as a deed.

Executed as a deed.

Signed for and on behalf of
Western Sydney Parklands Trust
by its Director **Suellen Fitzgerald**
pursuant to Section 8 of the *Western Sydney
Parklands Act 2006* in the presence of:

Signature of witness

Name of witness in full

Signature of **Suellen Fitzgerald**
Director of the **Western Sydney Parklands
Trust**

Executed by **Prospect Aquatic
Investments Pty Limited ABN
94079214127** in accordance with section 127 of
the Corporations Act 2001 (Cth):

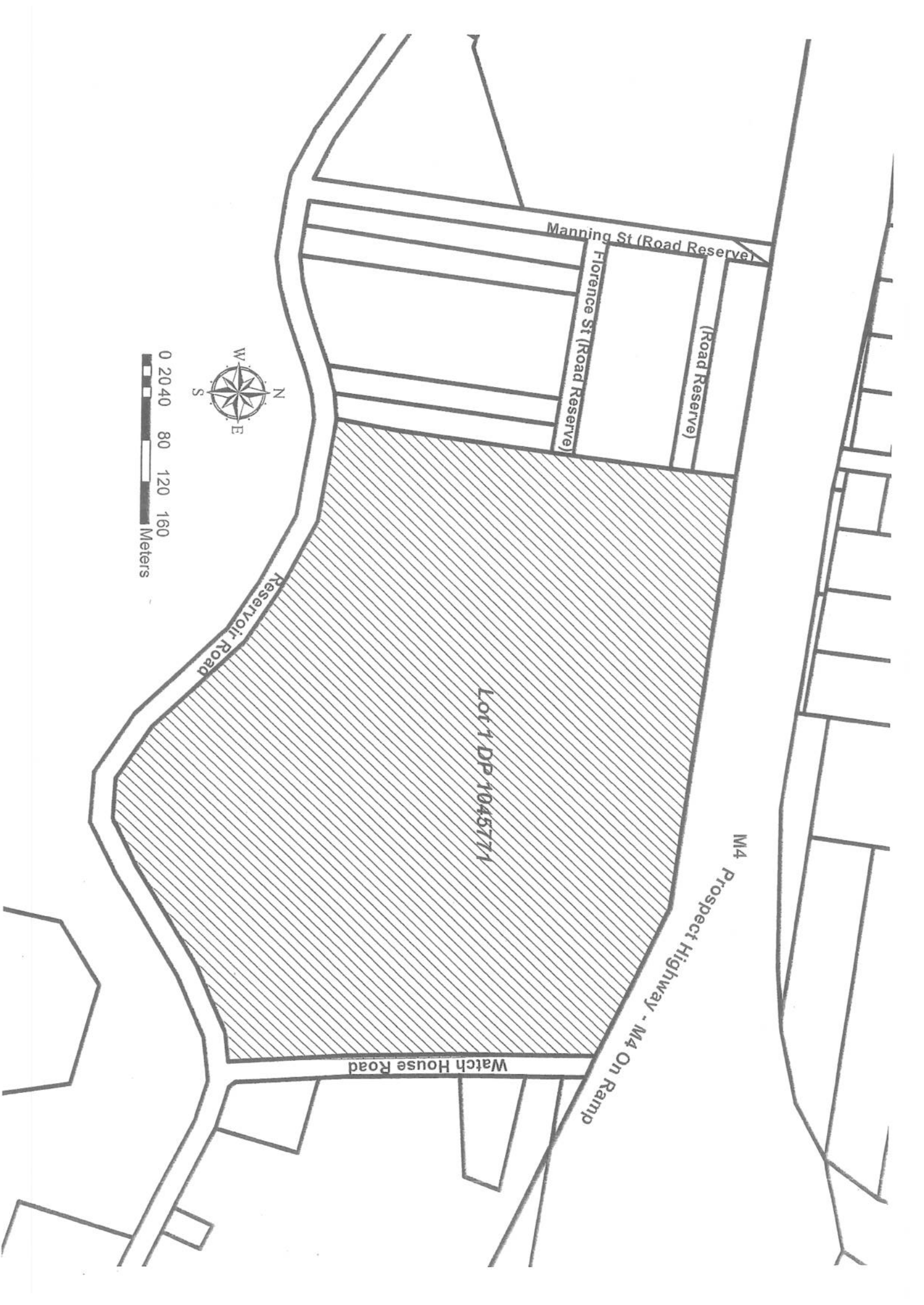
Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Annexure A - Plan of Prospect Recreational Park



Manning St (Road Reserve)

Florence St (Road Reserve)

(Road Reserve)

Lot 1 DP 1045771

Watch House Road

M4 Prospect Highway - M4 On Ramp

Reservoir Road




0 20 40 80 120 160
Meters

Annexure B - Plan of those parts of the Land which are subject to the Agistment Leases

LEGEND

- Private Property
- Leased Residential
- Leased Agriculture

0 30 60 120 180 240
Meters



Lot 1 DP 1045771



Prospect Expression of Interest lot location

Annexure C - Lease

CLAYTON UTZ

Lease
Prospect Recreational Park

Western Sydney Parklands Trust

ABN 85 202 544 800

Landlord

Prospect Aquatic Investments Pty Ltd

ABN 94 079 214 127

Tenant

The Clayton Utz contact for this document is
Gary Best on + 61 2 9353 4000

Clayton Utz
Lawyers
Levels 19-35 No. 1 O'Connell Street Sydney NSW 2000 Australia
PO Box H3 Australia Square Sydney NSW 1215
T + 61 2 9353 4000 F + 61 2 8220 6700

www.claytonutz.com

Our reference 15266/15661/80067181

**Annexure "A" to the lease between
 Western Sydney Parklands Trust ABN 85 202 544 800 (as Landlord)
 and Prospect Aquatic Investments Pty Ltd ABN 94 079 214 127 (as
 Tenant) and
 of premises known as [Prospect Recreational Park], [address of
 premises] dated [date]**

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The Landlord and the Tenant agree as follows.

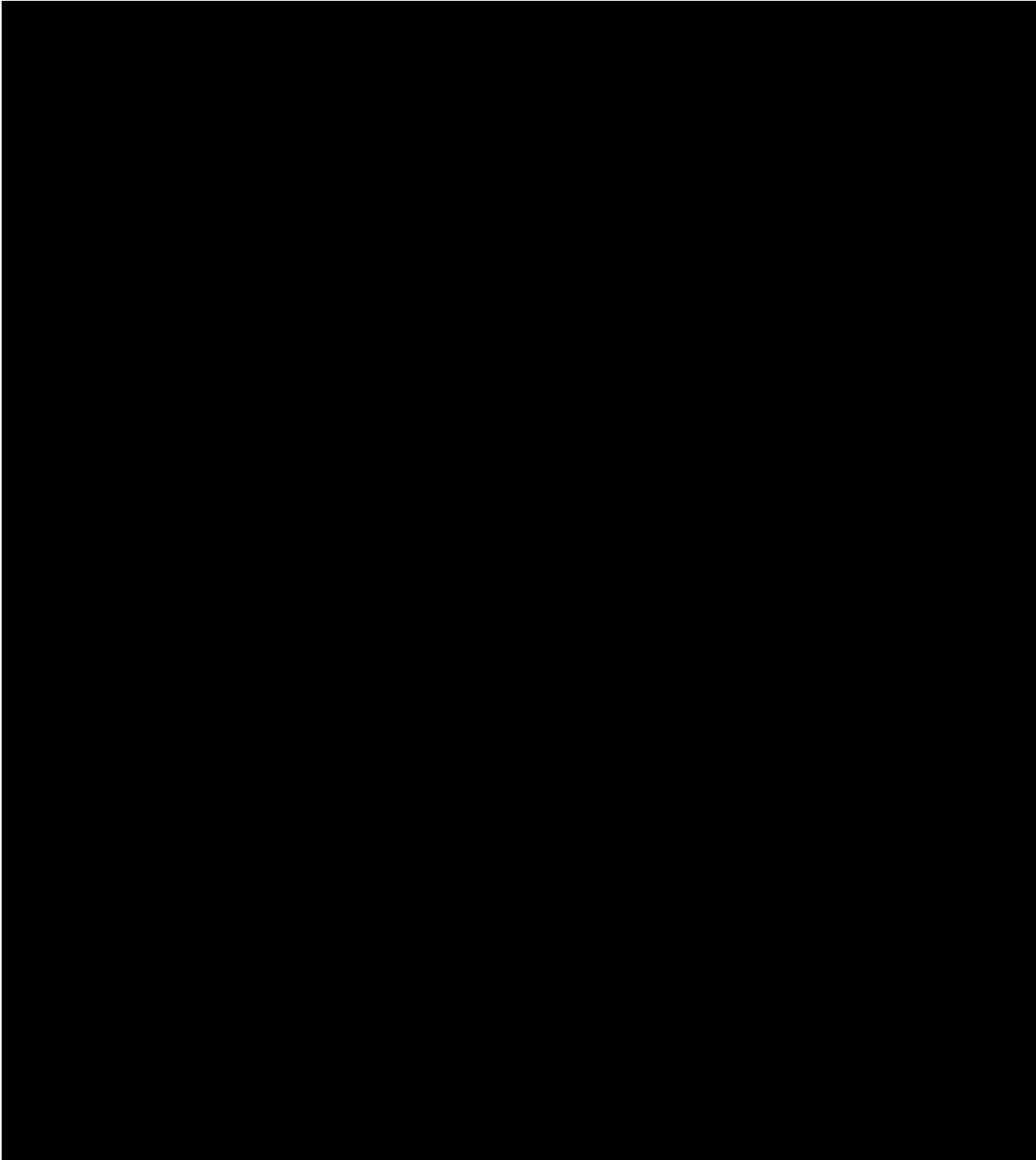
1. Definitions and interpretation

1.1 Definitions

The following words have these meanings in this lease unless the contrary intention appears.

Agreement for Lease means the agreement for lease that gave rise to this Lease.

Annual Rent means:



Application means an application for any Approval.

Approvals means all consents, approvals, major project approvals, modifications, registrations, certificates, licences and permits from any Authority necessary to carry out any proposed works to any part of the Premises or the Land.

Asset Management Plan means the Asset Management Plan prepared pursuant to the Agreement for Lease, as updated from time to time accordance with clause 11.3 ("Asset Management Plan - Routine Maintenance").

Authorised Officer means:

- (a) in the case of the Landlord, the Chief Executive Officer of the Landlord or any other person appointed by the Landlord to act as an Authorised Officer for the purpose of this lease (which at the Commencement Date includes [*insert*]); and
- (b) in the case of the Tenant, a director or a secretary or a person performing the functions of either of them or person appointed by the Tenant to act as an Authorised Officer for the purpose of this lease.

Authority means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body.

Bank Guarantee means, subject to clause 23.1(c), an unconditional undertaking (or any replacement of or addition to it under clause 23 ("Bank guarantee") by a bank and on terms acceptable to the Landlord (acting reasonably) to pay on demand an amount equivalent to the Annual Rent plus GST.

Building means the structures, improvements and all plant and equipment from time to time erected or placed on the Land.

Business means the operation of a commercial aquatic recreation activities centre including but not limited to a water theme park and other associated, supplementary and ancillary uses or events as necessary to conduct the operation or promotion of such a facility.

Business Day means a day (not being a Saturday or Sunday) on which banks are open for general banking business in Sydney.

Claim Amount means:

- (a) the amount of \$500,000 on the Commencement Date; and
- (b) on each Claim Event Date, the amount determined in accordance with the following formula:

$$A = \frac{R \times C2}{C1}$$

where:

A is the Claim Amount on a Claim Event Date;

R is \$500,000;

C2 is the Consumer Price Index number for the quarter ending immediately before the Claim Event Date; and

C1 is the Consumer Price Index number for the quarter ending immediately before the Commencement Date.

Claim Event Date means the date on which the damage or destruction to the Premises occurred and to which any insurance claim has been made by the Tenant.

Cleanup means the taking of all necessary action to Remediate any Contamination caused by any person for the purpose of restoring any land, building or waters to a condition as close as practical to the condition the land, building or waters were in before being affected by that Contamination.

Commencement Date has the meaning given on the coversheet.

Condemned means the Premises being taken to be unfit for its Permitted Use for a reason other than as a result of the Tenant's breach of any of its obligations under this lease.

Consent Authority means, in relation to an Application, the Authority having the function to determine the Application.

Consumer Price Index means the Sydney (All Groups) index published by the Australian Statistician or the index substituted for it by the Australian Statistician or, if neither of those indexes is available, an index nominated by the Landlord (acting reasonably).

Contamination means the presence in, on or under the Premises of any substance at a concentration above the concentration at which the substance is normally present in, on or under (respectively) land in the same locality being a presence that presents a risk of harm to human health or any other aspect of the Environment.

Control of a corporation includes the possession directly or indirectly of the power, whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly to control the membership of the board of directors of the corporation or to otherwise directly or indirectly direct or cause the direction of the management and policies of that corporation whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock of that corporation or otherwise.

Controller has the meaning it has in the Corporations Act.

Corporations Act means the *Corporations Act 2001* (Cwlth).

Costs includes costs, charges and expenses including those incurred in connection with advisors and (unless otherwise specified) includes reasonable internal administrative costs.

Encumbrance means any:

- (a) security for the payment of money or performance of obligations, including a mortgage, charge, lien, pledge, trust, power or title retention or flawed deposit arrangement;
- (b) right, interest or arrangement which has the effect of giving another person a preference, priority or advantage over creditors including any right of set-off;

- (c) right that a person (other than the owner) has to remove something from land (known as a profit à prendre), easement, public right of way, restrictive or positive covenant, lease, or licence to use or occupy; or
- (d) third party right or interest or any right arising as a consequence of the enforcement of a judgment,

or any agreement to create any of them or allow them to exist.

Environment includes all aspects of the surroundings of human beings.

Environmental Investigation Report has the meaning given to that term in the Agreement for Lease.

Environmental Law means any Law concerning the Environment and includes Laws concerning:

- (a) the carrying out of uses, works or development or the subdivision of land;
- (b) emissions of substances into the atmosphere, waters and land;
- (c) pollution and contamination of the atmosphere, waters and land;
- (d) production, use, handling, storage, transportation and disposal of:
 - (i) waste;
 - (ii) hazardous substances; and
 - (iii) dangerous goods;
- (e) threatened, endangered and other flora and fauna species; and
- (f) the health and safety of people,

whether made or in force before or after the date of this lease.

An **Event of Default** occurs if:

- (a) the Tenant defaults in performing, observing, or fulfilling any provision of this lease which is not an essential term of this lease;
- (b) the Tenant does not comply with an essential term of this lease;
- (c) the Tenant repudiates this lease and the repudiation is accepted by the Landlord;
- (d) the Tenant does not pay within 20 Business Days of a demand being made by the Landlord any money payable under this lease in the manner required under it;
- (e) any present or future monetary obligation of the Tenant:
 - (i) in connection with money borrowed or raised by any of them, or any hiring arrangement, redeemable preference share, letter of credit, interest rate swap, currency swap, financial option, futures contract or currency exchange agreement to which any of them is party:
 - A. is not satisfied on time or at the end of its period of grace; or

B. becomes prematurely payable,

unless the satisfaction of the obligation is the subject of a bona fide dispute between the relevant parties; or

- (ii) to guarantee or indemnify against loss in connection with money borrowed or raised is not discharged at maturity or when called unless the discharging of the obligation is the subject of a bona fide dispute between the relevant parties, which has a Material Adverse Effect;
- (f) distress is levied or a judgment, order or Encumbrance is enforced, or becomes enforceable against any property (having a value of not less than \$5,000,000.00 multiplied by the Consumer Price Index last published before the distress is levied or a judgement, order or Encumbrance is enforced or becomes enforceable and divided by the Consumer Price Index for the quarter ending before the Commencement Date) of the Tenant which has a Material Adverse Effect;
- (g) a representation or warranty made or taken to be made by or on behalf of the Tenant in connection with this lease is found or is notified by the Tenant to be materially incorrect or materially misleading when made or taken to be made which has a Material Adverse Effect;
- (h) an Insolvency Event occurs in respect of the Tenant which has a Material Adverse Effect;
- (i) the Tenant stops payment, ceases to carry on its business or a material part of it, or threatens to do either of those things except to reconstruct or amalgamate while solvent on terms reasonably approved by the Landlord which has a Material Adverse Effect;
- (j) the Tenant takes action to reduce its capital or buy back any of its ordinary shares or passes a resolution referred to in section 188(2) of the Corporations Act, in any case without the consent of the Landlord (such consent not to be unreasonably withheld) which has a Material Adverse Effect;
- (k) a person is appointed under legislation to manage any part of the affairs of the Tenant which has a Material Adverse Effect;
- (l) this lease or a transaction in connection with it is or becomes wholly or partly void, voidable or unenforceable, or is claimed to be so by the Tenant or anyone on behalf of it;
- (m) an undertaking given to the Landlord or its solicitors by the Tenant in connection with this lease is breached or not wholly performed within the period specified in the undertaking or, if no period is specified, within a reasonable period from the date of the undertaking and which has a Material Adverse Effect;
- (n) without the Landlord's prior consent:
 - (i) a transfer of shares in the capital of the Tenant is registered or any holder of shares in the capital of the Tenant disposes of any interest in those shares;
 - (ii) new shares, convertible notes or options for shares in the capital of the Tenant are issued; or

- (iii) a change takes place in the Control of the Tenant,
which has a Material Adverse Effect; or
- (o) the Tenant fails to provide evidence to the Landlord's reasonable satisfaction of the insurances required under this lease.

Expiry Date has the meaning given on the coversheet.

GST has the meaning it has in the *A New Tax System (Goods and Services Tax) Act 1999* (Cwlth).

Insolvency Event means the happening of any of these events:

- (a) a body corporate is (or states that it is) insolvent under administration or insolvent (each as defined in the Corporations Act);
- (b) a body corporate has a Controller appointed, is under administration or wound up or has had a Receiver appointed to any part of its property;
- (c) a body corporate is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Landlord);
- (d) an application or order has been made (and, in the case of an application, it is not stayed, withdrawn or dismissed within 20 Business Days), resolution passed, proposal put forward, or any other action taken, in each case in connection with that body corporate, which:
 - (i) is preparatory to or could result in any of paragraphs (a), (b) or (c) above; or
 - (ii) which results in the appointment of a liquidator or provisional liquidator in respect of a body corporate;
- (e) a body corporate is otherwise unable to pay its debts when they fall due;
- (f) as a result of the operation of section 459(F)(1) of the Corporations Act a body corporate is taken to have failed to comply with a statutory demand;
- (g) a body corporate is, or it makes a statement from which the Landlord reasonably deduces that the body corporate is, the subject of an event described in section 459(C)(2)(b) or section 585 of the Corporations Act);
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) something having a substantially similar effect to (a) to (h) happens in connection with that body corporate under the law of any jurisdiction.

Interest Rate means the rate which is 4% per annum above the 90 day Bank Bill Swap Reference Rate last published on or before the date from which interest is payable under this lease in The Australian Financial Review (or if no such rate has been published, another rate set by the Landlord in good faith).

Land means the land comprising folio identifier 1/1045771.

Landlord is defined on the cover sheet of this lease.

Landlord Environmental Liability means any of the following liabilities:

- (a) all costs and expenses associated with undertaking any Cleanup ordered or required by any Authority of any land, building or waters;
- (b) any compensation or other monies that an Authority requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and
- (e) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses) damages and Costs and interest, payable under an Environmental Law,

which relates to or is in connection with any Contamination in, on, or under the Premises other than a Tenant Contamination Liability.

Landlord's Employees and Agents means each of the Landlord's employees, officers, agents, contractors, invitees and those persons who at any time are under the control of, and in or on the Premises, with the consent (express or implied) of the Landlord.

Landlord's Property means all plant and equipment, fixtures, fittings which constitute improvements to land for the purpose of any law.

Liquor Laws means the *Liquor Act 1982* (NSW) and any laws which govern or require the payment of fees in connection with the sale of liquor from the Premises.

LPI means Land and Property Information New South Wales.

Material Adverse Effect means a material adverse effect on the ability of the Tenant or the Tenant's employees and agents to:

- (a) comply with the obligations under this lease; or
- (b) repay its financiers all amounts due under the Tenant's financing arrangements (if any).

Non-Routine Maintenance means one-off maintenance or repairs made necessary because of unplanned damage to, or breakage of, part of the Premises, and which is necessary to keep the Premises to the Required Standard.

Outgoings means the total of amounts and Costs paid or payable in connection with the Premises including:

- (a) Rates, Taxes and other charges imposed by any Authority but the amount of land tax included is on the basis that the land included in the Premises is the only land owned by the Landlord and is not subject to a trust;
- (b) supplying, renting, operating, maintaining, servicing, repairing and replacing Services and upgrading Services to comply with any laws or requirements of Authorities; and

- (c) charges for the supply (including charges for installation, connection and consumption) of Services to or on the Premises.

However, the amount of Outgoings will be reduced by the amount of any credit or refund of GST to which the Landlord is entitled as a result of incurring Outgoings.

Parent of a person means the person directly or indirectly exercising the decision making power of the first mentioned person including:

- (a) if the first mentioned person is a corporation, a person who:
- (i) controls the composition of the board of directors of the first mentioned person;
 - (ii) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a general meeting of the first mentioned person; or
 - (iii) holds or has a Relevant Interest in more than one half of the issued share capital of the first mentioned person (excluding any part of that issued share capital that carries no right to participate beyond a specified amount in a distribution of either profits or capital);
- (b) if the first mentioned person is a trustee of a unit trust and, in the case of the Tenant, its interest in this lease is property subject to that trust, a person who:
- (i) is in a position to cast, or control the casting of, more than one half of the maximum number of votes that might be cast at a meeting of holders of units at that meeting; or
 - (ii) holds or has a Relevant Interest in more than one half of the issued units of that trust (excluding any of the issued units that carries no right to participate beyond a specified amount in a distribution of either profits or capital); and
- (c) if the first mentioned person is a trustee of a trust and, in the case of the Tenant, its interest in this lease is property subject to that trust, a person who:
- (i) is a beneficiary of that trust entitled directly or indirectly to more than one half of the corpus or profits of the trust; or
 - (ii) is entitled to or whose consent is required to:
 - A. appoint or change the trustee;
 - B. give directions to the trustee;
 - C. vary the constituent document of the trust;
 - D. appoint or remove beneficiaries; or
 - E. decide to whom any distribution is made or the amount of any distribution.

A person is also a Parent of another person if a part of this definition is satisfied in respect of each trust and company in any chain of trusts or companies connecting that person and the other person.

Permitted Use means that the Premises may be used for the Business to the Required Standard and other associated uses consistent with the operation of the Business, including car parking and retail.

Policeman's Cottage means the existing "policeman's cottage" which is adjacent to the western boundary of the Land and approximately 60 metres north of Reservoir Road.

Premises means the Land and the Building and includes the Landlord's Property.

Premium means an amount or amounts payable to the Landlord, by way of unendorsed bank cheque (or cheques), in consideration of the Landlord consenting to Redevelopment Work.

Previous CPI Date means for the purposes of the Consumer Price Index, the quarter ending immediately before the Date of Total Destruction

Quarter Date means each 1 January, 1 April, 1 July and 1 October during the Term.

Rates means rates, land taxes, levies (including parking levies), assessments and other charges (including charges for consumption and garbage and waste removal) together with any interest, fines and penalties in connection with them.

Receiver includes a receiver or receiver and manager.

Redevelopment Work has the meaning given in clause 11.8(c) ("Replacement, rebuilding and redevelopment").

Reduced Bank Guarantee has the meaning given to that term in clause 23.1(c) ("Delivery to Landlord").

Related Entity has the meaning it has in the Corporations Act.

Relevant Interest means the power:

- (a) to exercise, or to control the exercise of, the right to vote attached to a share or unit;
or
- (b) to dispose of, or to exercise control over the disposal of, a share or unit.

Remediate means investigate, clean up, remove, abate, dispose of, control contain, encapsulate or otherwise treat Contamination and includes the monitoring and risk management of Contamination.

Remedy Period means:

- (a) for a breach by the Tenant of the obligation under clause 8 to effect and maintain insurances, the period from the date a Default Notice is given to the day that is 20 Business Days after that date;
- (b) for a breach by the Tenant to pay money to the Landlord under this deed, the period from the date a Default Notice is given to the day that is 30 Business Days after that date; and
- (c) for any other breach of this lease by the Tenant, the period from the date a Default Notice is given to the day that is 6 months after that date.

Rent means Annual Rent and Turnover Rent.

Rent Commencement Date means 1 September 20[].

Rent Material Breach means a failure by the Tenant to pay any Rent to the Landlord within 20 Business Days of written notice from the Landlord that the Tenant is in breach of its obligations to pay Rent under the lease.

Rent Period means each of:

- (a) the period from an including the Rent Commencement Date to the day immediately before the next Quarter Date;
- (b) thereafter for the whole Term each period commencing from and including each Quarter Date to the day immediately prior to the next Quarter Date; and
- (c) the period from and including the last Quarter Date in the Term to and including the Expiry Date.

Required Standard means the standard:

- (a) required by any licence, consent, approval, direction, notice or requirement of any relevant Authority applicable to the Premises;
- (b) required by any applicable laws and legislation; and
- (c) required to keep the Business operational and all Buildings maintained, to a standard no less than that of a well maintained major tourist attraction.

Review Date means [*the date which is the eleventh anniversary of the Rent Commencement Date*] and each anniversary of that date.

Routine Maintenance means such repairs, maintenance and upgrades as would routinely be conducted within a premises similar to the Premises in good repair and condition consistent always with the Required Standard.

Services means the services (such as water, drainage, gas, electricity, communications, fire fighting, air conditioning, lifts and escalators) running through or servicing the Premises and includes all plant, equipment, pipes, wires, cables, ducts and other conduits in connection with them.

Signage Policy means the Landlord's signage policy as at the Commencement Date (being the signage policy agreed pursuant to the Agreement for Lease) and any replacement or variation of it agreed by the parties pursuant to clause 5.12.

Subsidiary has the meaning it has in the Corporations Act.

Taxes means taxes, levies, imposts, deductions, charges, withholdings and duties imposed by any Authority (including stamp and transaction duties), (together with any related interest, penalties, fines and expenses in connection with them), except if imposed on the overall net income or capital gains of the Landlord.

Tenant is defined on the cover sheet of this lease.

Tenant Environmental Liability means any of the following liabilities:

- (a) all costs and expenses associated with undertaking any Cleanup ordered or required by any Authority of any land, building or waters;

- (b) any compensation or other monies that an Authority requires to be paid to any person under an Environmental Law for any reason;
- (c) any fines or penalties incurred under an Environmental Law;
- (d) all Costs incurred in complying with an Environmental Law; and
- (e) all other claims, demands, suits, proceedings, causes of action, losses (including consequential losses) damages and Costs and interest, payable under an Environmental Law

which:

- (f) arises, directly or indirectly, from the Tenant's occupation or use of the Premises or the carrying out of the Tenant's Business at the Premises; or
- (g) relates to or is in connection with any Contamination in, on, or under the Premises:
 - (i) referred to or contemplated by the Environmental Investigation Report other than a Tenant Excluded Contamination Liability; or
 - (ii) which arises, directly or indirectly from:
 - A. the construction of the Building pursuant to the Agreement for Lease or any improvements to, or repairs, maintenance or redevelopment of, the Building under this lease;
 - B. the Tenant's access to, occupation or use of the Premises; or
 - C. from the carrying out of the Business at the Premises

(whether or not referred to or contemplated by the Environmental Investigation Report and whether or not it is part of a Tenant Excluded Contamination Liability), and includes without limitation any Contamination in, on or under any part of the Premises which requires Remediation as a result of the construction of the Building pursuant to the Agreement for Lease or any improvements to, or repairs, maintenance or redevelopment of, the Building under this lease, any such access to, occupation or use of the Premises or the carrying out of the Business at the Premises (whether or not that part of the Premises has been accessed, occupied or used by the Tenant and whether or not that part of the Premises is subject to the Building).

Tenant Excluded Contamination Liability means any Contamination in, on, or under the Land for which the Tenant notified the Landlord that it is not liable for, and will not undertake any Remediation pursuant to clause 3.6(a) of the Agreement for Lease and for which the Landlord either accepted or disputed that liability pursuant to clause 3.6(c) of the Agreement for Lease.

Tenant's Employees and Agents means each of the Tenant's employees, officers, agents, contractors, service suppliers, sub-tenants, licensees, concessionaires, invitees and those persons who at any time are under the control of, and in or on the Premises, with the consent (express or implied) of the Tenant.

Tenant's Property means property in the Premises not owned by the Landlord.

Term means the period of 50 years:

- (a) from and including the Commencement Date; and
- (b) to and including the Expiry Date.

Totally Destroyed means destroyed or damaged so extensively that 80% or more of the net lettable area of the Building is unable to be used as contemplated by this lease or is otherwise in the reasonable opinion of the Tenant so destroyed or damaged that it would be impractical or not commercially viable to make good such damage. **Total Destruction** has a corresponding meaning.

Transaction Documents means this lease, any document giving rise to this lease, any guarantee or guarantee and indemnity given in connection with this lease, any licence granted in connection with this lease, any consent given by the Landlord under this lease, any assignment or transfer of this lease, any instrument which the Tenant acknowledges to be a Transaction Document and any other instrument connected with any of them.

Turnover Rent means the amount of rent payable by the Tenant as calculated in accordance with Schedule 1.

Western Sydney Regional Parklands has the meaning it has in the *Western Sydney Parklands Act 2006* (NSW).

Year means for the purposes of this lease, each 12 month period commencing on 1 September.

1.2 References to certain general terms

Unless the contrary intention appears, a reference in this lease to:

- (a) **(variations or replacement)** a document (including this lease) includes any variation or replacement of it;
- (b) **(clauses, annexures and schedules)** a clause, annexure or schedule is a reference to a clause in or annexure or schedule to this lease;
- (c) **(reference to statutes)** a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (d) **(law)** law means common law, principles of equity, and laws made by parliament (and laws made by parliament include State, Territory and Commonwealth laws and regulations and other instruments under them, and consolidations, amendments, re-enactments or replacements of any of them);
- (e) **(singular includes plural)** the singular includes the plural and vice versa;
- (f) **(person)** the word "person" includes an individual, a firm, a body corporate, a partnership, joint venture, an unincorporated body or association, or any Authority;
- (g) **(executors, administrators, successors)** a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (h) **(two or more persons)** an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;

- (i) **(jointly and severally)** an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (j) **(reference to a group of persons)** a group of persons or things is a reference to any two or more of them jointly and to each of them individually;
- (k) **(dollars)** Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia;
- (l) **(calculation of time)** if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;
- (m) **(reference to a day)** a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later;
- (n) **(accounting terms)** an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (o) **(meaning not limited)** the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind;
- (p) **(next day)** if an act under this agreement to be done by a party on or by a given day is done after 5.30pm on that day, it is taken to be done on the next day;
- (q) **(next Business Day)** if an event under this agreement must occur on a stipulated day which is not a Business Day then the stipulated day will be taken to be the next Business Day;
- (r) **(time of day)** time is a reference to Sydney time; and
- (s) **(reference to anything)** anything (including any amount) is a reference to the whole and each part of it.

1.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this agreement.

1.4 Inconsistent agreements

If a provision of this lease is inconsistent with a provision of a Transaction Document the provision of this lease prevails.

2. Term

2.1 Term of lease

Subject to the provisions of this lease the Landlord leases the Premises to the Tenant for the Term.

2.2 Nature of tenancy

The Landlord and the Tenant acknowledge and agree that this lease is for a term of 50 years and the Tenant:

- (a) without limiting clause 3 ("Rent and Outgoings"), must pay all Costs in relation to the Premises and the Landlord has no responsibility or obligation in that regard except as expressly provided to the contrary in this lease; and
- (b) takes and is subject to the same responsibilities and liabilities in regard to the Premises including in respect of:
 - (i) persons, property, Costs and otherwise; and
 - (ii) capital or structural works repairs and maintenance,which the Tenant would take and be subject to if the Tenant were the owner of the Premises,

and the provisions of this lease are to be read, interpreted and applied in the context of and incorporating those principles. The express provisions of this lease do not limit the scope of this clause 2.2.

3. Rent and Outgoings

3.1 Annual Rent

The Tenant must pay the Annual Rent in respect of each Rent Period in accordance with clause 3.2.

3.2 Payment of Annual Rent

- (a) The Tenant must pay the Annual Rent by equal quarterly instalments in advance on the Commencement Date and thereafter on each Quarter Date.
- (b) If an instalment is for a period of less than three months, then that instalment is that proportion of one quarter of the Annual Rent which the number of days in the period bears to the number of days in the Rent Period in which that period begins.
- (c) If the Rent Commencement Date is a date which is earlier than the Commencement Date, the Tenant must pay on the Commencement Date an additional instalment of Annual Rent which is equal in value to the proportion of Annual Rent for the 12 month period commencing on the Rent Commencement Date for the number of days in the period from the Rent Commencement Date to the Commencement Date.

3.3 Rent Review

The Annual Rent for any period of 12 months commencing on a Review Date will be determined in accordance with the following formula:

$$A = \frac{R \times C2}{C1}$$

where:

A is the Annual Rent for that 12 month period;

- R is the Annual Rent payable for the 12 month period immediately preceding that Review Date;
- C1 is the Consumer Price Index number for the quarter ending immediately before the last Review Date before the relevant Review Date (or, if there has not been one, the date which is the fourth anniversary of the Rent Commencement Date); and
- C2 is the Consumer Price Index number for the quarter ending immediately before that Review Date.

3.4 Rent not to decrease

The Annual Rent payable for any period of 12 months during the Term shall in no case be less than the rent payable for the period of 12 months immediately before the relevant Review Date.

3.5 Turnover Rent

The Tenant must pay Turnover Rent in respect of each Rent Period in accordance with Schedule 1.

3.6 Outgoings

- (a) The Tenant must:
- (i) pay as and when they become due for payment all Outgoings in respect of the Premises during the Term, whether assessed during the Term or not and whether or not imposed on the Landlord, the Tenant or the Premises; and
 - (ii) if required by the Landlord, produce to the Landlord the receipts for those payments within 20 Business Days after the respective due dates for payment.
- (b) If the Tenant does not pay the Outgoings when they become due the Landlord may, if it thinks fit, pay the same and any sum or sums so paid may be recovered by the Landlord as if the sum or sums were rent in arrears.

3.7 Landlord's right to reimbursement

The Tenant must repay to or reimburse the Landlord promptly on demand an amount equivalent to any moneys paid by the Landlord in respect of any liability imposed on the Tenant under or by virtue of this lease, which liability has not already been complied with by the Tenant, notwithstanding that the liability is imposed on the Landlord under a law.

3.8 Payment despite termination

The Tenant must pay the Outgoings for the Term even if the Term has expired or been terminated before the Outgoings can be calculated. In that case, payment must be made by the Tenant promptly once the actual Outgoings are known and the parties must co-operate with each other and do all things reasonably required to ascertain and calculate the amounts payable by the Tenant pursuant to this clause.

4. Payments

4.1 Method of payment

The Tenant must make payments under this lease to the Landlord (or a person nominated by the Landlord in a notice to the Tenant) by the method the Landlord reasonably requires without set off, including equitable set-off, or counterclaim and without deduction.

4.2 No demand necessary

The Landlord need not make demand for any amount required to be paid by the Tenant under this lease unless this lease says that demand must be made.

4.3 Adjustment of payments

If the Tenant pays an amount and it is found later that the amount payable:

- (a) should have been higher, then the Landlord may demand payment of the difference even though the Landlord has given the Tenant a receipt for payment of the lower amount.
- (b) should have been lower, then the Landlord must repay the difference even though the Landlord has given the Tenant a receipt for payment of the higher amount.

4.4 Obligations not affected

Expiry or termination of this lease does not affect the Tenant's obligations to make payments under this lease for periods before then or the Landlord's obligation to repay amounts under clause 4.3 ("Adjustment of payments").

4.5 Interest on overdue amounts

- (a) If the Tenant does not pay any amount payable to the Landlord under this lease on the due date for payment, the Tenant must pay interest on that amount at the Interest Rate. The interest accrues daily from (and including) the due date to (but excluding) the date of actual payment and is calculated on actual days elapsed and a year of 365 days.
- (b) The Tenant must pay interest under this clause on demand from the Landlord.

5. Use and occupation of Premises

5.1 Permitted Use

The Tenant may only use the Premises for the Permitted Use.

5.2 No warranty as to use

The Landlord does not warrant that the Premises are suitable, or may be used, for any purpose.

5.3 Improvements

The Landlord and Tenant agree that all assets and property which constitute improvements to land for the purposes of any law relating to the right of the Tenant to claim depreciation

benefits and building allowances will be and remain always for all purposes owned by the Tenant.

5.4 Tenant may remove some property

The Landlord acknowledges and agrees that the Tenant will have the right subject to clause 16.4 ("Tenant may not remove certain property") to remove from the Premises on termination of this lease any assets and property which are not regarded as improvements to land for the purposes of any such law.

5.5 Noise

The Tenant acknowledges that the Landlord has no responsibility, and is not liable in any way to the Tenant (or any person claiming under or through the Tenant) for any matters related to or connected with the level of noise or (subject to clause 11) other disturbance to occupiers of the Premises.

5.6 Further development

The Tenant acknowledges that after the commencement of the Term:

- (a) adjoining lots to the Land may be developed from time to time;
- (b) land located near the Premises may be developed;
- (c) as part of that development excavation or construction works may be carried out; and
- (d) the Tenant's access to or enjoyment of the Premises may be affected by that development.

5.7 No objection by the Tenant

- (a) Except where, despite the terms of this Lease, the Tenant is expressly permitted by statute to do so, the Tenant is not entitled to:
 - (i) object to;
 - (ii) obstruct the proper carrying out of;
 - (iii) seek injunctive or other relief in respect of; or
 - (iv) claim compensation or an abatement of Rent or Outgoings in respect of, the matters disclosed in clause 5.6("Further development").
- (b) Nothing in this clause 5.7 affects or reduces the Landlord's obligation to provide quiet enjoyment of the Premises to the Tenant under clause 13.1 ("Quiet enjoyment").

5.8 Other Objection

Nothing in clause 5.7 restricts the Tenant from making any objection to any Consent Authority which it is entitled to make.

5.9 Title

The Tenant must at all times observe and perform the restrictions, stipulations, easements and covenants referred to in the folio of the register for the Land as if the Tenant were the registered proprietor of the Land.

5.10 Risk of Other Developments

- (a) Subject to clause 5.10(b), the Tenant acknowledges that the Landlord:
 - (i) will continue to consider its development options for other potential development sites within Western Sydney Regional Parklands, and the release of any additional development sites will be at the landlord's sole discretion in terms of timing and process; and
 - (ii) is entitled to pursue any other developments within or outside Western Sydney Regional Parklands.
- (b) The Landlord agrees to consult the Tenant before it seeks or considers any proposals for the development and operation of any water park facility within Western Sydney Regional Parklands.
- (c) The parties acknowledge and agree that:
 - (i) no legal rights arise for the benefit of the Tenant by virtue of clause 5.10(b); and
 - (ii) the Landlord has the right to consider and pursue any development options pursuant to clause 5.10(a) in its sole and unfettered discretion.

5.11 Signage

- (a) No signs or advertisements are to be placed on any part of the Premises except in accordance with the Signage Policy and in accordance with the requirements of all relevant Authorities.
- (b) Despite clause 5.11(a), the Tenant is not required to obtain the Landlord's consent to the following signs:
 - (i) notices which are required for Occupational Health and Safety purposes or otherwise required by law;
 - (ii) signs inside structures that are not visible from the exterior of, or outside, those structures; and
 - (iii) usual directional signage and signage of an administrative natureprovided always that any such signage is not at any time inconsistent with the Signage Policy.

5.12 Change to Signage Policy

- (a) If the Landlord or the Tenant wishes to vary the Signage Policy, the party proposing the variation must seek the written consent of the other party and provide full details of the proposed variation.

- (b) The parties must:
 - (i) act reasonably; and
 - (ii) discuss in good faith any proposals advanced by the other party to agree and finalise any variation to the Signage Policy.

6. Business operation and management

6.1 Standards of operation

- (a) The Tenant warrants that a Business of the Required Standard will be operated within the Premises at all times by a responsible and solvent person who has the capability and experience of operating a Business to the Required Standard.
- (b) The Landlord acknowledges that the Tenant will not be in breach of its obligations under clause 6.1(a) during any period where:
 - (i) in the ordinary course of business the Premises or any part is temporarily closed for a reasonable period due to redevelopment, renovations, refurbishment or stocktaking activities;
 - (ii) the Premises are closed to the general public for not more than 7 months of any Year; and
 - (iii) it is not possible to operate the Business due to damage or destruction provided the Tenant has complied with its obligations under clause 17 ("Damage or destruction").

6.2 Tenant operating Business

If the Tenant is responsible for the operation of the Business, then the Tenant agrees to carry out the responsibilities of management and operation of the Business to the Required Standard.

7. Tenant's additional rights and obligations

7.1 General obligations

The Tenant must:

- (a) comply on time with all laws (including all Environmental Laws, including without limitation any laws relating to Contamination and the Remediation of any Contamination) and the requirements of Authorities in connection with the Premises, the Tenant's Business, the Tenant's Property and the use or occupation of the Premises (including obtaining and maintaining all consents and approvals);
- (b) inform the Landlord of any material damage to, or significant accident in, the Premises immediately when it becomes aware of it;
- (c) give the Landlord a copy of any notice or order which may materially affect the Landlord or the Premises, or the use or occupation of the Premises, promptly after the Tenant receives the notice or order; and
- (d) comply with the restrictions, easements and covenants, if any, registered on the title to the Land.

7.2 Prohibited acts

The Tenant may not:

- (a) do anything in or around the Premises which is dangerous;
- (b) do anything to contaminate, pollute or increase toxicity in the Premises or their environment; or
- (c) object to any condition of a consent or approval issued by an Authority which repeats or reinforces a restriction, right, reservation or obligation under this lease.

7.3 Securing of the Premises

The Tenant is responsible for:

- (a) arranging and maintaining the security for the Premises; and
- (b) protecting against any unauthorised entry to the Premises.

7.4 Supply failure

The Tenant may not terminate this lease, stop or reduce payments under it, or claim any compensation because a Service is not available or is interrupted or fails. The Landlord agrees (at the Tenant's cost) to assist the Tenant as and when reasonably required by the Tenant in dealing with service providers so as to rectify an interruption or failure so that any interruption or failure causes as little inconvenience to the Tenant as is reasonably practicable.

7.5 Indirect acts

If the Tenant may not do something in connection with this lease, then it may not do anything which may result in it happening.

7.6 Tenant's Employees and Agents to comply

The Tenant agrees to ensure that the Tenant's Employees and Agents comply, if appropriate, with the Tenant's obligations under this lease.

7.7 Tenant's risk

The Tenant accepts all risks in connection with the use and occupation of the Premises including that a law or a requirement of an Authority may affect the use or occupation of the Premises.

7.8 Consideration of nearby properties

The Tenant must:

- (a) reasonably consider the occupiers of nearby properties in the Tenant's use and occupation of the Premises; and
- (b) endeavour to minimise inconvenience to adjacent occupiers of land when it carries out any construction works on the Premises.

7.9 Car Parking

The Tenant acknowledges and agrees that car parking is available within the Premises.

8. Insurances

8.1 Building and other insurance

- (a) The Tenant must effect and maintain, or must procure to be effected and maintained, throughout the Term:
- (i) broadform public liability insurance written on an occurrence basis with a limit of indemnity of not less than \$50 million or any other amount reasonably required by the Landlord, for any one occurrence which covers liability (including to the Landlord) in respect of:
 - A. damage to, loss or destruction of, or loss of use of, any real or personal property; and
 - B. the personal injury of, disease or illness (including mental illness) to, or death of, any person,occurring in and around the Premises and arising out of or in connection with the business carried on at the Premises;
 - (ii) insurance which insures against any liability for death of, or any injury, damage, expense, loss or liability suffered or incurred by any person employed by the Tenant in the performance of the Business conducted at the Premises giving rise to a claim under any statute relating to workers' or accident compensation in New South Wales or at common law;
 - (iii) industrial special risks insurance covering the Premises and all contents (including plant and equipment, all external and internal glass and hazardous goods stored at the premises) of the Tenant material to the Tenant's ability to conduct the Business carried on at the Premises against the risks of loss, damage or destruction by all insurable risks to the reasonable satisfaction of the Landlord for their full replacement or reinstatement value (including extra costs of reinstatement, consultant's fees and removal of debris);
 - (iv) other insurances required of it, or of a contractor or subcontractor of it, by the Landlord in connection with works carried out by the Tenant under clause 11 ("Maintenance, repair and alteration of Premises"); and
 - (v) other insurances which, in the Landlord's reasonable opinion, a prudent tenant would effect over time having regard to the nature of the Premises and this lease and which are consistent with prudent industry practice at the time.
- (b) The Tenant must ensure that each insurance required by this lease is in force on the Commencement Date and is maintained until the expiry or termination of the Lease.

8.2 The policy

The Tenant must ensure that:

- (a) the insurances referred to in clause .1(a)(i) (relating to broadform public liability) provide that:
 - (i) all insurance agreements and endorsements (with the exception of limits of indemnity) name as insureds and operate as if there was a separate policy of insurance covering the Landlord (for the Landlord's vicarious liability only for the acts or omissions of other insureds), the Tenant and its employees;
 - (ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured; and
 - (iii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy);
- (b) the insurance referred to in clause .1(a)(iii) (relating to industrial special risks) provides that:
 - (i) all insurance agreements and endorsements (with the exception of limits of indemnity) name as insureds and operate as if there was a separate policy of insurance covering the Landlord and the Tenant for their respective rights and interests;
 - (ii) failure by any insured to observe and fulfil the terms of the policy or to comply with the duty of disclosure does not prejudice the insurance of any other insured; and
 - (iii) the insurer waives all rights, remedies or relief to which it might become entitled by way of subrogation against named insureds (to the extent they are insured under the policy); and
- (c) each insurance required by this Lease except for the insurance referred to in clause .1(a)(ii) (relating to workers compensation insurance) is:
 - (i) effected with reputable insurers with a rating of BBB+ or better by Standard and Poors or the equivalent rating with another rating agency;
 - (ii) on terms and conditions (including deductible amounts) approved in writing by the Landlord, which approval by the Landlord must not be unreasonably withheld; and
 - (iii) once approved by the Landlord, the terms of the insurance is not changed without the Landlord's prior written approval (not to be unreasonably withheld). The Tenant must indemnify the Landlord for its reasonable legal and other costs (if any) associated with determining whether or not to approve any such requested change.

8.3 Evidence of policies

- (a) The Tenant must, in respect of each insurance required to be effected and maintained in accordance with this Lease give the Landlord (promptly upon written request from the Landlord) copies of all cover notes, policies, certificates of currency, renewal certificates and endorsement slips.
- (b) If the Tenant does not comply with its obligation to effect and maintain the insurances required by this Lease, or if the Tenant fails to provide evidence that such insurances have been effected, the Landlord may, but is not obliged to, effect the relevant insurances and may recover the cost of doing so as a debt due from the Tenant.

8.4 Tenant duties

The Tenant must ensure that in relation to any insurance policy required to be effected and maintained by the Tenant in accordance with this lease it:

- (a) does not do anything or fail to do anything or (insofar as it is reasonably within its power) permit anything to occur which prejudices any insurance;
- (b) if necessary, rectifies anything which might prejudice any insurance;
- (c) reinstates an insurance policy if it lapses;
- (d) does not cancel, vary or allow an insurance policy to lapse without the prior written consent of the Landlord;
- (e) gives full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance; and
- (f) comply with the terms of each insurance policy.

8.5 Premiums and deductibles

The Tenant must punctually pay all premiums in respect of all insurances required by this lease. Any deductibles payable under any of the insurances required by this lease shall be the responsibility of the Tenant.

8.6 Review of amount of broadform public liability insurance

The Landlord may at three yearly intervals computed from the Commencement Date by notice require the Tenant to change the amount of broadform public liability insurance required to be maintained by the Tenant to such amount as is adequate for a corporate with the same risk profile as the Tenant having regard to then current market practice for companies carrying on the same type of business as the Tenant or having similar assets.

8.7 Notices of cancellation

The Tenant must immediately give notice to the Landlord whenever an insurer of any of the insurances required by this lease gives the Tenant a notice of cancellation or any other notice in respect of the relevant policy of insurance or the Tenant serves a notice of cancellation on the insurer.

8.8 Reinstatement

The Tenant must ensure that:

- (a) the Insurances required by this lease do not prejudice the Tenant's obligations under clause 8.10 ("Use of Claim Proceeds") and clause 17 ("Damage or destruction"); and
- (b) compliance with the provisions of clause 8.10 ("Use of Claim Proceeds") and clause 17 ("Damage or destruction") by the Developer will not prejudice the Developer's or any other insured's right to indemnity under those Insurances.

8.9 Notifications relating to claims

The Tenant must notify the Landlord if an event occurs which gives rise, or may give rise, to:

- (a) a claim under any insurance policy required under clause 8.1 ("Building and other insurance") in excess of \$10,000 (or such higher amount as the parties agree in writing from time to time) or any number of claims under any one such insurance policy in excess of \$10,000 (or such higher amount the parties agree in writing from time to time);
- (b) such an insurance policy being cancelled or lapsing; or
- (c) a claim under any insurance policy required under clause 8.1 ("Building and other insurance") is refused either in part or in full.

8.10 Use of claim proceeds

- (a) Subject to clause 17.2(b)(ii) ("Tenant options") and clause 17.4 ("Tenant not proceeding"):
 - (i) the Tenant must, for an insurance claim for an amount equal to or in excess of the Claim Amount, use the proceeds of any insurance under clause (iii) ("Building and other insurance") to replace or reinstate the Premises;
 - (ii) if the proceeds of an insurance under clause 8.1 ("Building and other insurance") are insufficient to replace or reinstate the Premises, the Tenant must, to the extent of the insufficiency, complete the replacement or reinstatement using its own funds; and
 - (iii) any proceeds which remain after the replacement or re-instatement of the Premises must be held by the Tenant in a separate account in the names of the Landlord, the Tenant and, if required by the Landlord, any other person who has an interest in such proceeds, and paid:
 - A. first, to settle claims arising from or in connection with the event insured against; and
 - B. second, in equitable portions (having regard to their respective interests in the Premises or the effect on them of the event insured against) to the Landlord, the Tenant and, if required by the Landlord, any other person who has an interest in such proceeds.

- (b) However, if as a result of the application of 17.2(b)(ii) ("Tenant options") and clause 17.4 ("Tenant not proceeding"), the Premises are not to be replaced or reinstated, then clause 17.4(a)(iii) will apply to any proceeds of an insurance under clause 7 ("Building and other insurance") as if they were proceeds which remain after the replacement or re-instatement of the Premises.

8.11 If reinstatement not completed at settlement of claim

- (a) Subject to 17.2(b)(ii) ("Tenant options") and clause 17.4("Tenant not proceeding"), upon settlement of a claim under any insurance relating to damage or destruction required under this lease, if the Tenant has not completed reinstatement of the Premises, or any part, the Tenant agrees to pay proceeds of an insurance claim (even under a policy in the Tenant's name only in breach of clause 8.2 ("The Policy")) into a separate joint account in the names of the Tenant and the Landlord and, if required by the Landlord or the Tenant, any other person who has an interest in such proceeds. As the Tenant proceeds to reinstate the loss or damage, the Landlord will consent to moneys being progressively drawn from the joint account for the purpose of satisfying the Costs of such reinstatement, such Costs to be agreed by the Tenant and the Landlord and failing any agreement determined in accordance with the procedures set out in clause 19 ("Dispute resolution").
- (b) The parties agree that amounts will not be withdrawn from the joint account unless the Landlord is reasonably satisfied that the money remaining in that joint account is not less than the amount which the Landlord from time to time reasonably determines or otherwise accepts is sufficient to pay all Costs of completing all such reinstatement works.

8.12 Notices from or to the insurer

The Tenant must ensure that the insurances referred to in clause 8.1 ("Building and other insurance") contain provisions acceptable to the Landlord that will:

- (a) provide that a notice to the insurer by one insured party is deemed to be notice by all of the insured parties; and
- (b) provide that disclosure to the insurer by one insured party is deemed to be disclosure by all of the insured parties.

8.13 Tenant to give information

The Tenant must give full, true and particular information to the insurer of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or the payment of all or any benefits under the insurance.

8.14 Settlement of claims

The Tenant may not compromise, settle, prosecute or enforce a claim under any insurance relating to damage or destruction without the prior consent of the Landlord (acting reasonably) or otherwise on such basis as the Landlord and the Tenant agree in writing from time to time.

8.15 ICA requirements

The Tenant must comply with the requirements of the Insurance Council of Australia Limited and of any insurer in relation to:

- (a) anything placed or intended to be placed by the Tenant in the Premises; and

- (b) alarms, sprinklers and other fire warning or prevention equipment.
-

9. Alienation

9.1 Tenant not to alienate

The Tenant must not:

- (a) dispose of, deal with, assign its estate and interest in the Premises or its rights and powers as Tenant under this lease;
- (b) sublet, licence, part with possession of, or share possession of the Premises; or
- (c) create or allow to come into existence an Encumbrance which affects the Tenant's estate or interests in the Premises or its rights and powers as Tenant under this lease.

9.2 Assignment

- (a) Despite clause 9.1 ("Tenant not to alienate"), the Tenant may assign its estate and interest in the Premises and its rights and powers as a Tenant under this lease with the consent of the Landlord (such consent not to be unreasonably withheld), provided that, before the proposed transaction takes effect:
 - (i) the Tenant gives to the Landlord 20 Business Days' notice of its intention to assign or transfer which sets out:
 - A. the name and address of the proposed assignee or transferee;
 - B. if the proposed assignee or transferee is a company, the names and addresses of its directors;
 - (ii) the Tenant proves to the reasonable satisfaction of the Landlord that the proposed new tenant is a respectable, responsible and solvent person capable of duly and punctually observing and performing the obligations of the Tenant under this lease;
 - (iii) where the proposed new tenant will be operating the Business, the Tenant proves to the reasonable satisfaction of the Landlord that the proposed new tenant is capable of operating the Business to the Required Standard;
- (b) the Landlord, the Tenant and the proposed new tenant and any new guarantors sign a deed relating to the transfer or assignment in a form reasonably required by the Landlord under which:
 - (i) the Tenant and the Landlord each release the other from their respective obligations under this lease arising after the transfer or assignment;
 - (ii) the Tenant and the Landlord each release the other from all claims in respect of, or in any way arising from, this lease except in respect of any matter or thing which occurs before the date of transfer or assignment;

- (iii) the proposed new tenant agrees to comply with this lease as if it were the Tenant in respect of:
 - A. all obligations of the Tenant under clauses 2.2 ("Nature of tenancy"), 3 ("Rent and Outgoings"), 5.1 ("Permitted Use"), 8 ("Insurances") 9.1 ("Tenant not to alienate") and 15.2 ("Events of Default"), including obligations under those clauses which arose before the transfer or assignment; and
 - B. all obligations imposed on the Tenant which arise on or after the transfer or assignment; and
- (iv) the proposed new tenant agrees for any Event of Default which is not relating to the payment of a monetary sum and for which the Landlord has given notice under clause 15.4 to:
 - A. rectify the Event of Default within the Remedy Period; and
 - B. be bound by any arrangements agreed between the Landlord and the Tenant in connection with the Event of Default;
- (c) any Event of Default by the Tenant has been remedied by the Tenant, waived by the Landlord or the proposed new tenant has agreed to either rectify the Event of Default within the Remedy Period pursuant to clause 9.2(b)(iv) (where the Event of Default does not relate to the payment of a monetary sum) or to pay a monetary sum to the Landlord pursuant to clause 15.7(c) prior to the date of the assignment (where the Event of Default relates to the failure of the Tenant to pay a monetary sum);
- (d) the proposed new tenant satisfies the Landlord that it has effected the insurances required under clause 8 ("Insurances");
- (e) the Tenant and the proposed new tenant pay the Landlord's reasonable Costs, including legal Costs, of considering the proposed assignment; and
- (f) the proposed new tenant provides to the Landlord the security or securities required to replace the securities existing in favour of the Landlord under this lease as at the date of the assignment.

The Tenant and the proposed new tenant are not to be taken to have complied with this clause 8.2 until a notice to that effect is given by the Landlord to the Tenant.

9.3 Assignee to comply with Tenant's obligations

By taking an assignment or transfer, the assignee or transferee is taken to have agreed with the Landlord to comply with the obligations of the Tenant under this lease whether the obligations relate to a period before or after the assignment or transfer takes effect.

9.4 Change of Control of Tenant

- (a) A person may become or cease to be a Parent of the Tenant if, before the proposed event occurs:
 - (i) the Tenant gives to the Landlord 20 Business Days' notice of the proposal for a person to become or cease to be a Parent of the Tenant which sets out:

- A. the name and address of the proposed Parent; and
 - B. if the proposed Parent is a company, the names and addresses of its directors;
- (ii) the Tenant proves to the reasonable satisfaction of the Landlord that the Tenant and the new Parent (or persons who between them Control the Tenant) will be financially substantial and financially capable of complying with the Tenant's obligations under this lease;
 - (iii) the Tenant has remedied, or the Landlord has waived, any Event of Default which has occurred;
 - (iv) the Tenant pays the Landlord's reasonable Costs, including legal Costs, in connection with considering the proposed change of Control;
 - (v) the Tenant and the proposed Parent of the Tenant and the person proposing to cease being a Parent of the Tenant comply with all reasonable requirements of the Landlord; and
 - (vi) the Tenant satisfies the Landlord (acting reasonably):
 - A. that the Tenant, following the proposed change of Control, is capable of, and experienced in, operating the Business to the Required Standard; or
 - B. where clause 9.4(vi)A cannot be satisfied, that the proposed new Parent of the Tenant is a person (and if there is no proposed new Parent of the Tenant, the shareholders of the Tenant are people) who is/are capable of, and experienced in, operating the Business to the Required Standard and supporting its Subsidiaries in operating the Business to the Required Standard.
- (b) The Tenant is not to be taken to have complied with this clause 9.4 until a notice to that effect is given by the Landlord to the Tenant.

9.5 Listed Company

Clause 9.1 is not breached and clause 9.4 does not apply to:

- (a) the initial listing of shares of the Tenant or a Parent of the Tenant on a recognised stock exchange;
- (b) any transaction on a recognised stock exchange involving the Tenant or a Parent of the Tenant while listed; or
- (c) where a Parent of the Tenant is a company that is listed on a recognised stock exchange, any transaction involving the change in Control of an entity which holds shares in the Parent.

9.6 Tenant's right to grant a mortgage

The Landlord and the Tenant acknowledge that, subject to clause 9.9 ("Leasing and charging Tenant's Property"), nothing in this lease restricts the Tenant's right to grant a mortgage, charge or other encumbrance over the Tenant's interest in this lease.

9.7 Financier's side deed

The Landlord acknowledges that:

- (a) the Tenant may want to obtain financial accommodation and grant a mortgage, charge or other encumbrance over the Tenant's interest in this lease; and
- (b) it may be a condition of that financing that the Landlord enters into a financier's side deed and, perhaps, other agreements with the financier.

9.8 Terms of financier's side deed

The Landlord agrees to be reasonable in negotiating the terms of the financier's side deed referred to in clause 9.7 ("Financier's side deed") if:

- (a) there is no material derogation of the Landlord's rights under this lease, or any other Transaction Document;
- (b) the Tenant pays all Costs reasonably incurred by the Landlord arising out of, or in connection with, those agreements (including negotiating them); and
- (c) the financier's side deed contains usually accepted terms required by financiers for a similar facility.

9.9 Leasing and charging Tenant's Property

The Tenant may not mortgage, charge, lease or otherwise deal with any Tenant's Property which requires the Landlord to sign a landlord's waiver without first obtaining the consent of the Landlord, which consent will not be unreasonably withheld or delayed if:

- (a) the Tenant uses the Landlord's standard form of waiver or, if relevant, the form of waiver previously agreed to by the Tenant; and
- (b) the Tenant pays the Landlord's reasonable Costs (including legal Costs).

9.10 Sublease conditions

- (a) The Tenant must not sublet or further lease or licence the Premises without the consent of the Landlord.
- (b) The Landlord may not unreasonably withhold its consent to a sublease of part of the Premises if:
 - (i) the proposed sublessee is respectable, responsible and solvent and capable of carrying on the business proposed to be carried on under the sublease;
 - (ii) the business proposed to be carried on under the sublease is authorised pursuant to clause 4.1 ("Permitted Use");
 - (iii) the sublease includes a provision by which termination of this lease for any reason constitutes a termination at the same time of the sublease;
 - (iv) the rent or fee payable under the sublease is at the best rent or fee obtainable in all the circumstances;

- (v) the sublease includes provisions obliging the sublessee not to do, or fail to do, anything which may result in the Tenant breaching any of its obligations under this lease or which, if done by the Tenant, would result in the Tenant breaching its obligations under this lease;
- (vi) the proposed sublease is otherwise in a form acceptable to the Landlord (acting reasonably);
- (vii) any Event of Default by the Tenant has been remedied by the Tenant or waived (in writing) by the Landlord; and
- (viii) the Tenant and the proposed sub-lessee pay the Landlord's reasonable Costs, including legal Costs, of considering the proposed sublease.

In this clause 9.10, the term "sublease" includes a licence and the term "lessee" includes a licensee.

9.11 Costs

The Tenant must within 5 Business Days of demand pay the Landlord's Costs as required by this clause 9 ("Alienation"), whether or not (for any reason) the proposed event takes place.

10. Indemnities and releases

10.1 Indemnity

- (a) The Tenant must at all times indemnify the Landlord, its directors, officers, employees and agents ("**those indemnified**") from and against any claim, action, damage, loss, liability, cost or expense incurred or suffered by any of those indemnified or arising from any claim, suit, demand, action or proceeding by any person against any of those indemnified to the extent such Loss was caused or contributed to by:
 - (i) any loss, injury or death, or loss of or damage to property caused or contributed to by the Tenant or those for whom the Tenant is responsible (including the Tenant's invitees onto the Premises);
 - (ii) any default by the Tenant under this lease;
 - (iii) the use or occupation of the Premises by the Tenant or Tenant's agents;
 - (iv) any Service not working properly, being unavailable or being interrupted, or the misuse of any Service provided to the Premises, unless caused by the negligence of the Landlord;
 - (v) the escape of any water from the Premises or caused or contributed to by the Tenant or Tenant's agents;
 - (vi) the Landlord or the Landlord's Employees and Agents doing anything which the Tenant must do under this lease but has not done or which the Landlord considers (acting reasonably) the Tenant has not done properly;
 - (vii) the Landlord or the Landlord's Employees and Agents exercising, or attempting to exercise, a right or remedy in connection with this lease after the Tenant defaults under this lease; and

- (viii) the Landlord entering the Premises, and taking action, in an emergency pursuant to clause 12.4(b).
 - (ix) except to the extent that such actions, claims or demands are caused or contributed to by the breach of this lease by the Landlord or the negligent act or omission of the Landlord or its employees or relates to, Landlord Environmental Liability.
- (b) The Tenant agrees that the Landlord may enforce the indemnity in favour of the those indemnified for the benefit of each of such persons in the name of the Landlord or of such persons.
 - (c) The Tenant agrees to pay amounts due under this indemnity on demand from the Landlord.

10.2 Release

The Tenant releases and forever discharges the Landlord from all actions, suits, claims, demands, causes of actions, costs and expenses, equitable under statute and otherwise and all other liabilities of any nature (whether or not the parties were or could have been aware of them) which the Tenant:

- (a) now has;
- (b) at any time had;
- (c) may have now or in the future; or
- (d) but for this lease, could or might have had,

against the Landlord in any way relating to or arising out of or in connection with:

- (e) any damage, loss, injury or death to or of any person or loss of or damage to property on or near the Premises;
- (f) any liability for loss of, loss of use of, or damage to the Tenant's Property or for loss of the Tenant's profits;
- (g) anything the Landlord is permitted or required to do under this lease;
- (h) a Service being interrupted, not being available or not working properly;
- (i) the Premises not complying with any law or the requirements of any Authority; and
- (j) the Landlord entering the Premises, and taking action, in an emergency pursuant to clause 12.4(b)

except to the extent that such actions, claims or demands are caused or contributed to by the breach of this lease by the Landlord or the negligent act or omission of the Landlord or its employees.

10.3 Environmental Liabilities

- (a) The parties acknowledge and agree that:
 - (i) the Tenant is responsible for the Tenant Environmental Liability; and

- (ii) the Landlord is responsible for the Landlord Environmental Liability.
- (b) Without limiting any other provision of this clause 10 ("Indemnities and releases"), the Tenant:
 - (i) indemnifies the Landlord against;
 - (ii) releases the Landlord from; and
 - (iii) agrees the Landlord is not liable for,any liability or loss arising from, and Costs incurred in connection with, Tenant Environmental Liability.

10.4 Continuing indemnity

Each indemnity of the Tenant contained in this lease is:

- (a) a continuing obligation by the Tenant and remains in full force and effect after the termination of this lease; and
- (b) a separate and independent obligation of the Tenant.

11. Maintenance, repair and alteration of Premises

11.1 Obligation to repair

The Tenant:

- (a) must keep the Premises in good repair and condition and structurally sound to a standard which is not less than the Required Standard; and
- (b) acknowledges that the Landlord is not responsible for any structural and capital maintenance, replacement and repair in respect of the Premises.

11.2 Premises quality

The Tenant must undertake reasonable Routine Maintenance to keep the Premises maintained in accordance with the Asset Management Plan and the Business to the Required Standard.

11.3 Updating Asset Management Plan - Routine Maintenance

- (a) Every five years after the first anniversary of the Commencement Date, the Tenant must update the Asset Management Plan by preparing a draft updated Asset Management Plan for approval by the Landlord and clauses 11.3(b) to 11.3(e) shall apply for the purposes of that updated Asset Management Plan.
- (b) Within 10 Business Days of receiving the draft updated Asset Management Plan, the Landlord may reasonably request that the Tenant amend its draft updated Asset Management Plan to include additional items of Routine Maintenance necessary to ensure that the Premises are maintained to the Required Standard.
- (c) Where the Landlord has made a request to amend the draft updated Asset Management Plan in accordance with clause 11.3(b), the Tenant must make the amendments if it is reasonable to do so.

- (d) After the Tenant has complied with clause 11.3(c), the draft updated Asset Management Plan will be considered final.
- (e) If the parties fail to reach agreement in relation to the contents of the draft updated Asset Management Plan, then either party may issue a notice of dispute under clause 19.1 ("Notice of Dispute").

11.4 Non-Routine Maintenance

- (a) The Landlord may, at any time during the Term, notify the Tenant of any necessary Non-Routine Maintenance item of which it has become aware, in respect of the external areas of the Building or areas of the Building accessed by the public.
- (b) On receipt of a notice from the Landlord in accordance with clause 11.4(a), the Tenant may either:
 - (i) notify the Landlord within 10 Business Days that it has conducted, or will within a reasonable period conduct, the Non-Routine Maintenance referred to in the Landlord's notice; or
 - (ii) notify the Landlord within 10 Business Days that it requires representatives of the Landlord to meet with its representatives to discuss the item in the Landlord's notice and the work which may reasonably be required to be undertaken by the Tenant to restore external areas of the Premises or areas of the Premises accessed by the public.
- (c) Where the Tenant notifies the Landlord in accordance with clause 11.4(b)(ii), the parties must meet and use their reasonable endeavours to agree the works that may reasonably be required to be undertaken and the Tenant must, upon agreeing such works, perform such works as soon as practicable.
- (d) If the parties fail to reach agreement under clause 11.4(c), then either party may issue a notice of dispute under clause 19.1 ("Notice of Dispute").

11.5 Policeman's Cottage

- (a) The Tenant must:
 - (i) keep the Policeman's Cottage in good repair and condition and structurally sound;
 - (ii) undertake all reasonable repairs and maintenance of the Policeman's Cottage, including without limitation any structural and capital maintenance; and
 - (iii) retain and protect the pine trees within the curtilage of the Policeman's Cottage.

so that the Policeman's Cottage and the pine trees within the curtilage of the Policeman's Cottage are in the same condition as at the Commencement Date.
- (b) The Tenant acknowledges that the Landlord is not responsible for any structural and capital maintenance, replacement and repair in respect of the Policeman's Cottage.

- (c) Every 5 years after the first anniversary of the Commencement Date, the Tenant must notify the Landlord if, in its reasonable opinion, the Policeman's Cottage requires protection and maintenance.
- (d) The Tenant must provide with that notice evidence to support its opinion and (if applicable) any proposed plans for the protection and maintenance of the Policeman's Cottage.
- (e) No later than 20 Business Days after receipt of such notice, the Landlord may request a meeting with the Tenant to discuss in good faith (with both parties acting reasonably) the Tenant's proposed course of action in relation to the protection and maintenance of the Policeman's Cottage.
- (f) If the parties fail to reach agreement in relation to the Tenant's proposed course of action in relation to the protection and maintenance of the Policeman's Cottage, then either party may issue a notice of dispute under clause 19.1 ("Notice of Dispute").
- (g) Where it is agreed that the Tenant will undertake protection and maintenance works to the Policeman's Cottage, the provisions of clause 11.11 ("Alterations to Premises") will apply as if the references in that clause to the Premises were a reference to the Policeman's Cottage.

11.6 Refurbishment

The Landlord acknowledges that the Tenant will not be in breach of its obligations under clause 11.2 ("Premises quality") during the periods where in the ordinary course of business the Premises is temporarily closed for a reasonable period because of:

- (a) renovations or refurbishment in accordance with the Asset Management Plan; or
- (b) damage or destruction provided the Tenant has complied with its obligations under clause 17 ("Damage or destruction").

11.7 Rent payable for refurbishment period

The Landlord and Tenant agree that regardless of any renovation or refurbishment to the Premises, the Rent (as provided for in clause 3 ("Rent and Outgoings")) shall continue to be payable for the period of the refurbishment or renovation.

11.8 Replacement, rebuilding and redevelopment

- (a) Subject to the requirements of this clause, the Tenant will have the right to redevelop, replace or rebuild (more than once) the Building (or any part of it) during the Term.
- (b) Where the Tenant proposes to replace or rebuild the Building so that such rebuilding or replacing is to a standard not less than the Required Standard and the proposed new Building is the same as the Building in existence immediately prior to the exercise of such right, subject to complying with clause 11.8(d), the Tenant may do so with the Landlord's consent (not to be unreasonably withheld). The Tenant must seek the Landlord's consent no later than three months before it lodges an Application with the Consent Authority with respect to the proposed replacement or rebuilding, and provide to the Landlord such details as the Landlord reasonably requires to confirm that this clause 11.8(b) applies to that proposal. Any dispute as to whether this clause 11.8(b) applies must be determined under clause 19 ("Dispute resolution").

(c) Where the Tenant proposes to replace or rebuild the Building so that such replacing or rebuilding is at least to the Required Standard but the proposed new Building is not the same as the Building in existence immediately prior to the exercise of such right ("**Redevelopment Work**"), then:

- (i) the Tenant must first obtain the consent of the Landlord;
- (ii) the Landlord and the Tenant must agree upon the plans and specifications for the proposed new Building prior to any Application being lodged with the Consent Authority;
- (iii) at least six months prior to the date the Tenant proposes to lodge an Application with the Consent Authority for such Redevelopment Work, the Tenant must first make a written submission to the Landlord outlining a proposal for the Landlord's consideration in relation to the rent applicable for the duration of the Redevelopment Work and the rent applicable on and from completion of the Redevelopment Work; and
- (iv) any written submission made to the Landlord under this clause 11.8(c) must contain sufficient detail and information to enable the Landlord to determine in its sole and unfettered discretion:
 - A. whether it will consent to the Tenant carrying out the Redevelopment Work;
 - B. the terms and conditions of rent applicable for the duration of the Redevelopment Work; and
 - C. the rent and Premium to be charged with respect to the new Premises on and from completion of the Redevelopment Work,

and the Landlord must notify the Tenant of its determination within 45 Business Days after it receives the Tenant's submission under clause 11.8(c)(iii). If the Tenant fails to furnish the Landlord with all the information that it requires to consider any submission made under clause 11.8(c)(iii), then the 60 day approval period will be extended taking into account the time it took for the Tenant to furnish that additional information to the Landlord.

(d) The Tenant shall provide the Landlord, on request, with such security for the completion of replacement or rebuilding works (including any Redevelopment Work) which the Landlord shall reasonably require having regard to the nature, scope and anticipated cost of the replacement or rebuilding.

(e) If the Tenant:

- (i) replaces or rebuilds the Building in accordance with clause 11.8(c), then the rent payable by the Tenant under this lease from the date of that replacement or rebuilding will remain unchanged and the Tenant is not liable to pay any Premium with respect to the replaced or rebuilt Building;
- (ii) carries out Redevelopment Work in accordance with clause 11.8(c), then the rent payable by the Tenant under this lease on and from the date the Redevelopment Work is completed and the amount of any

Premium will be that determined by the Landlord pursuant to clause 11.8(c)(iv)C.

11.9 Application approval

- (a) This clause 11.9 does not apply to:
 - (i) works for which a statutory approval is not required;
 - (ii) any Routine Maintenance carried out in accordance with the Asset Management Plan; or
 - (iii) any Non-Routine Maintenance carried out in accordance with clause 11.4 ("Non-Routine Maintenance").
- (b) If the Tenant wishes to carry out any works to:
 - (i) any external part of the Premises;
 - (ii) any part of the Premises accessible to the general public (including foyers, car park entry or the colonnade); or
 - (iii) the Premises which will have any material effect on the Services to the Premises,

it must obtain the prior approval of the Landlord to any application it is required to make in respect of any Approval and, in considering whether to give its approval, the Landlord must act reasonably.

11.10 Tenant's works

The Tenant agrees to ensure that any works it does which affect or relate to Premises or any part of the Premises are done

- (a) in a proper and workmanlike manner;
- (b) in accordance with all laws and the requirements of authorities;
- (c) without unduly disturbing other occupiers of or visitors to the Premises, and
- (d) if they are works for which the Landlord's consent is required under clause 11.9 ("Application approval"):
 - (i) in accordance with any plans, specifications and schedule of finishes required and approved by the Landlord (such approval not to be unreasonably withheld); and
 - (ii) in accordance with the Landlord's reasonable requirements and directions.

11.11 Alterations to the Premises

Without limiting clause 11.8 ("Replacement, rebuilding and redevelopment"), the Tenant shall not make or suffer or permit to be made any alterations, additions or installations in or to the Premises affecting the structure of the Building without the Landlord's prior approval (not to be unreasonably withheld) and:

- (a) in seeking the Landlord's approval to a proposed alteration, addition or installation the Tenant shall submit plans and specifications of the proposed work to be carried out to the Premises together with a list of the persons (if any) from whom the Tenant proposes to call tenders for the proposed work. The Landlord must keep confidential the information provided by the Tenant to the Landlord in accordance with this paragraph;
- (b) if any of the proposed works requires lodgement of an Application with the Consent Authority, then at least three months before the Tenant lodges an Application, the Tenant must seek the Landlord's consent, and provide to the Landlord such details as the Landlord reasonably requires;
- (c) the Landlord will (unless it notifies the Tenant otherwise) require as a condition of its approval that:
 - (i) any such work must be supervised by a person approved by the Landlord (such approval not to be unreasonably withheld);
 - (ii) the Tenant demonstrates that any such work will be carried out in accordance with all relevant codes, standards and regulations;
 - (iii) any such work must be executed by contractors or tradesmen approved by the Landlord (such approval not to be unreasonably withheld), but no objection shall be made by the Landlord to any person whose name appears on the list provided under clause 11.11(a) and who has been approved by the Landlord; and
 - (iv) the Tenant pays on demand all reasonable Costs incurred by the Landlord in considering (acting reasonably) the proposed works, and their supervision including the reasonable fees of architects or other building consultants employed by the Landlord;
- (d) subject to the Landlord providing its consent to the carrying out of the works:
 - (i) the Tenant must obtain from any Authority all necessary approvals or permits necessary to enable such proposed work to be lawfully effected and shall on request by the Landlord produce for inspection to the Landlord copies of all such Approvals and permits from any such Authority. Until all required approvals have been received from all relevant Authorities, the Tenant must not commence the works; and
 - (ii) the Tenant shall on request by the Landlord produce for inspection to the Landlord copies of all such Approvals and permits from any such Authority; and
 - (iii) the Tenant must not commence the works until all required approvals have been received from all relevant Authorities;

- (e) upon completion of the works the Tenant must obtain and produce to the Landlord any certificates of compliance issued by any such Authority; and
- (f) the Tenant shall reimburse the Landlord for any cost or expense as may be reasonably incurred by the Landlord as a result of any such alteration addition or installation including any resulting modification of or variation to the Building.

For the avoidance of doubt, the Tenant and Landlord acknowledge and agree that this clause 11.11 does not give the Tenant any rights to redevelop, replace or rebuild the Building.

12. Tenant's general covenants, representations and warranties

12.1 Representations and warranties

The Tenant represents and warrants that:

- (a) if it is a company it has been incorporated as a company 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;
- (b) it has power to enter into and observe its obligations under the Transaction Documents;
- (c) it has in full force and effect the authorisations necessary to enter into the Transaction Documents, observe obligations under it, and allow it to be enforced;
- (d) its obligations under the Transaction Documents are valid and binding and are enforceable against it in accordance with its terms;
- (e) the Transaction Documents and the transactions under them do not contravene its constituent documents or any laws 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;
- (f) the Tenant does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise);
- (g) it has made its own appraisal of, and has satisfied itself in all respects in connection with, the suitability of the Premises for the Tenant's proposed use of the Premises; and
- (h) it has had the opportunity to investigate, and has accepted this lease, with full knowledge of and subject to any prohibitions or restrictions applying to the Premises (including their use) under any laws or the requirements of authorities.

12.2 Head lease or other interests

The Tenant must permit persons having an estate or interest in the Premises superior to or concurrent with the Landlord's to exercise the Landlord's or that other person's rights and otherwise perform their obligations in connection with the Premises.

13. Landlord's obligations

13.1 Quiet enjoyment

Subject to the Landlord's rights in connection with this lease, while the Tenant complies with its obligations under this lease, it may peaceably possess and occupy the Premises during the Term without interference by the Landlord.

14. Landlord's additional rights, representations and warranties

14.1 Right to deal with the Land

The Landlord may grant easements for services, support, drainage or other rights over the Land provided the easements or rights would not materially adversely affect the use of the Premises or the Tenant's rights or obligations under this lease and provided that the Landlord notifies the Tenant of its intention to grant any such easement.

14.2 Representations and warranties

The Landlord represents and warrants that:

- (a) it has power to enter into and observe its obligations under the Transaction Documents;
- (b) it has in full force and effect the authorisations necessary to enter into the Transaction Documents, observe obligations under it, and allow it to be enforced;
- (c) its obligations under the Transaction Documents are valid and binding and are enforceable against it in accordance with its terms;
- (d) the Transaction Documents and the transactions under them do not contravene its constituent documents or any laws 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
- (e) the Landlord does not have immunity from the jurisdiction of a court or from legal process (whether through service of notice, attachment prior to judgment, attachment in aid of execution, execution or otherwise).

14.3 Compliance with laws and requirements

The Landlord may do anything to comply with any law or the requirements of authorities.

14.4 To enter

- (a) The Landlord may enter the Premises at reasonable times on reasonable prior notice to see if the Tenant is complying with its obligations under this lease or to do anything the Landlord must or may do, under this lease.
- (b) If the Landlord decides there is an emergency, the Landlord may enter at any time without notice.

14.5 Prospective tenants or purchasers

After giving reasonable prior notice, the Landlord may during the last year of the Term:

- (a) enter the Premises to show prospective purchasers or tenants through the Premises; and
- (b) display for a reasonable time on the Premises a sign indicating that the Premises are available for purchase or lease.

14.6 Landlord may assign

If the Landlord assigns its interest in the Land and this lease, the Landlord must ensure that the assignee:

- (a) has the necessary powers to enable it to perform the Landlord's obligations under this lease;
- (b) has title to the Premises following the assignment; and
- (c) agrees to enter into a deed of covenant with the Tenant under which the assignee agrees to comply with the Landlord's obligations under this lease except such deed of covenant will not be required in circumstances where the Landlord's obligations under this lease are vested in the assignee by statute.

14.7 Change of Landlord

If the Landlord :

- (a) transfers title to the Premises; or
- (b) grants a concurrent lease over the Premises,

so that the Tenant becomes obliged to perform its obligations under this lease in favour of another person ("**New Landlord**"), then:

- (c) the Landlord is released from its obligations under this lease arising after the Tenant receives notice of that event;
- (d) the Tenant must procure that the New Landlord is substituted for the Landlord as a named insured under the Insurances;
- (e) the Tenant must give the New Landlord a replacement Bank Guarantee for each Bank Guarantee held by the Landlord (or which the Landlord is entitled to hold) at that time, such Bank Guarantee to be in the same form (except that the New Landlord is named as favouree) and for the same amount as the Bank Guarantee it replaces;
- (f) within a reasonable time after the Tenant has complied with clause 14.7(e), the Landlord must return the Bank Guarantees held by it to the Tenant (subject to exercising any rights to call on a Bank Guarantee which it may have at that time);
- (g) the Tenant must enter into those documents and assurances the Landlord or the New Landlord reasonably requires to enable the New Landlord to enforce the benefit of all obligations owed under this deed in the New Landlord's name;

- (h) the Landlord must procure the New Landlord to enter into such documents as are required to ensure that the New Landlord is bound by all Transaction Documents executed by the Landlord and any consents; and
- (i) the Landlord must pay the reasonable Costs incurred by the Tenant in complying with the Tenant's obligations under clauses 14.7(d), 14.7(e) and 14.7(g).

14.8 Agents

The Landlord may appoint agents or others to exercise any of its rights or perform any of its duties under this lease. Communications from the Landlord override those from the agents or others if they are inconsistent except to the extent the Tenant has already acted in reliance upon the communication from the agent or others.

14.9 Landlord may rectify

- (a) The Landlord may:
 - (i) after giving the Tenant 20 Business Days prior notice, do anything which should have been done by the Tenant under this lease but which has not been done or which the Landlord reasonably considers has not been done properly; and
 - (ii) for that purpose, and for as long as it is necessary for that purpose, the Landlord and the Landlord's Employees and Agents may enter the Premises and remain there.
- (b) In exercising its rights under this lease the Landlord must use reasonable endeavours not to interfere with the Tenant's use of the Premises.

14.10 Landlord not liable

The exercise of the Landlord's rights under clause 14.9 ("Landlord may rectify") is not a breach of clause 13.1 ("Quiet enjoyment").

14.11 Representatives

The Landlord and the Tenant may appoint representatives to exercise any of their rights or perform any of their duties under this lease. If either party notifies the other party of such an appointment and the scope of the representative's authority:

- (a) the representatives must be treated as if they were the Landlord or the Tenant, whichever is applicable, when they are exercising those rights or performing those duties;
- (b) matters within the knowledge of a representative will be taken to be within the knowledge of the Landlord or the Tenant, whichever is applicable;
- (c) communications from the Landlord and the Tenant override those from the representatives if they are inconsistent except to the extent to which the receiving party has acted in reliance upon communication from the other party's representatives; and
- (d) a direction of either party to this lease to a representative of the other party, prior to the receipt of notification that that person is no longer the party's representative, will be taken to have been given to the other party to this lease.

14.12 Change of representative

Each party agrees to promptly notify the other party of any changes in relation to, or the termination of the appointment of, a representative.

14.13 Landlord's position as an Authority

If the Landlord is an Authority nothing in any Transaction Document operates to restrict or otherwise affect the Landlord's statutory discretion in exercising its powers as an Authority. If there is a conflict between the unfettered discretion of the Landlord in the exercise of such powers on the one hand and the satisfaction and performance of the Landlord's obligations in a Transaction Document on the other, the former will prevail.

15. Default and termination

15.1 Essential terms

The following obligations of the Tenant are essential terms of this lease:

- (a) the obligations to pay money to the Landlord; and
- (b) the obligations under:
 - (i) clause 9 ("Alienation");
 - (ii) clause 5.1 ("Permitted Use");
 - (iii) clause 8 ("Insurance");
 - (iv) clause 11 ("Maintenance, repair and alteration of Premises"); and
 - (v) clause 17 ("Damage or destruction").

This clause 14.1 does not prevent any other obligation of the Tenant under this lease from being an essential term.

15.2 Notification of Events of Default

The Tenant must notify the Landlord within 5 Business Days after it becomes aware that an Event of Default has occurred giving the Landlord full details of the Event of Default.

15.3 Events of Default

The Tenant must ensure that no Event of Default occurs.

15.4 Notice of Breach

Before exercising any right under clause 15.8, the Landlord must give notice to the Tenant setting out details of the relevant Event of Default which has occurred and requiring that within the Remedy Period (irrespective of whether the Tenant has complied with clause 15.2):

- (a) the Tenant rectifies the Event of Default if, in the reasonable opinion of the Landlord, it is capable of rectification; or
- (b) the Tenant pays compensation to the Landlord instead of rectification if, in the reasonable opinion of the Landlord, the Event of Default is not capable of

rectification by the Tenant but the Landlord can, in the reasonable opinion of Landlord, be restored by the payment of compensation to the position in which the Landlord would have been had the Event of Default not occurred.

Despite any other provision of this lease, the Landlord may not exercise any right under clause 15.8 as a result of an Event of Default if the Tenant complies with a notice given under this clause 15.4.

15.5 Landlord may remedy

The Landlord may, but is not obliged to, remedy at any time (including entering upon the Premises for the purpose of doing so) any:

- (a) Event of Default; and
- (b) breach by the Tenant of its insurance obligations under clause 8 ("Insurances") regardless of whether a notice pursuant to clause 15.4 has been issued to the Tenant.

All Costs incurred by the Landlord (including legal Costs) in remedying an Event of Default or a breach by the Tenant of its insurance obligations under clause 8 ("Insurances") are a liquidated debt owing by the Tenant to the Landlord payable on demand.

15.6 Method of Rectification

If the Landlord gives a notice under clause 15.4 requiring the Tenant to pay compensation (instead of rectifying the Event of Default):

- (a) the Landlord must specify the amount of compensation the Landlord requires and the basis on which the calculation has been made; and
- (b) the Tenant will be taken to have complied with the notice if, instead of paying compensation, the Tenant rectifies the Event of Default to the satisfaction of the Landlord.

Any dispute as to the amount of reasonable compensation is to be determined under clause 19.

15.7 Assignment when in Breach

The Landlord will not be able to terminate this lease pursuant to clause 15.8 if the Tenant, within the Remedy Period effects an assignment of this lease to any person on terms acceptable to the Landlord provided that:

- (a) the Tenant establishes that the proposed assignee satisfies the criteria for assignment in clause 9.2;
- (b) the proposed assignee undertakes to be bound by the provisions of this lease and to rectify, or pay reasonable compensation to the Landlord (as appropriate) in relation to, the Event of Default specified in the notice given under clause 15.4 before the end of the Remedy Period; and
- (c) if the Event of Default is the failure of the Tenant to pay a monetary sum, the Landlord may insist that that sum is paid before the assignment or transfer takes effect.

15.8 Landlord's right to terminate

In addition to its rights under clause 15.5 ("Landlord may remedy"), the Landlord may, if an Event of Default occurs, subject to clause 15.4 and clause 15.7:

- (a) terminate this lease by re-entering the Premises; or
- (b) terminate this lease by notice.

The Tenant agrees that the Landlord is not liable for, and releases the Landlord from, liability or loss arising from, and Costs incurred in connection with, anything done by the Landlord under this clause 15.8 or clause 15.5 ("Landlord may remedy").

15.9 Indemnity for breach

The Tenant:

- (a) indemnifies the Landlord against any liability or loss arising from, and any Costs incurred in connection with:
 - (i) an Event of Default;
 - (ii) the Tenant's non-compliance with its obligations under this lease; and
 - (iii) any payment required to be made under this lease not being made on its due date,

including liability, loss, Costs on account of funds borrowed, contracted for or used to fund any amount payable under this lease and including in each case legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher; and

- (b) agrees to pay the Landlord an amount equal to any liability, loss, and Costs of the kind referred to in clause 15.9(a) suffered or incurred by any employee, officer, agent or contractor of the Landlord including legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher,

provided that this indemnity shall not cover any liability or loss to the extent it is caused by the negligence or default of the Landlord or the Landlord's Employees and Agents.

15.10 Indemnity in connection with termination

If an Event of Default occurs and as a consequence this lease is terminated, then the Tenant indemnifies the Landlord against any liability or loss arising from, and any Costs incurred:

- (a) in connection with the Landlord re-entering the Premises;
- (b) because the Landlord will not receive the benefit of the Tenant performing its obligations under this lease from the date of that termination until the Expiry Date; and
- (c) in connection with anything else relating to that termination including the Landlord attempting to mitigate its loss,

whether before or after termination of this lease including legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher. The Landlord's rights under this

clause 15.10 are in addition to its rights under clause 15.9 ("Indemnity for breach") but are subject to the Landlord's obligation to mitigate its loss.

15.11 Calculation assumptions

Subject to the Landlord's obligation to mitigate its loss in accordance with clause 15.10 ("Indemnity in connection with termination"), the benefit of the Tenant performing its obligations referred to in clause 15.10(b) is to be calculated:

- (a) on the assumption that this lease continues in force until the Expiry Date; and
- (b) having regard to the provisions in this lease relating to:
 - (i) Rent and the Tenant's contribution to Outgoings;
 - (ii) the performance of the Tenant's obligations under clause 11 ("Maintenance, repair and alteration of Premises"); and
 - (iii) the performance of the Tenant's other obligations under this lease.

15.12 Waiver

The Landlord and the Tenant agree that:

- (a) the Landlord's failure to enforce any breach of covenant on the part of the Tenant is not to be construed as a waiver of that breach, nor shall any custom or practice which may grow up between the parties in the course of administering this lease be construed to waive or to lessen the right of the Landlord to insist upon the performance by the Tenant of any term, covenant or condition hereof, or to exercise any rights given to the Landlord on account of any such default;
- (b) a waiver by the Landlord of a particular breach shall not be deemed to be a waiver of the same or any other subsequent breach or default; and
- (c) the demand of or subsequent acceptance of Rent under this lease by the Landlord will not constitute a waiver of any preceding breach by the Tenant of any term, covenant or condition of this lease, other than the failure of the Tenant to make the particular payment or payments of rental so accepted, regardless of the Landlord's knowledge of such preceding breach at the time of acceptance of such Rent.

15.13 Rights not affected

Subject to the Landlord's obligation to mitigate its loss contained in clause 15.10 ("Indemnity in connection with termination"), the Tenant expressly acknowledges and agrees that the Landlord's entitlement to recover damages from the Tenant or any other person shall not be affected or limited by:

- (a) the Landlord re-entering the Premises or otherwise terminating this lease;
- (b) the Landlord accepting the Tenant's repudiation;
- (c) the Tenant abandoning or vacating the Premises; or
- (d) the conduct of either party (or that of any servant or agent of a party) constituting a surrender by operation of law.

15.14 Due date for payment

If the Tenant is obliged under this lease to pay to or reimburse the Landlord any cost, expense, charge, outgoing or other moneys, that amount is payable on demand and recoverable as Rent and/or Outgoings in arrears.

16. Tenant's obligations on expiry or termination

16.1 Tenant to yield up

The Tenant must:

- (a) vacate the Premises on the earlier of the Expiry Date and the date this lease is terminated; and
- (b) leave the Premises in a condition consistent with the Tenant having complied with all its obligations under this lease.

16.2 Removal of Tenant's property

If required by the Landlord, but not otherwise, the Tenant must (subject to clauses 5.3 ("Improvements") and 16.4 ("Tenant may not remove certain property")), , remove furniture, loose equipment, goods and other items owned by the Tenant but which do not form part of the Premises or which are not affixed (or intended to be affixed) to the Premises from the Premises:

- (a) before the day when the Premises must be vacated; or
- (b) if this lease is terminated in accordance with clause 15 ("Default and termination"), within 30 Business Days after such termination.

16.3 Tenant to make good

The Tenant must promptly make good, to at least the standard existing before removal, any damage caused by any property being removed from the Premises.

16.4 Tenant may not remove certain property

The Tenant may not remove anything the removal of which will cause damage to the Premises which cannot be repaired.

17. Damage or destruction

17.1 Total Destruction

If the Building is Totally Destroyed the Tenant must, subject to clause 17.4 ("Tenant not proceeding"), promptly:

- (a) make the Premises safe and secure;
- (b) give the Landlord a report from a structural engineer as to the structural stability of the Premises; and
- (c) clear all debris from the Land.

17.2 Tenant options

The Tenant must:

- (a) consult the Landlord regularly with respect to its proposed course of action in relation to the Totally Destroyed Building; and
- (b) within 40 Business Days of such damage or destruction, either:
 - (i) elect to re-establish the Business to a standard which is in accordance with clause 6 ("Business Operation and Management"). If the Tenant elects to re-establish the Business pursuant to this clause 17.2(b)(i), the Tenant must comply with the provisions of clause 17.3; or
 - (ii) elect to terminate this lease upon notice to the Landlord, without compensation to the Tenant and without prejudice to the rights of either party in respect of any antecedent claim or any antecedent breach or non-observance of any covenant or provision of this lease.

17.3 Rebuilding alternatives

- (a) If the Tenant elects to re-establish the Business pursuant to clause 17.2(b)(i), the Tenant must, at its cost, either:
 - (i) reinstate the Building in accordance with its original design subject to any modifications as may be required by any competent Authority and approved by the Landlord (such approval not to be unreasonably withheld). If any of the proposed works requires lodgement of an Application with the Consent Authority, then at least three months before the Tenant lodges an Application, the Tenant must seek the Landlord's consent, and provide to the Landlord such details as the Landlord reasonably requires; or
 - (ii) rebuild the Building to a different design provided:
 - A. the Landlord and the Tenant agree that the Building is to be rebuilt to a different design and to a standard not less than the Required Standard and agree upon the plans and specifications relating to it;
 - B. the Tenant obtains all necessary consents for the new Building; and
 - C. the Tenant constructs the new Building in accordance with the agreed plans and specifications.
- (b) If the Tenant proposes to rebuild the Building in accordance with clause 17.3(a)(ii), at least six months prior to the date the it proposes to lodge an Application with the Consent Authority for such rebuilding, the Tenant must make a written submission to the Landlord outlining a proposal for the Landlord's consideration in relation to the proposed works and the rent applicable for the duration of the rebuilding work.

- (c) Any written submission made to the Landlord under clause 17.3(b) must contain sufficient detail and information to enable the Landlord to determine in its sole and unfettered discretion:
- (i) whether it will consent to the Tenant carrying out the rebuilding work;
 - (ii) the terms and conditions of rent applicable for the duration of the rebuilding work; and
 - (iii) the rent and Premium to be charged with respect to the Premises on and from completion of the rebuilding work,
- and the Landlord must notify the Tenant of its determination within 45 Business Days after it receives the Tenant's submission under clause 17.3(b).
- (d) If the Tenant reinstates or rebuilds the Building:
- (i) in accordance with clause 17.3(a)(i), then the rent payable by the Tenant under this lease from the date of the reinstatement will remain unchanged and the Tenant is not liable to pay any Premium with respect to the reinstated Building; and
 - (ii) in accordance with clause 17.3(a)(ii) , then the rent payable by the Tenant under this lease from the date the rebuilding is completed and the amount of any Premium will be that determined by the Landlord pursuant to clause 17.3(c)(iii).

17.4 Tenant not proceeding

If the Tenant elects to re-establish the Business pursuant to clause 17.2(b)(i) and:

- (a) the Tenant has not gained all appropriate Approvals for the rebuilding of the Building and has not commenced on site within:
- (i) 24 months from the date of the Building being Totally Destroyed so that completion will occur not more than 24 months later; or
 - (ii) if clause 17.3(a)(ii)("Rebuilding alternatives") applies and:
 - A. the Landlord and Tenant have not agreed how the Building is to be rebuilt within 6 months from the date of the Building being Totally Destroyed; and
 - B. the matter is the subject of a dispute in accordance with clause 19 ("Dispute resolution"),

24 months plus any period in excess of 6 months from the date of the Building being Totally Destroyed until the dispute has been determined; or
- (b) the Total Destruction occurs in the last 5 years of the Term,

then on or after:

- (c) the expiry of 24 months from the date of the Building being Totally Destroyed (or such longer period as contemplated by clause 17.4(a)(ii) where the matter is the subject of a dispute), in circumstances where clause 17.4(a) applies; or
- (d) the date the Building is Totally Destroyed, in circumstances where clause 17.4(b) applies,

this lease will, at the option of either the Landlord or the Tenant, terminate on the date which is one month after the relevant party notifies the other, without compensation to the Tenant and without prejudice to the rights of either party in respect of any antecedent claim or any antecedent breach or non-observance of any covenant or provision of this lease.

17.5 Termination

If the lease is terminated:

- (a) pursuant to clause 17.2(b)(ii), the Tenant will pay compensation to the Landlord which is determined in accordance with the following formula:

$$C = (R \times N) \times ((1 + CPII)^N)$$

where:

C is the amount of compensation payable by the Tenant to the Landlord;

CPII is the average annual % increase in the Consumer Price Index for the 60 month period ending on the Previous CPI Date (expressed as a ratio);

N is 5 if A less B is greater than or equal to 5;

Otherwise

N is A less B, if A less B is less than 5

where:

A is the Term

B is the number of whole Years comprising the expired number of years of the Term as at the date of Total Destruction;

R is determined in accordance with the following formula:

$$R = \frac{TR}{3}$$

where:

TR is the total Rent payable for the 36 month period immediately preceding the date of Total Destruction; and

- (b) pursuant to clause 17.2(b)(ii) or clause 17.4, the Tenant must, at its cost, if (and to the extent) required by the Landlord, promptly demolish the Building and clear the Land of all improvements, structures, rubbish and debris. Failing such demolition and clearance being carried out to the Landlord's satisfaction, the Landlord will be

entitled to carry out such demolition and clearance at the Tenant's cost. The Landlord will be entitled to recover from the Tenant any Costs reasonably incurred by it in carrying out such works as a liquidated debt due and payable by the Tenant to the Landlord on demand.

17.6 Partial Destruction

If the Building is partially destroyed or damaged but is not Totally Destroyed, the Tenant must promptly at its cost obtain all necessary approvals and repair, replace and make good the whole of the destroyed or damaged portion of the Building as nearly as possible to the condition in which it was immediately prior to such damage or destruction, with such modifications as the Tenant may seek and the Landlord approve (such approval not to be unreasonably withheld) or as may be required by any competent authority and approved by the Landlord (such approval not to be unreasonably withheld).

18. Costs, charges and expenses

18.1 What the Tenant must pay

Notwithstanding any other provision in this lease, the Tenant must pay or reimburse the Landlord on demand for:

- (a) the reasonable Costs of the Landlord in connection with any consent or approval (whether or not that consent or approval is given), exercise or non-exercise of rights by the Landlord arising from a breach by the Tenant of its obligations under this lease (including in connection with the actual enforcement or preservation of any rights under this lease), waiver, variation, release, surrender or discharge in connection with this lease;
- (b) unless already paid by the Tenant, Taxes and Rates (including registration fees) which may be payable or determined to be payable by the Landlord in connection with this lease or a payment or receipt or any other transaction contemplated by this lease excluding any fine or penalty incurred due to the default of the Landlord; and
- (c) stamp duty and registration fees and if applicable, fines and penalties in respect of them, which may be payable or determined to be payable in connection with this lease,

including in each case reasonable legal Costs on a full indemnity basis or solicitor and own client basis, whichever is the higher. The Costs payable by the Tenant under this clause do not include any internal Costs of the Landlord including salaries and overhead expenses, or any Costs in connection with the negotiation and execution of this lease.

18.2 Independent consultants

The Tenant agrees that the Costs referred to in clause 18.1 ("What the Tenant must pay") include the Costs incurred by the Landlord with respect to any independent consultant or other person reasonably appointed to evaluate any matter of concern or the Landlord's agent.

18.3 Obligations at Tenant's cost

Anything which the Tenant is required to do or may do under this lease must be done at the Tenant's cost unless expressly specified otherwise in this lease.

18.4 Consents obtained by Landlord

If the Landlord has agreed to obtain a person's consent before the Landlord gives its consent under this lease or to pay Costs incurred by that person in giving consent, then the consent from that person is a consent in connection with this lease.

19. Dispute resolution

19.1 Notice of dispute

If a dispute between the Tenant and the Landlord arises in connection with this lease or its subject matter, then the disputing party must give to the other a notice adequately identifying and providing details of the dispute.

19.2 Continuing to perform obligations

All parties to this Lease must continue to perform their respective obligations under this lease if there is a dispute but will not be required to complete the matter the subject of the dispute, unless the party requiring that matter to be completed indemnifies the other party against reasonable Costs and losses suffered in completing that matter if the dispute is not resolved in favour of the indemnifying party.

19.3 Parties to consult

Any dispute between the parties arising in connection with this deed or its subject matter must first be referred to the chairman of the Landlord and the chief executive officer, Village Roadshow Theme Parks to meet in good faith within 10 Business Days after the date of the notice for resolution of the dispute. If these persons cannot agree within 10 Business Days then the remaining provisions of this clause 19 apply.

19.4 Further steps required before proceedings

Any dispute between the parties arising in connection with this lease or its subject matter must, as a condition precedent to the commencement of litigation, first be the subject of mediation by a mediator agreed by the disputing parties and, if the parties cannot agree within 10 Business Days, by a mediator appointed by LEADR.

19.5 Disputes for expert determination

If the mediation referred to in clause 19.4 ("Further steps required before proceedings") has not resulted in settlement of the dispute within one month (or such other period as the parties may agree) after appointment of the mediator, and the subject matter of the such dispute does not relate to the legal interpretation of this lease (including, but not limited to the termination of this lease), then either party may refer that matter to expert determination in accordance with clause 19.6 ("Choice of expert").

19.6 Choice of expert

A dispute to be referred to an expert in accordance with clause 19.5 ("Disputes for expert determination") must be determined by an independent expert of at least five years immediate past experience in the relevant field:

- (a) agreed between and appointed jointly by the parties; or

- (b) in the absence of agreement within 5 Business Days after the matter is referred to expert determination, appointed by the President or other senior officer for the time being of the body administering the relevant field.

19.7 Agreeing the relevant field

If the parties cannot agree as to the relevant field, either party may refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the parties.

19.8 Expert

The expert appointed to determine a dispute:

- (a) must have a technical understanding of the issues in contest;
- (b) must not have a significantly greater understanding of one party's business or operations which might allow the other side to construe this greater understanding as a bias; and
- (c) must inform each disputing party before being appointed the extent of the expert's understanding of each party's business or operations. If that information indicates a possible bias, then that expert must not be appointed except with the approval of both parties.

19.9 Agreement with expert

The parties must enter into an agreement with the expert appointed under clause 19.6 ("Choice of expert") setting out the terms of the expert's determination and the expert's fees within 7 Business Days after the expert is appointed.

19.10 Directions to expert

In reaching a determination in respect of a dispute under clause 19.5 ("Disputes for expert determination"), the expert must give effect to the intent of the parties entering into this lease and the purposes of this lease.

19.11 Role of expert

The expert must:

- (a) act as an expert and not as an arbitrator;
- (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
- (c) not accept verbal submissions unless both parties are present;
- (d) on receipt of a written submission from one party ensure that a copy of such submission is given promptly to the other party;
- (e) take into consideration all documents, information and other material which the parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;

- (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
- (g) issue a draft certificate stating the expert's intended determination giving each party 10 Business Days to make further submissions;
- (h) issue a final certificate stating the expert's determination within two months (or such other period as the parties may agree) of being so appointed, or such other time as agreed by the parties; and
- (i) act with expedition with a view to issuing the final certificate as soon as practicable.

19.12 Complying with directions of expert

The disputing parties must comply with all directions given by the expert in relation to the resolution of the dispute, and must within the time period specified by the expert, give the expert:

- (a) a short statement of facts;
- (b) a description of the dispute; and
- (c) any other documents, records or information the expert requests.

19.13 Expert may convene meetings

The expert may hold a meeting with all the parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.

19.14 Meeting not a hearing

The parties agree that a meeting under clause 19.13 ("Expert may convene meetings") is not a hearing and is not an arbitration.

19.15 Confidentiality of information

The parties agree, and must procure that each of the mediator and expert agrees as a condition of its appointment:

- (a) subject to clause 19.5 , to keep confidential all documents, information and other material, disclosed to them during or in relation to the expert determination or mediation; and
- (b) not to disclose any confidential documents, information and other material except:
 - (i) to a party or adviser who has signed a confidentiality undertaking to the same effect as clause 19.5; or
 - (ii) if required by law to do so; or
- (c) not to use confidential documents, information or other material disclosed to them during or in relation to the expert determination for a purpose other than the expert determination or mediation.

19.16 Confidentiality in proceedings

The parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:

- (a) views expressed or proposals or suggestions made by a party or the expert during the expert determination or mediation relating to a possible settlement of the dispute;
- (b) admissions or concessions made by a party during the expert determination or mediation in relation to the dispute; and
- (c) information, documents or other material concerning the dispute which are disclosed by a party during the expert determination or mediation unless such information, documents or facts shall have been otherwise discoverable in judicial or arbitral proceedings.

19.17 Final determination of expert

The parties agree that the final determination by an expert is final and binding upon them unless the determination involves a cost (excluding the Costs incurred by a party in the course of the mediation or determination) to either disputing party (whether by way of payment of money or the carrying out of work) exceeding \$1,000,000.

19.18 Expert's costs

If any expert does not award costs, the disputing parties must each pay an equal share of the expert's costs in making the determination.

19.19 Expert generally not liable

The parties agree that other than where the expert has engaged in fraud, the expert will not be liable to them in any respect in connection with the carrying out of the expert's functions in accordance with this lease.

19.20 Commencement of litigation

For the avoidance of doubt, and subject to clause 19.3 and clause 19.4, the parties may commence litigation for any dispute arising in connection with the legal interpretation of this lease (including, but not limited to termination of this lease).

20. Condemnation or Compulsory Acquisition

20.1 Termination

If the whole of the Land or the Premises is Condemned or compulsorily acquired then either the Landlord or the Tenant may by notice to the other terminate this lease.

20.2 Part acquisition or Condemnation

If only a part of the Land or the Premises is acquired or Condemned such that it is unreasonable or imprudent to operate the remainder, then either the Landlord or the Tenant may terminate this lease. If neither of them terminates this lease, any compensation paid to the Landlord or the Tenant must be used for making alterations or modifications to the remaining Premises to a specification agreed between the Landlord and the Tenant and in the absence of

such agreement, to a specification substantially the same as existing prior to such acquisition or Condemnation.

21. Notices

21.1 Form

Unless expressly stated otherwise in this lease, all notices, certificates, consents, approvals, directions, requests, waivers and other communications in connection with a Transaction Document must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out or referred to in clause 21.2 ("Delivery") or, if the recipient has notified otherwise, then marked for attention in the way last notified.

21.2 Delivery

They must be:

- (a) left at the address set out or referred to below;
- (b) sent by prepaid post (airmail, if appropriate) to the address set out or referred to below;
- (c) sent by fax to the fax number set out or referred to below; or
- (d) given in any other way permitted by law.

Landlord

Name: Western Sydney Parklands Trust
Address: Level 4, 10 Valentine Avenue, Parramatta NSW 2150
Telephone No: (02) 9895 7500
Facsimile No: (02) 9895 7580
Attention: The Director

Tenant

Name: Prospect Aquatic Investments Pty Ltd
Address: Jam Factory, Level 1, 500 Chapel Street, South Yarra
VIC 3141
Facsimile No: (03) 9660 1993
Attention: General Counsel and the Company Secretary

and:

Name: Herbert Geer
Address: Level 20, 385 Bourke Street, Melbourne VIC 3000
Facsimile No: (03) 9670 5670

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

21.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

21.4 Receipt - post

If sent by post, notices are taken to be received 3 Business Days after posting (or 5 Business Days after posting if sent to or from a place outside Australia).

21.5 Receipt - fax

If notices are sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

21.6 Receipt - general

Despite clauses 21.4 ("Receipt - post") and 21.5 ("Receipt - fax"), if they are received after 5.00pm in the place of receipt or on a non-Business Day, they are to be taken to be received at 9.00am on the next Business Day.

22. GST

22.1 Goods and services tax definitions

In this clause 22 words and expressions have the same meanings as those in the *A New Tax System (Goods and Services Tax) Act 1999*.

22.2 Amounts GST exclusive

Unless otherwise stated, the amount payable by a party under this lease for a supply represents the value of the taxable supply for which the amount is to be paid.

22.3 Liability to pay GST

- (a) Subject to clause 22.3(b) and 22.6(a) ("Tax invoice"), if a party makes a taxable supply to the other party under this lease the recipient of the taxable supply must pay (in addition to and at the same time and in the same manner as any other amount for the supply is due to be paid) the amount of any GST payable in respect of the taxable supply.
- (b) If an amount for a supply is expressed to include GST, no additional amount shall be payable under clause 22.3(a) by a party in respect of the supply.

22.4 Reimbursements

- (a) If this lease requires the Tenant to reimburse the Landlord for an acquisition the Landlord makes, the amount required to be reimbursed will be the amount paid or

payable by the Landlord for the acquisition, less the amount of any input tax credit to which the Landlord is entitled in respect of the acquisition, plus any amount payable under clause 22.3(b) ("Liability to pay GST").

- (b) The Tenant shall have reciprocal rights in respect of any acquisitions the Tenant makes and for which the Landlord is required under this lease to reimburse to the Tenant.

22.5 Costs, claims etc

If a party is required under this lease to pay the other party's Costs for doing something, or to indemnify the other party in respect of anything, the amount required to be paid or indemnified is the amount of the cost, expense or thing less amount of any input tax credit to which the other party is entitled in respect of the cost, expense or thing.

22.6 Tax invoice

- (a) A party's right to payment under clause 22.3(a) ("Liability to pay GST") is subject to a tax invoice being delivered to the party liable to pay for the taxable supply. The party liable to pay for the taxable supply must pay an amount payable under clause 22.3(a) ("Liability to pay GST") within 5 Business Days of receiving a tax invoice.
- (b) If the amount payable for a supply is expressed to include GST, the party that makes the supply must deliver a tax invoice to the party that is liable to pay for the supply not less than five Business Days before the date on which the amount is due to be paid.

22.7 Adjustments

- (a) If the value of a taxable supply under this lease changes after the recipient of the supply has paid an amount in respect of that supply under clause 22.3(a) ("Liability to pay GST"), the supplier must, within 10 Business Days after it becomes aware of the change, give the recipient of the taxable supply an adjustment note.
- (b) If the adjustment reduces the amount of GST payable by the supplier, the supplier must refund the overpaid GST to the recipient of the supply when it gives the adjustment note.
- (c) If the adjustment increases the amount of GST payable by the supplier, the recipient of the supply must pay the additional GST to the supplier within 10 Business Days after it has received the adjustment note.

22.8 Penalties and interest

If a party incurs any penalties or interest as a result of late payment of GST where that late payment is caused solely by the failure of the recipient of the supply to comply with this clause, then the recipient of the supply must pay to the supplier on demand the amount of the penalties and interest.

23. Bank guarantee

23.1 Delivery to Landlord

- (a) The Tenant must deliver the Bank Guarantee to the Landlord on the later of:
 - (i) the Rent Commencement Date; and

- (ii) the Commencement Date.
- (b) The Tenant must deliver to the Landlord a replacement or additional Bank Guarantee on or before each anniversary of the Rent Commencement Date so that the amount guaranteed is an amount equal in value to the Annual Rent plus GST.
- (c) Subject to clause 23.1(d), the Tenant may deliver to the Landlord a replacement bank guarantee on or before the third anniversary of the Rent Commencement Date so that the amount guaranteed is an amount equal in value to 6 months' of the Annual Rent plus GST ("**Reduced Bank Guarantee**").
- (d) The parties acknowledge and agree that the Tenant will only be entitled to provide the Reduced Bank Guarantee pursuant to clause 23.1(c), if the Tenant:
 - (i) is not in arrears of Rent as at the third anniversary of the Rent Commencement Date; and
 - (ii) has not breached its obligation to pay the Annual Rent by the time specified in clause 3.2 and the Turnover Rent by the time specified in Schedule 1 at any time before the third anniversary of the Rent Commencement Date.
- (e) The parties agree that if the Tenant provides the Reduced Bank Guarantee pursuant to clause 23.1(c), that Reduced Bank Guarantee will for all purposes of this lease be taken to be the Bank Guarantee.
- (f) If the Tenant delivers to the Landlord the Reduced Bank Guarantee pursuant to clause 23.1(c), the Landlord must as soon as reasonably practicable after receipt of that Reduced Bank Guarantee return to the Tenant any Bank Guarantee that it holds for an amount equal in value to the Annual Rent plus GST.
- (g) If at any time after the Reduced Bank Guarantee has been provided, a Rent Material Breach occurs, then upon notice in writing from the Landlord, the Tenant must provide a replacement Bank Guarantee for an amount equivalent to the Annual Rent plus GST for the immediately preceding Year. Upon receipt of that Bank Guarantee the Landlord agrees to return the existing Reduced Bank Guarantee to the Tenant.

23.2 Return of Bank Guarantee

Subject to clause 23.1(f), the Landlord must return any Bank Guarantee (or any remaining uncalled part of it) at such time after:

- (a) expiry or termination of this lease as it is satisfied (acting reasonably) that the Tenant has complied with all outstanding obligations (if any) under this lease and the Landlord will have no further entitlement to call on the Bank Guarantee; or
- (b) the Tenant has delivered to the Landlord a replacement Bank Guarantee pursuant to clause 23.1(b).

23.3 Landlord may call on Bank Guarantee

If the Tenant does not comply with any of its obligations under this lease, whether this lease is registered or not, then the Landlord may call on the Bank Guarantee without notice to the Tenant.

23.4 Replacement Bank Guarantee

If the Landlord calls on the Bank Guarantee, then no later than 5 Business Days after the Landlord gives the Tenant a notice asking for it, the Tenant must deliver to the Landlord a replacement or additional Bank Guarantee so that the amount guaranteed is the amount required by clause 23.1 ("Delivery to Landlord").

23.5 Expiry of Bank Guarantee

If the Bank Guarantee has an expiry date that will or may occur before the date in clause 23.2 ("Return of Bank Guarantee"), the Tenant must provide a replacement Bank Guarantee without an expiry date, or with an expiry date no earlier than 12 months after the expiry date in the existing Bank Guarantee, no later than 10 Business Days before the expiry date of the existing Bank Guarantee. If the Tenant fails to do so the Landlord may call on the existing Bank Guarantee and hold the amount received until it receives a replacement Bank Guarantee from the Tenant, at which time it must deliver the sum received following its call on the Bank Guarantee to the Tenant.

23.6 Bank Guarantee obligations are essential terms

The Tenant's obligations under this clause 23 ("Bank guarantee") are essential terms of this lease.

24. General

24.1 Discretion in exercising rights

A party may exercise a right or remedy or give or refuse its approval or consent in any way it considers appropriate and in its absolute discretion (including by imposing conditions), unless this lease expressly states otherwise.

24.2 Partial exercising of rights

If a party does not exercise a right or remedy fully or at a given time, the Landlord may still exercise it later.

24.3 Prompt performance

If this lease specifies when a party agrees to perform an obligation, that party agrees to perform it by the time specified.

24.4 Approvals and consents

By giving its approval or consent the Landlord does not make or give any warranty or representation as to any circumstance relating to the subject matter of the consent or approval.

24.5 Remedies cumulative

The rights and remedies provided in this lease are in addition to other rights and remedies given by law independently of this lease.

24.6 Rights and obligations are unaffected

Rights given to the parties under this lease and the parties' liabilities under it are not affected by anything which might otherwise affect them by law.

24.7 Variation and waiver

A provision of this lease, or a right created under it, may not be waived or varied except in writing, signed by the party or parties to be bound.

24.8 Indemnities

The indemnities in this lease are continuing obligations, independent from the other obligations of the parties under this lease and continue after this lease expires or is terminated in respect of any act, matter or thing done or omitted to be done before the date of expiry or termination of this lease. It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity under this lease.

24.9 Construction

No rule of construction applies to the disadvantage of the Landlord because it was responsible for the preparation of, or seeks to rely on, this lease or any part of it.

24.10 Acceptance of money or other acts not a waiver

If the Landlord:

- (a) accepts money under this lease (before or after termination);
- (b) does not exercise or delays exercising any right under clause 14 ("Default and termination");
- (c) gives any concession to the Tenant; or
- (d) attempts to mitigate its loss,

it is not a waiver of any breach or of the Landlord's rights under this lease. An attempt by the Landlord to mitigate its loss is not a surrender of this lease.

24.11 Exclusion of statutory provisions

In this lease:

- (a) the covenants, powers and provisions implied in leases by sections 84, 84A, 85, 133A and 133B of the *Conveyancing Act 1919* (NSW) do not apply; and
- (b) words used in any of the forms of words in the first column of part 2 of schedule 4 to the *Conveyancing Act 1919* (NSW) do not imply a covenant under section 86 of that Act.

24.12 Prior breaches

Expiry or termination of this lease does not affect any rights in connection with a breach of this lease before then.

24.13 Warranties and undertakings

The Tenant warrants that it has relied only on its own enquiries in connection with this lease and not on any representation or warranty by the Landlord or any person acting or seeming to act on the Landlord's behalf.

24.14 Inconsistent law

To the extent permitted by law, this lease prevails to the extent it is inconsistent with any law.

24.15 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Tenant in connection with this lease with the result that the Landlord's rights, powers or remedies are adversely affected (including, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

24.16 Counterparts

This lease may consist of a number of copies, each signed by one or more parties to this lease. If so, the signed copies are treated as making up the one document.

24.17 Serving documents

Without preventing any other method of service, any document in a court action may be served on a party by being delivered or left at that party's address for service of notice under clause 21 ("Notices").

24.18 Parties bound

Even if this document is found not to be a lease or is found to be a lease for a term less than the Term, the parties are bound in contract to carry out their obligations under this document for the Term, unless expressly released under this document from those obligations.

24.19 Entire agreement

This lease constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, undertakings and negotiations on that subject matter.

25. Governing law, jurisdiction and service of process

25.1 Governing law

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

25.2 Submission to jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

Schedule 1 - Turnover Rent

1.1 Definitions

In this Schedule 1 clause references in italics are clauses in this Schedule 1 and:

Audit Period means:

- (a) the period from the Rent Commencement Date to the following 31 August;
- (b) each 12 month period from 1 September to and including the next 31 August; and
- (c) the period from the last 1 September in the Term to the Expiry Date or, if this lease is terminated prior to the Expiry Date, from the last 1 September prior to the date of termination to the date of termination.

Audited Accounts means the annual audited accounts prepared pursuant to *clause 1.6* ("*Audited Accounts*").

Auditor means one of:

- (a) PricewaterhouseCoopers;
- (b) Deloitte Touche Tohmatsu;
- (c) KPMG;
- (d) Ernst & Young;
- (e) Horwath Australia Limited; or
- (f) such other auditor as the parties may agree in writing from time to time.

Gross Revenue means all revenue derived from the sale, use and occupation of the Premises and conduct of the Business after deducting any GST payable by the Tenant in respect of that Gross Revenue.

Turnover Rent Year means each of:

- (a) the period from and including the Rent Commencement Date to the day immediately before the next Quarter Date;
- (b) thereafter for the whole Term each period commencing from and including each Quarter Date to the day immediately prior to the next Quarter Date; and
- (c) the period from and including the last Quarter Date in the Term to and including the Expiry Date.

1.2 Payments on account of Turnover Rent

The Turnover Rent must be paid in respect of each Rent Period, quarterly in arrears within 10 Business Days of the end of each such Rent Period.

1.3 Turnover Rent calculation

The Turnover Rent shall be 0.5% of the Gross Revenue for each Turnover Rent Year to the extent that the Gross Revenue exceeds \$30,000,000 in that Turnover Rent Year.

1.4 Recalculation of Turnover Rent

The Turnover Rent to be paid under *clause 1.2 ("Payments on account of Turnover Rent")* in respect of each Turnover Rent Period will be:

- (a) calculated initially by the Tenant acting reasonably having regard to the requirements for calculating Turnover Rent in *clause 1.3 ("Turnover Rent calculation")*; and
- (b) recalculated in respect of each Turnover Rent Year, within three months of the end of each Audit Period in accordance with *clause 1.5 ("Audited Accounts")*.

1.5 Audited Accounts

Within three months after the end of each Audit Period the Tenant must deliver to the Landlord Audited Accounts audited by the Auditor for each Audit Period which must show the recalculation of the Turnover Rent (as required by *clause 1.4(b) ("Recalculation of Turnover Rent")*) and such other information as the Landlord considers reasonably necessary to determine and verify whether the amount paid by the Tenant on account of Turnover Rent for each such Audit Period is correct.

1.6 Objections

If the Landlord does not present any objection to the Tenant with respect to the Audited Accounts within 20 Business Days of receipt of them, the Audited Accounts are deemed correct and conclusive for all purposes except where:

- (a) such objections relate to or arise from any fraud, deceit, unlawful neglect or intended misstatement on the part of the Tenant; or
- (b) the Audited Accounts are later shown to be incorrect,

in which cases the time for objection shall not be limited.

If the Landlord does present an objection within 20 Business Days which the Tenant disputes, the provisions of *clause 19 ("Dispute Resolution")* shall apply.

1.7 Keeping of proper accounting records

The Tenant must keep proper accounting records for all transactions of the Tenant's business for seven years after the end of the Turnover Rent Year to which they relate.

1.8 Inspection of records

On giving reasonable notice, the Landlord may inspect, copy or audit the records referred to in *clause 1.7 ("Keeping of proper accounting records")*. Within the period stated in the notice, the Tenant must produce them for the Landlord at a place the Landlord specifies acting reasonably. The Landlord agrees not to disclose to any person any confidential information provided by the Tenant pursuant to this Schedule 1 to any person other than as necessary for the purposes of this Schedule 1, unless required by law or a stock exchange or otherwise with the consent of the Tenant.

1.9 Costs of audit

Within 5 Business Days after the Landlord's demand, the Tenant must pay the cost of any audit or inspection made because the Tenant has not given the Audited Accounts on time.

Executed as a deed

Signed for and on behalf of
Western Sydney Parklands Trust
by its Director **Suellen Fitzgerald**
pursuant to Section 8 of the *Western Sydney
Parklands Act 2006* in the presence of:

Signature of witness

Name of witness in full

Signature of **Suellen Fitzgerald**
Director of the **Western Sydney Parklands
Trust**

Executed by **Prospect Aquatic
Investments Pty Limited ABN
94079214127** in accordance with section 127 of
the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

Annexure D - Independent Certifier's Deed

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Deed made at _____ on _____ 2010

Parties Western Sydney Parklands Trust a ("WSPT")

Prospect Aquatic Investments Pty Ltd ABN 94 079 214 127 of Jam
Factory, Level 1, 500 Chapel Street, South Yarra VIC 3141 ("Developer")

[Independent Certifier] ABN [] of [] ("Independent Certifier")

Recitals

- A. The Developer and WSPT have entered, or will enter, into, among other agreements the Agreement for Lease under which the Developer will procure the carrying out of the Works.
- B. The Developer has engaged, or will engage, the Builder to carry out the Works on the terms of the Building Contract.
- C. The Developer has obtained, or will obtain, financial accommodation from the Financier to assist the Developer in satisfying its obligations under the Agreement for Lease.
- D. The parties, other than the Independent Certifier, have financial and other interests in determining when the Works reach Practical Completion as that event will cause the relevant parties to commence the Lease.
- E. By this deed, the Developer appoints the Independent Certifier to, among other things, certify Practical Completion of the Works.
- F. The Independent Certifier accepts its appointment and agrees to perform its functions on the terms of this deed.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

"**Agreement for Lease**" means the Agreement for Lease between WSPT, the Developer and the Guarantor in relation to the Development.

"**Builder**" *[Insert if Builder is different to Developer]*.

"**Certifier Default**" means an event so described in clause 12.1.

"**Financier**" means *[insert]*.

"**Insurances**" means the insurances required to be effected and maintained under clause 11, and "**Insurance**" means each one of the insurances, the details of which are specified in schedule 1 of this deed.

"**Obligations**" means the obligations and duties of the Independent Certifier to the Developer and WSPT under or in connection with this deed.

"**Principal Default**" means an event so described in clause 12.2.

"**Related Entity**" has the meaning ascribed to it in section 9 of the Corporations Act.

"Replacement Certifier" means the successor of the Independent Certifier appointed under clause 12.5 of this deed.

2. Interpretation

Unless the contrary intention appears, a reference in this deed to:

- (a) a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (d) anything (including an amount) is a reference to the whole and each part of it;
- (e) a document (including this deed) includes any variation or replacement of it;
- (f) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (g) Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia;
- (h) a time of day is a reference to Sydney time;
- (i) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (j) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;
- (k) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (l) an exhibit, annexure or schedule is a reference to an exhibit, annexure or schedule to this deed.

2.2 Number

The singular includes the plural and vice versa.

2.3 Headings

Headings (including those in brackets at the beginning of paragraphs) are for convenience only and do not affect the interpretation of this deed.

2.4 Agreement for Lease definitions

A term which has a defined meaning in the Agreement for Lease has the same meaning when used in this deed unless it is expressly defined in this deed, in which case the meaning given to it in this deed will prevail.

3. Appointment of Independent Certifier

3.1 Terms of appointment

- (a) The Developer appoints the Independent Certifier to perform the Obligations.
- (b) The Independent Certifier's appointment commences on the date of this deed and terminates on the date determined pursuant to clause 4.
- (c) Each of WSPT and the Developer confirms and approves the appointment of the Independent Certifier as the independent certifier for the purposes of the Agreement for Lease to do those things provided in this deed.

3.2 Consent

The Independent Certifier accepts its appointment under clause 3.1 and agrees that it will perform the Obligations.

3.3 Receipt of Documents

The Independent Certifier acknowledges:

- (a) receipt of copies of each of the Transaction Documents; and
- (b) confirms that it has read and will be deemed to have informed itself fully of:
 - (i) the requirements of the Transaction Documents;
 - (ii) the nature of the work necessary for the performance of the Obligations;
 - (iii) the accuracy and completeness of description of the Obligations;
 - (iv) the fees payable to it which are to cover completely the Costs of complying with the Obligations; and
 - (v) all matters and things necessary or ancillary to the due and proper performance of the Obligation.

4. Term of appointment

The Developer's and WSPT's rights under this deed to require the Independent Certifier to perform the Obligations remain in effect until the later of:

- (a) the date of the expiry of the Defects Liability Period; or
- (b) the date of issuing the Final Certificate,

in respect of the remaining Works, unless that appointment is terminated at an earlier date in accordance with clause 12.

5. Relationship

5.1 Nature of relationship

- (a) The Independent Certifier is an independent contractor and is not an employee or agent of either WSPT or the Developer.

- (b) The Independent Certifier's employees, contractors, consultants and agents are not the employees, contractors, consultants or agents of any of WSPT or the Developer. The Independent Certifier assumes full responsibility for the acts and omissions of each of its employees and agents.

5.2 Independence

The Developer, WSPT and the Independent Certifier agree that the Independent Certifier will act independently of all parties in connection with the performance of the Obligations.

5.3 Co-operation and assistance

- (a) The Developer and WSPT will co-operate with each other and the Independent Certifier and use their reasonable endeavours (without being obliged to pay money) to assist the Independent Certifier to enable it to satisfy the Obligations.
- (b) Subject to any law or duty of confidentiality and without limiting clause 5.3(a), each WSPT and the Developer will provide to the Independent Certifier any information reasonably necessary to enable the Independent Certifier to satisfy the Obligations and agrees to provide the Independent Certifier with any information within the time required by this deed or any Transaction Documents.
- (c) The Independent Certifier will co-operate with the Developer and WSPT and any agent, consultant, contractor or employee of the Developer and WSPT in relation to the Works and will co-ordinate the performance of the Obligations with the activities being performed by those parties under the Transaction Documents.

5.4 Information provided to Independent Certifier

The Independent Certifier is entitled to rely on information provided to it by the Developer and WSPT as being true and correct in all material respects unless:

- (a) such information is:
 - (i) manifestly incorrect;
 - (ii) provided on a qualified basis; or
 - (iii) actually known or ought to have been known by the Independent Certifier to be untrue or incorrect; or
- (b) either the Developer or WSPT subsequently informs the Independent Certifier of any change to the information provided to it.

5.5 Authority to act

The Independent Certifier has no authority:

- (a) other than expressly provided in this deed, to give directions to the Developer or WSPT or any of their officers, employees, contractors, consultants or agents;
- (b) to waive or alter any terms of the Transaction Documents; or
- (c) to discharge or release a party from any of its obligations pursuant to the Transaction Documents.

5.6 Standard of performance

- (a) In performing the Obligations, the Independent Certifier agrees:
 - (i) to act in good faith, impartially, diligently, reasonably and with a high degree of professional care, knowledge, experience and skill which may be reasonably expected of and in accordance with the standards applicable to a practising firm of project management consultants experienced in the performance of the same or similar services; and
 - (ii) to perform all its Obligations within the specified times provided in the Transaction Documents.
- (b) The Independent Certifier warrants that it has the capability, expertise and experience to perform the Obligations.

5.7 No conflict of interest

The Independent Certifier acknowledges and warrants that:

- (a) it owes a duty of care and professional responsibility to each of the Developer and WSPT in connection with the performance of the Obligations;
- (b) each of the Developer and WSPT are relying on its independence; and
- (c) it has no conflict of interest with respect to the carrying out of the Obligations and that it will not accept any role in relation to the Development other than expressly set out in this deed.

5.8 Reliance

The Independent Certifier acknowledges and agrees that:

- (a) it will perform the Obligations in accordance with this deed for the benefit of WSPT and the Developer and that each WSPT and the Developer will be relying on the performance of the Obligations as if the Independent Certifier were separately performing them for each of WSPT and the Developer directly; and
- (b) the Developer and WSPT are entitled to and will rely on its certification in accordance with the provisions of this deed and for the purposes of the Transaction Documents.

5.9 Certification final and binding

WSPT and the Developer acknowledge and agree that each of:

- (a) the Certificate of Practical Completion;
- (b) the Final Certificate; and
- (c) the determinations, certifications and confirmations referred to in clause 6.1,

given by the Independent Certifier pursuant to this deed and each Transaction Document, in the absence of manifest error of fact or law, is final and binding on the Developer and WSPT under this deed and the Transaction Documents.

6. Obligations of Independent Certifier

6.1 Obligations relating to Practical Completion

- (a) The Developer must give the Independent Certifier and WSPT at least 20 Business Days notice of the date on which the Developer anticipates Practical Completion of the Works will be reached.
- (b) When the Developer is of the opinion that Practical Completion has been reached the Developer must:
 - (i) request the Independent Certifier to issue a Certificate of Practical Completion in relation to the Works; and
 - (ii) at the same time give WSPT a copy of that request.
- (c) Within 10 Business Days of receipt of the Developer's request, the Independent Certifier must give the Developer (with a copy to WSPT at the same time) either:
 - (i) a Certificate of Practical Completion certifying the Date of Practical Completion; or
 - (ii) the reasons for withholding the Certificate of Practical Completion and provide a detailed list of work required to be completed in order for the Certificate of Practical Completion to be issued.
- (d) If the Independent Certifier does not within 104 Business Days after receipt of the Developer's request either issue the Certificate of Practical Completion or give the Developer reasons for not issuing the Certificate of Practical Completion, then either WSPT or the Developer may regard the circumstances as constituting a dispute between WSPT and the Developer for the purposes of clause 32 of the Agreement for Lease.
- (e) On receipt of the detailed list referred to in clause 6.1(c)(ii), the Developer must carry out the work referred to in that list and, on completion of that work, request the Independent Certifier to issue a Certificate of Practical Completion and clauses 6.1(c), 6.1(d) and this clause 6.1(e) will apply, the necessary changes being made.

6.2 Prerequisites for Certificate of Practical Completion

A Certificate of Practical Completion may not issue unless and until:

- (a) the Developer has given WSPT a survey prepared by a licensed surveyor showing that the relevant Works are within the Premises;
- (b) the Independent Certifier has issued a certificate addressed to WSPT stating that the relevant Works have been completed in accordance with the Documentation and otherwise in accordance with the Agreement for Lease;
- (c) all compliance reports have been delivered to the relevant Consent Authority with a copy to WSPT;
- (d) copies of all necessary documents and Approvals issued by the relevant Consent Authority acknowledging completion of the Works, and permitting use and occupation of the Development as contemplated in the Lease (including a Compliance Certificate and an Occupation Certificate) have been delivered to WSPT;

- (e) copies of all other certificates (including any Part 4A Certificate and any Complying Development Certificate), consents and Approvals required of any relevant Authority, whose certificate, consent or approval is required for the erection, use or occupancy of each relevant part of the Works have been delivered to WSPT;
- (f) the Developer's ESD Consultant has certified to the Independent Certifier and WSPT that the WSPT ESD Principles have been incorporated, and reflected, in the Final Plans and Specifications; and
- (g) in respect of the Works (if applicable), copies of the following certificates have been delivered to WSPT:
 - (i) all load test certificates;
 - (ii) engineer's certificates;
 - (iii) full 'as constructed' documentation; and
 - (iv) all applicable builder's warranties.

6.3 Defects Liability and Final Certificate

- (a) As soon as practicable after the Date of Practical Completion the Developer must rectify any defects or omissions in the Works.
- (b) At any time during the Defects Liability Period, WSPT may inspect the Works and if necessary, issue a Defects Notice pursuant to clause 25.3 of the Agreement for Lease.
- (c) The Developer must promptly make good the defect or omission specified in the Defects Notice within the relevant time specified in the Defects Notice.
- (d) The provisions of clause 6.1 apply, the necessary changes being made, to the issue of the Final Certificate as if the reference in those clauses to:
 - (i) the Certificate of Practical Completion was a reference to the Final Certificate; and
 - (ii) the reference to Practical Completion was a reference to Final Completion.

6.4 Other Obligations relating to the Agreement for Lease

In addition to all obligations of the Independent Certifier under this deed, the Independent Certifier must perform all the obligations of the Independent Certifier specified in the Agreement for Lease.

6.5 Independent Certifier's right to enter and inspect

- (a) The Independent Certifier may:
 - (i) after having given the Developer at least 2 Business Days notice (except in the case of an emergency where no notice is required) inspect the Works;
 - (ii) inspect and test materials used in connection with the Works;

- (iii) require the Developer to produce any evidence of tests which may reasonably be required by the Independent Certifier with respect to the Works; and
- (iv) reject any materials or workmanship materially inconsistent with:
 - A. the Final Plans and Specifications (as amended pursuant to this deed); or
 - B. to the standard required under this deed and the Agreement for Lease.

7. Independent Certifier's personnel

7.1 Properly qualified

The Independent Certifier must at all times provide adequately competent, experienced and qualified personnel to perform the Obligations.

7.2 List of personnel

Upon the request at any time by WSPT or the Developer, the Independent Certifier must promptly provide a list of the personnel which it will use or will be using to perform the obligations and detailing the qualifications and experience of each person.

7.3 Removal of personnel

If at any time during the term of this deed, either WSPT or the Developer considers that the conduct of the Independent Certifier's personnel is prejudicial to the interest of the Development or that the Independent Certifier has not engaged personnel who are sufficiently competent, experienced and qualified to perform the Obligations, then either WSPT or the Developer (as applicable) may, after consultation with the Independent Certifier, by written notice to the Independent Certifier require the removal of that person from any involvement in the Development. The Independent Certifier shall within 10 Business Days replace the person named in that notice with the person approved by the WSPT and the Developer.

8. Notifications

The Independent Certifier agrees to promptly notify the WSPT and the Developer if it becomes aware in the course of performing the Obligations:

- (a) that any matter stated or certified by the Builder or certificate provided under any Transaction Document is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which in its reasonable opinion:
 - (i) may materially or adversely affect the Builder's ability to achieve Practical Completion by the Date for Practical Completion;
 - (ii) it considers to be, in the context of the Development, of material interest to WSPT or the Developer;
 - (iii) may involve a material breach of any Transaction Document; or
 - (iv) may involve a material dispute between any party to any Transaction Document or any other person in relation to a Transaction Document or the Development.

9. Fees

9.1 Payment by Developer

The Developer agrees to pay to the Independent Certifier, such fees as separately agreed between the Developer and the Independent Certifier.

9.2 WSPT not to pay

WSPT is not required to pay fees to the Independent Certifier for work carried out under this deed or any Transaction Document.

10. Representations and Warranties

10.1 Representations and warranties

The Independent Certifier represents and warrants that:

- (a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) it has power to enter into this deed and the Transaction Documents to which it is a party and comply with its obligations under each of it;
- (c) this deed and the transactions under it which involve it do not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers (or, to the extent applicable, the powers of its directors) to be exceeded;
- (d) it has in full force and effect the authorisations necessary for it to enter into this deed, to comply with the Obligations and exercise its rights under it, and allow it to be enforced;
- (e) the Obligations are valid and binding and are enforceable against it in accordance with its terms;
- (f) it benefits by entering into this deed;
- (g) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (h) unless stated in this deed, it does not enter into this deed as trustee;
- (i) there is no pending or threatened proceeding affecting it or any of assets before a court, governmental agency, commission or arbitrator except those in which a decision against it would be insignificant;
- (j) it does not have immunity from the jurisdiction of a court or from legal process;
- (k) it has the appropriate qualifications to undertake all of the certification requirements forming part of the Obligations; and
- (l) it and all its representatives, employees, agents, contactors and consultants engaged in the performance of the Obligations possesses, and will continue to possess, the appropriate experience, skill, qualifications and resources which are required to properly perform the Obligation.

11. Insurance

11.1 Own Risk

The Independent Certifier undertakes to carry out the Obligations entirely at its own risk.

11.2 Undertakings

The Independent Certifier undertakes as follows:

- (a) it will obtain and maintain the Insurances;
- (b) it will obtain and maintain such additional insurances, and make such variations to existing Insurances, as may reasonably be requested by the Developer and WSPT, promptly after that request;
- (c) each Insurance policy will comply with the following requirements:
 - (i) the policy must contain provisions which are reasonably standard in the market for insurance of the type covered by the policy;
 - (ii) the insurers must be reputable, and approved by the Developer and WSPT;
 - (iii) the named insured on the policy must be the Developer and WSPT and such other persons as the Developer or WSPT reasonably require; and
 - (iv) the Insurance must at all times cover liability for an amount stated in schedule 1, and
- (d) each insurance policy must contain the following:
 - (i) the insurer must waive its right to set-off or reduce by way of counterclaim, or make any deduction or withholding, in relation to any payment to be made by it under any Insurances;
 - (ii) the insurer must waive its right to claim from the Developer or WSPT any insurance premiums, fees, commissions or the like;
 - (iii) the Insurances must continue unaltered in relation to each named insured, despite any act, omission, breach or misrepresentation by any other named insured or person;
 - (iv) each named insured may pay premiums not paid when due (in satisfaction of the premium due), but only the Independent Certifier has an obligation to do so;
 - (v) each named insured must have rights which are of the same nature and extent as they would have had had a separate policy been individually taken out by that named insured (subject to limits on liability);
 - (vi) the insurer must undertake to promptly notify the Developer and WSPT:
 - A. cancellation of any Insurances; or
 - B. any change whatsoever of a restrictive nature which affects any Insurances; or

- C. any act or omission or any event which might invalidate an Insurance policy or render it unenforceable; or
 - D. any failure to pay an amount on account of premiums when due;
- (vii) the insurer must undertake to notify each named insured of non-receipt of any renewal instructions no later than 5 Business Days prior to the due date for expiry of any Insurance;
 - (viii) despite the occurrence of an event referred to in sub-paragraphs (vi) or (vii) above, the Insurances must continue unaltered for the benefit of the Developer and WSPT for a period of at least of 20 Business Days after notice is given to the Developer and WSPT under either of those sub-paragraphs;
 - (ix) there must be no reduction of limits or coverage without the prior consent of the Developer and WSPT; and
 - (x) the insurer's obligations must be primary obligations, without right of contribution in respect of any other indemnity or insurance cap.
- (e) it will provide the Developer and WSPT with:
 - (i) a true and complete copy of each Insurance policy, promptly after receipt of the policy by or on behalf of the Independent Certifier;
 - (ii) certificates of currency evidencing the maintenance of the Insurances, or a component of the Insurances, promptly after the Insurances (or a component) is or are renewed or extended;
 - (iii) it will give the Developer and WSPT a copy of any notice received by the Independent Certifier from any insurer in respect of Insurances, promptly after receipt; and
 - (iv) such other details in respect of Insurances as the Developer or WSPT may from time to time reasonably request, promptly after the request;
 - (f) it will pay when due all premiums, commissions, stamp duties, charges and other expenses incurred or payable in relation to Insurances, and give evidence of that payment to the Developer and WSPT;
 - (g) it will do all things necessary or desirable to maintain the Insurances in full force;
 - (h) not, without the Developer's and WSPT's consent, vary, cancel or allow to lapse any Insurances;
 - (i) it will do all things reasonably necessary or desirable to permit or facilitate the collection or recovery of any moneys payable by the insurers under Insurances;
 - (j) it will not, without the consent of the Developer and WSPT do (or omit to do) anything which does or might (or the omission of which does or might) adversely affect the nature or extent of the rights of any named insured under Insurances, or extinguish, qualify or limit any obligations of the insurer in respect of any Insurances;
 - (k) it will immediately rectify anything which may have an adverse effect on the Insurances and reinstate any of the Insurances if it lapses;

- (l) it will not, without the consent of the Developer and WSPT, do, or take any steps to, cancel, materially change or reduce the amount of coverage of any Insurances;
- (m) it will not, without the consent of the Developer and WSPT:
 - (i) consent to any reduction in limits or coverage; or
 - (ii) enforce, conduct, settle or compromise any claims,in respect of any Insurances, whether or not any of them cover other property; and
- (n) it will notify the Developer and WSPT immediately when:
 - (i) an event occurs which gives rise or might give rise to a claim under or which could adversely affect any one of the Insurances; or
 - (ii) any one of the Insurances is cancelled.

12. Default

12.1 Certifier Default

- (a) The Independent Certifier must ensure that no Certifier Default occurs.
- (b) Each of the following is a Certifier Default:
 - (i) the Independent Certifier does not comply with or perform any of the Obligations;
 - (ii) the Independent Certifier becomes the subject of an Insolvent Event;
 - (iii) distress is levied or a judgment, order or Encumbrance is in force or becomes enforceable, against any property of the Independent Certifier for amounts totalling more than \$50,000;
 - (iv) a representation or warranty made by or for the Independent Certifier in connection with this deed or a Transaction Document is found to have been incorrect or misleading when made;
 - (v) the Independent Certifier ceases to carry on its business or material part of it; or
 - (vi) a person is appointed under legislation to manage any part of the affairs of the Independent Certifier.

12.2 Principal Default

- (a) The Developer must ensure that no Principal Default occurs.
- (b) A Principal Default occurs when the Developer does not pay on time any amount payable by it under this deed, unless there is a dispute between the Developer and the Independent Certifier regarding the amount or the subject of the amount to be paid.

12.3 Right to terminate

- (a) Subject to clause 12.3(c), if a Certifier Default occurs and the default is not remedied by the Independent Certifier within 10 Business Days of notice of that

default being given by either the Developer or WSPT to the Independent Certifier, the Developer or WSPT may terminate the appointment of the Independent Certifier by giving not less than 10 Business Days' notice in writing to the Independent Certifier and the Developer's and WSPT's obligations under this deed are terminated.

- (b) If a Principal Default occurs and the default is not remedied within 10 Business Days of notice being given by the Independent Certifier to each of WSPT and the Developer, the Independent Certifier may terminate this deed by giving not less than 10 Business Days' notice in writing to each of WSPT and the Developer.
- (c) The Developer or WSPT may, without giving advance notice, terminate this deed by giving notice in writing to the Independent Certifier if an event described in clause 12.1(b)(ii) occurs.
- (d) If the Agreement for Lease is terminated for the default of the Developer, WSPT may elect in writing to the Developer and the Independent Certifier either to terminate this deed or to continue with it (and if it has not made an election within one month of the date of termination of the Agreement for Lease, is taken to have elected to terminate this deed).
- (e) If pursuant to clause 12.3(d) WSPT:
 - (i) elects to terminate this deed, that termination does not disturb any existing rights of the parties arising prior to the date of termination; and
 - (ii) elects to continue with this deed, it does so on the basis that it accepts the obligation to pay the Independent Certifier for work done after the date of the election pursuant to this deed.

12.4 Rights on termination

If the appointment of the Independent Certifier is terminated pursuant to:

- (a) clauses 12.3(a) or 12.3(d), the Independent Certifier will only be entitled to payment from the Developer of all amounts due to it under clause 9, up to and including the date of termination; and
- (b) clause 12.3(b), then the Independent Certifier will also be entitled to receive from the Developer its reasonable Costs arising from that termination.

12.5 Appointment of successor

- (a) The termination of the appointment of the Independent Certifier under clause 12.3 above will not be effective until the successor to the Independent Certifier is appointed by the Developer in accordance with this clause 12.5.
- (b) Prior to any termination of the appointment of the Independent Certifier taking effect under clause 12.3(a), the Developer must appoint a Replacement Certifier as the successor to the Independent Certifier.
- (c) The Replacement Certifier must:
 - (i) be acceptable to the Developer and WSPT (acting reasonably);
 - (ii) enter into a deed with the Developer and WSPT in substantially the same terms and conditions as this deed; and

- (iii) is a person who is able, in the reasonable opinion of the Developer and WSPT, to observe the Obligations under this deed.
- (d) The Developer and WSPT agree to enter into the deed with the Replacement Certifier contemplated under clause 12.5(c)(ii).
- (e) In the event that the Developer and WSPT do not agree on the identify of the Replacement Certifier within 5 Business Days of the decision to terminate the appointment of the Independent Certifier, the Replacement Certifier will be such other certifier nominated by the Developer and approved by WSPT in accordance with the Agreement for Lease.

12.6 Return of records

- (a) Within 10 Business Days of the termination of its appointment, the Independent Certifier must:
 - (i) deliver to either WSPT or the Developer (as applicable) or, at the direction of WSPT or the Developer, to the Replacement Certifier, all copies of Transaction Documents, all books, records, plans, specifications and other documents relating to the Obligations or the Development in the possession or control of the Independent Certifier (with the Independent Certifier being entitled to retain copies but only for insurance purposes); and
 - (ii) use its reasonable endeavours to ensure the representative of the Independent Certifier, its agents and sub contractors deliver such material to either WSPT or the Developer or, at the direction of WSPT or the Developer, to the Replacement Certifier. The Independent Certifier may not exercise any lien against any of the documentation referred to in this clause.
- (b) In the event that its appointment is terminated, the Independent Certifier agrees that it will co-operate with and assist the Replacement Certifier to ensure an effective and smooth transition of its duties and obligations under this deed to the Replacement Certifier.

13. Costs

13.1 What the Independent Certifier agrees to pay

The Independent Certifier agrees to pay or reimburse the Developer and WSPT on demand for their Costs in making, enforcing and doing anything in connection with this deed, including legal Costs in accordance with any written agreement as to legal Costs or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor or own client basis.

13.2 Payment for WSPT's and the Developer's costs

WSPT and the Developer each agree to pay for anything that it agrees to do under this deed.

14. Dealing with interests

Each of the Developer and WSPT may assign or otherwise deal with its rights under this deed in any way it considers appropriate. If the Developer or WSPT do this, the Independent Certifier may not claim against any assignee (or any other person who has an interest in this deed) any right of set-off or other rights the Independent Certifier has against the Developer or

WSPT.

15. No assignment by Independent Certifier

Without the prior written consent of the Developer and WSPT, the Independent Certifier may not:

- (a) assign, deal with or part with possession of any interest in this deed or rights or benefits in connection with this deed; or
- (b) create or allow to come into existence any Encumbrance which affects the interests of the Independent Certifier under this deed.

16. Notices

16.1 Form

Unless expressly stated otherwise in the Transaction Document, all notices, certificates, consents, approvals, waivers and other communications in connection with a Transaction Document must be in writing, signed by an Authorised Officer of the sender and marked for attention as set out below or, if the recipient has notified otherwise, then marked for attention in the way last notified:

WSPT

Name: Western Sydney Parklands Trust
Address: Level 4, 10 Valentine Avenue, Parramatta NSW 2150
Telephone No: (02) 9895 7500
Facsimile No: (02) 9895 7580
Attention: Suellen Fitzgerald

Developer

Name: Prospect Aquatic Investments Pty Ltd
Address: Jam Factory, Level 1, 500 Chapel Street, South Yarra VIC 3141
Facsimile No: (03) 9660 1763
Attention: Simon Phillipson - General Counsel
Facsimile No: (03) 9660 1764
Attention: Phil Leggo - Company Secretary

and:

Name: Herbert Geer
Address: Level 20, 385 Bourke Street, Melbourne VIC 3000
Facsimile No: (03) 9670 5670
Attention: Steven Smith

Independent Certifier

Name:

Address:

Telephone No:

Facsimile No:

Attention:

16.2 Delivery

Notices must be:

- (a) left at the addresses referred to in clause 16.1; or
- (b) sent by prepaid post (airmail, if appropriate) to the addresses referred to in clause 16.1; or
- (c) sent by fax to the fax number referred to in clause 16.1.

However, if the intended recipient has notified a changed postal address or changed fax number, then the communication must be to that address or number.

16.3 When effective

Notices take effect from the time they are received unless a later time is specified in them.

16.4 Receipt - postal

If sent by post, notices are taken to be received 3 Business Days after posting (or 5 Business Days after posting if sent to or from a place outside Australia).

16.5 Receipt - fax

If notices are sent by fax, they are taken to be received at the time shown in the transmission report as the time that the whole fax was sent.

16.6 Waiver of notice period

WSPT may waive a period of notice required to be given by the Developer under this deed.

17. General

17.1 Prompt performance

If this deed specifies when the Independent Certifier agrees to perform an obligation, the Independent Certifier agrees to perform it by the time specified. The Independent Certifier agrees to perform all other obligations promptly.

17.2 Consents

The Independent Certifier agrees to comply with all conditions in any consent the Developer or WSPT give in connection with this deed.

17.3 Certificates

The Developer or WSPT may give the Independent Certifier a certificate about an amount payable or other matter in connection with this deed. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

17.4 Set-off

The Developer or WSPT may set off any amount due for payment by the Developer or WSPT to the Independent Certifier against any amount due for payment by the Independent Certifier to the Developer or WSPT under this deed.

17.5 Discretion in exercising rights

The Developer and WSPT may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

17.6 Partial exercising of rights

If the Developer or WSPT do not exercise a right or remedy fully or at a given time, the Developer or WSPT may still exercise it later.

17.7 No liability for loss

The Developer and WSPT are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except to the extent of any negligence or fraud by either the Developer or WSPT.

17.8 Conflict of interest

The Developer's and WSPT's rights and remedies under this deed may be exercised even if this involves a conflict of duty or the Developer and WSPT have a personal interest in their exercise.

17.9 Remedies cumulative

The Developer's and WSPT's rights and remedies under this deed are in addition to other rights and remedies given by law independently of this deed.

17.10 Other Encumbrances or judgments

- (a) This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:
 - (i) any Encumbrance or other right or remedy to which the Developer or WSPT are entitled; or
 - (ii) a judgment which the Developer or WSPT obtain against the Independent Certifier in connection with this deed.
- (b) Notwithstanding clause 17.10(a), the Developer or WSPT may still exercise their rights under this deed as well as under the judgment, the Encumbrance or the right or remedy.

17.11 Inconsistent law

To the extent permitted by any law, this deed prevails to the extent it is inconsistent with any law.

17.12 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Independent Certifier in connection with this deed with the result that the Developer's or WSPT's rights, powers or remedies are adversely affected (including by way of delay or postponement) are excluded except to the extent that its exclusion is prohibited or rendered ineffective by law.

17.13 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

17.14 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available except:

- (a) in connection with any person exercising rights or dealing with rights or obligations under this deed (including in connection with preparatory steps such as negotiating with any potential assignee of the Developer's or WSPT's rights or other person who is considering contracting with the Developer and WSPT in connection with this deed);
- (b) to officers, employees, legal and other advisers and auditors of the Developer and WSPT or the Independent Certifier or its officers, employees, legal and other advisors and auditors;
- (c) to any party to this deed or any Related Entity of any party to this deed, provided the recipient agrees to act consistently with this clause;
- (d) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (e) as required by any law or any Transaction Document.

Each party consents to disclosures made in accordance with this clause.

17.15 Further steps

The Independent Certifier agrees to do anything the Developer or WSPT ask (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to bind the Independent Certifier and any other person intended to be bound under this deed; or
- (b) to show whether the Independent Certifier is complying with this deed.

17.16 Each signatory bound

This deed binds each person who signs as a party described in this deed even if another person who was intended to sign does not sign it or is not bound by it.

17.17 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to this deed. If so, the signed copies are treated as making up the one document.

17.18 Inconsistency

To the extent that there is any inconsistency between the terms of this deed and the terms of the Agreement for Lease, the terms of the Agreement for Lease will prevail.

17.19 Applicable Law

This deed is governed by the Law in force in New South Wales. The Independent Certifier, the Developer and WSPT submit to the non-exclusive jurisdiction of the courts of New South Wales.

18. GST

18.1 Definitions and interpretation

In this clause 18:

"**Agreed Price**" means the amount the Recipient is required to pay under any provision of this deed (except this clause 18) for a supply or so far as the consideration for the supply is not expressed as an amount of money, the GST exclusive market value of that consideration;

"**Recipient**" means a party who provides or is liable to provide consideration under this deed for a supply; and

"**Supplier**" means a party who makes a supply whether as agent or otherwise, and unless the context indicates a contrary intention:

- (a) a reference to a supply is a supply under this deed; and
- (b) words and phrases used that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

18.2 Payment

Despite the other provisions of this deed, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) the Agreed Price for that supply is exclusive of GST;
- (b) the Recipient must pay an additional amount for GST, as reasonably calculated by the Supplier, at the same time and in the same way as the Recipient must pay the Agreed Price; and
- (c) the Supplier must issue a tax invoice to the Recipient in respect of that supply within 10 Business Days after the Supplier receives a payment in respect of that supply.

18.3 Reimbursements

Subject to clause 18.2, if the Recipient must reimburse the Supplier for any amount paid by the Supplier to a third person, the Recipient must reimburse the Supplier that amount less the amount of any input tax credits the Supplier is entitled to in respect of any acquisition to which

that amount relates.

18.4 Variation

If the amount the Supplier recovers from the Recipient on account of GST on a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier must credit the Recipient with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note within 10 Business Days after the date of the adjustment event.

18.5 Penalties

If the Recipient does not comply with its obligations under this deed or with its obligations under the GST law in connection with this deed and because of this the Supplier becomes subject to penalties or interest for late payment of GST, then the Recipient must pay the Supplier on demand an amount equal to the amount of the penalties and interest.

Schedule 1

Insurances (clause 11)

1. Third Party Legal Liability

Coverage: The legal liabilities of the Independent Certifier, the Developer and WSPT and their employees and agents to third parties for bodily injury and property damage and resulting loss of use arising from the or in connection with the Independent Certifier's Obligations under this deed and as other obligations under the Transaction Documents.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of this deed until the issue of the Final Certificate.

Limit: A minimum of \$50,000,000 for any one occurrence, (unlimited in any period of insurance) arising out of or in the course of or caused by the execution of the Works.

2. Professional Indemnity

Coverage: The professional activities and duties of the Independent Certifier and its employees and agents in respect of its Obligations.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of this deed until 6 years from the issue of the Final Certificate.

Limit: A minimum of \$20,000,000 for any one occurrence and in the aggregate subject to an automatic reinstatement.

3. Workers' Compensation Insurance

Coverage: A suitable policy against any liability, loss, claim, demand, suit or proceeding, Costs and expenses arising at common law or under any statute (including the *Workers Compensation Act 1987* (NSW)) or other legislative provision relating to workers compensation, as a result of personal injury or death of any person employed or taken to be employed by the Independent Certifier.

Insurance Term: From the date of this deed until the issue of the Final Certificate.

4. Other Insurances

Such other insurances as may be reasonably required by both of the Developer and WSPT from time to time which are obtainable with a reasonable premium (having regard to the nature of the risk to be insured against).

Insurance Term: From the date of this deed until the issue of the Final Certificate.

Executed as a deed.

Signed for and on behalf of
Western Sydney Parklands Trust
by its Director **Suellen Fitzgerald** pursuant to
Section 8 of the *Western Sydney Parklands
Act 2006* in the presence of:

Signature of witness

Name of witness in full

Signature of Suellen Fitzgerald
Director of the **Western Sydney Parklands
Trust**

Executed by **Prospect Aquatic
Investments Pty Limited ABN
94079214127** in accordance with section 127 of
the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

[Insert execution clause for Independent Certifier]

Annexure E - Deed of Appointment

Deed of Appointment of Principal Contractor

Western Sydney Parklands Trust

Owner

Prospect Aquatic Investments Pty Ltd

Developer

[Insert name of Contractor]

Contractor

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Deed of Appointment of Principal Contractor made at _____ on _____

Parties **Western Sydney Parklands Trust** a statutory body constituted under *Western Sydney Parklands Act 2006 (No 92)* (NSW) of Level 4, 10 Valentine Avenue, Parramatta NSW 2150 (**Owner**)

Prospect Aquatic Investments Pty Ltd ABN 94 079 214 127 of Jam Factory, Level 1, 500 Chapel Street, South Yarra VIC 3141 (**Developer**)

[Insert name of Contractor ABN _____] [insert address] (Contractor)

Recitals

- A. The Developer has entered into the Agreement for Lease with the Owner in respect of the Land.
- B. Under the Contract the Contractor is required to, amongst other things, carry out the Contract Works on the Land and is appointed as principal contractor in respect of any work carried out by or on behalf of the Developer during the term of that appointment.
- C. Under the Agreement for Lease, the Owner authorises the Developer to appoint the Contractor as principal contractor subject to the Contractor entering into this deed of appointment with the Owner.

This deed provides

1. Definitions and interpretation

1.1 Definitions

In this deed:

Agreement for Lease means the agreement for lease between the Owner and the Developer dated *[insert date]*.

Construction Work means any part of the Contract Works which is to be done on the Land that is 'construction work' as defined by clause 3(1) of the OH&S Regulation and also includes any alteration, renovation, repair or maintenance work on the Land where:

- (a) the cost of the work exceeds \$250,000; and/or
- (b) the work, or any component of the work falls within the definition of 'high risk construction work' as defined by clause 209 of the OH&S Regulation; and/or
- (c) the work, or any component of the work, involves demolition work or asbestos removal work for which a licence is required under the OH&S Regulation.

Contract means the contract entitled *[insert name of contract]* dated *[insert]* between the Developer and the Contractor.

Contract Works means the work carried out by the Contractor under the Contract.

Hazardous Substances has the meaning assigned to it under the OH&S Regulation.

Land means the land contained in folio identifier 1/1045771.

OHS Induction Training has the meaning assigned to it in Part 8.2 of the OH&S Regulation.

OH&S Plan means the site specific occupation health and safety management plan:

- (a) prepared by the Developer pursuant to clause 18 of the Agreement for Lease in relation to the Works as required by Part 8.3 of the OH&S Regulation; and
- (b) for which the Developer has warranted to the Owner under clause 18.3 of the Agreement for Lease that compliance with the OH&S Plan will enable the Developer to discharge its obligations as a principal contractor under Chapter 8 of the OH&S Regulation.

OH&S Regulation means the Occupational Health and Safety Regulations 2001.

Safe Work Method Statement means that statement prepared in accordance with clause 3.4 of this deed and has the meaning assigned to it in Part 8.3 of the OH&S Regulation.

Works means the Works to be carried out by the Developer pursuant to the Agreement for Lease.

1.2 Interpretation

In this deed:

- (a) headings are for convenience only and do not affect interpretation;

and the following rules apply in interpreting this deed unless the context makes clear that a rule is not intended to apply:

- (b) an obligation or a liability assumed by, or a right conferred on, 2 or more persons binds or benefits them jointly and severally;
- (c) "**person**" includes an individual, the estate of an individual, a corporation, an authority, an association or a joint venture (whether incorporated or unincorporated), a partnership and a trust;
- (d) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of novation;
- (e) a reference to a document (including this deed) is to that document as varied, novated, ratified or replaced from time to time;
- (f) a reference to a statute includes its delegated legislation and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (g) a word importing the singular includes the plural (and vice versa), and a word indicating a gender includes every other gender;
- (h) a reference to a party, clause, schedule, exhibit, attachment or annexure is a reference to a party, clause, schedule, exhibit, attachment or annexure to or of this deed, and a reference to this deed includes all schedules, exhibits, attachments and annexures to it;
- (i) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (j) "**includes**" in any form is not a word of limitation; and
- (k) a reference to "\$" or "**dollar**" is to Australian currency.

2. Principal contractor

2.1 Definitions

In this clause 2 "owner" and "principal contractor" have the same meanings as in the OH&S Regulation.

2.2 Appointment as principal contractor

- (a) The parties acknowledge and agree that under the Agreement for Lease, the Owner has authorised the Developer to make arrangements for the appointment of a principal contractor for the Works or any part of the Works, as the case may be, \ to exercise any authority of the Owner that is necessary for the principal contractor to discharge the responsibilities imposed on a principal contractor by Chapter 8 of the OH&S Regulation if:
- (i) the Owner is satisfied (acting reasonably) that any arrangements made by the Developer for the appointment of a principal contractor will satisfy the provisions of the OH&S Regulation in relation to the discharge of responsibilities imposed on a principal contractor under Chapter 8 of the OH&S Regulation;
 - (ii) the principal contractor enters into a deed of appointment, before the Works are commenced, between the Owner and the principal contractor in the form reasonably required by the Owner; and
 - (iii) the Developer procures that the principal contractor complies with the obligations of the Developer in clause 18 of the Agreement for Lease as if that principal contractor was a party to the Agreement for Lease.
- (b) For the purposes of Chapter 8 of the OH&S Regulation, and subject to this deed, the Owner:
- (i) appoints the Contractor as principal contractor for the Contract Works; and
 - (ii) authorises the Contractor to exercise such authority of the Owner that is necessary to enable the Contractor to discharge the responsibilities imposed on a principal contractor by Chapter 8 of the OH&S Regulation.
- (c) The appointment applies for the period during which the Contractor is specified as being in control of the Land, or a part of the Land (as the case may be), under the Contract.
- (d) The Contractor acknowledges that the Contractor:
- (i) is responsible for the Contract Work at all times from the time it begins until the time it is completed; and
 - (ii) must ensure that the Contract Work is carried out in accordance with the OH&S Regulation and the OH&S Act.

2.3 Release and Indemnity

- (a) The Contractor acknowledges and agrees that the Developer and Owner will not be liable to the Contractor for any costs, losses or damages suffered by it arising out of or in connection with the appointment of it as principal contractor or the performance by it of its functions as principal contractor.

- (b) The Contractor must indemnify the Developer and Owner against any damage, expense, loss or liability suffered or incurred by the Developer and Owner arising out of or in connection with the Contractor's failure to exercise or fulfil the functions and responsibilities under the OH&S Regulation and this deed.

3. Obligations of the Contractor

3.1 Signs

The Contractor must ensure that signs, clearly visible from outside the site and on which the name and contact telephone numbers (including an after hours emergency telephone number) of the Contractor are stated, are placed on each site (if there is more than one) where the Construction Work is being performed.

3.2 OHS induction training

The Contractor must comply with any and all requirements of the principal contractor under Part 8.2 of the OH&S Regulation in relation to OHS Induction Training.

3.3 OHS Management Plan

- (a) The Contractor must :
 - (i) comply with any and all requirements of the principal contractor under the OH&S Plan (as varied or updated from time to time);
 - (ii) maintain the OH&S Plan in accordance with Part 8.3 and more specifically clause 226 of the OH&S Regulation;
 - (iii) promptly provide any updated OH&S Plan to the Owner and the Developer;
 - (iv) comply with the NSW Government "Occupational Health and Safety Management Systems Guidelines";
 - (v) comply with all statutory obligations of the Contractor; and
 - (vi) take all measures necessary to protect people and property on or adjacent to the Land and the Construction Works.
- (b) If it is not feasible to do the Construction Works in accordance with the OH&S Plan, the Contractor must:
 - (i) use such occupational health and safety plans and systems as may be necessary to discharge its obligations as a principal contractor under Chapter 8 of the OH&S Regulation; and
 - (ii) design and implement any such plans and systems in conformity with the general duties imposed on persons under Division 1 of Part 2 of the OH&S Act.
- (c) The Contractor must ensure that all persons for whom it is responsible or over whom it is capable for exercising control while doing the Construction Works comply with, the OH&S Plan and all statutory obligations of the Contractor.

3.4 Safe Work Method Statement

The Contractor must comply with any and all requirements of the principal contractor under Part 8.3 and more specifically under clause 227 of the OH&S Regulation in relation to a Safe Work Method Statement.

3.5 Hazardous substances

The Contractor must comply with any and all requirements of the principal contractor under Part 8.3 and more specifically under clause 228 of the OH&S Regulation in relation to Hazardous Substances.

3.6 Subcontractors

Where the relevant parts of the OH&S Regulation applicable under this clause 3 refers to a 'subcontractor', such a reference will include any contractors carrying out work in relation to the Construction Work.

3.7 Other obligations relating to the Agreement for Lease

In addition to all obligations of the Contractor as principal contractor under this deed, the Contractor must perform all the obligations of the principal contractor specified in the Agreement for Lease.

4. Contract not affected

Nothing in this deed limits or affects the Contractor's obligations or the rights of the Developer under the Contract.

5. Payment

The Owner and the Contractor acknowledge that the Contractor will not be entitled to make any claim for payment to the Owner, and the Owner will not be obliged to make any payment to the Contractor under this deed in relation to the performance of principal contractor activities.

6. Breach and rectification

6.1 Rectification of breach

- (a) If the Contractor commits a breach of this deed, the Owner may (without limiting the Owner's rights as regards the Contractor under this deed or at law) give written notice to the Developer specifying the breach.
- (b) If the Owner gives a notice to the Developer under clause 6.1(a), the Developer must use its best endeavours to ensure that the Contractor rectifies a breach within a reasonable period of time.

6.2 Notice

The Contractor and the Developer must each notify the Owner promptly upon becoming aware of a breach of the terms of this deed by the Contractor.

6.3 Owner may carry out obligations

- (a) If the Contractor fails to comply with an obligation under this deed and fails to rectify that breach within a reasonable period of time pursuant to clause 6.1(b), the

Owner may perform, or have performed, the obligation on the Contractor's behalf and recover the costs and expenses incurred as a debt.

- (b) If and to the extent that the Owner (acting reasonably) considers it necessary to undertake any activity, give any direction or otherwise perform any of the works or services pursuant to clause 6.3(a) for which the Contractor is responsible under this deed, the parties acknowledge and agree that in doing so, the Owner is not acting as a principal contractor, nor is the Owner to be taken, for any purpose, to be the principal contractor. In these circumstances, the Contractor indemnifies the Owner against any loss, expense or damage of any nature, including financial loss and lawyers' fees and expenses on an indemnity basis, suffered or incurred by the Owner arising out of the performance or authorisation of the performance of any of the works or services referred to in this clause 6.3.

7. Assignment and subcontracting

7.1 Assignment

The Contractor will not assign any part of this deed or any interests, rights and obligations under this deed.

7.2 Subcontracting

- (a) The Contractor will not subcontract all of its obligations under this deed, but may, subject to the terms of the Contract, subcontract part of its obligations under this deed.
- (b) The Contractor must procure that any subcontractor complies with any and all requirements of a subcontractor under Part 8.3 and more specifically clause 229 of the OH&S Regulation in relation to responsibilities of subcontractors.
- (c) The Contractor will be liable for all acts and omissions of any subcontractors and employees and agents of subcontractors as if there were acts or omissions of the Contractor.

8. General

8.1 Notices

Each communication (including each notice, consent, approval, request and demand) under or in connection with this deed:

- (a) must be in writing;
- (b) must be addressed as follows (or as otherwise notified by that party to each other party from time to time:

Owner

Name: Western Sydney Parklands Trust

Address: Level 4, 10 Valentine Avenue, Parramatta NSW 2150

Fax: (02) 9895 7580

For the attention of: Suellen Fitzgerald

Developer

Name: Prospect Aquatic Investments Pty Ltd
Address: Jam Factory, Level 1, 500 Chapel Street, South Yarra
VIC 3141
Facsimile No: (03) 9660 1763
Attention: Simon Phillipson - General Counsel
Facsimile No: (03) 9660 1764
Attention: Phil Leggo - Company Secretary
and:
Name: Herbert Geer
Address: Level 20, 385 Bourke Street, Melbourne VIC 3000
Facsimile No: (03) 9670 5670
Attention: Steven Smith

[Insert name of Contractor]

Name: *[insert]*
Address: *[insert]*
Fax: *[insert]*
For the attention of: *[insert]*

- (c) must be signed by the party making it or (on that party's behalf) by the solicitor for, or any attorney, director, secretary or authorised agent of, that party;
- (d) must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, in accordance with clause 8.1(b); and
- (e) is taken to be received by the addressee:
 - (i) (in the case of prepaid post sent to an address in the same country) on the third day after the date of posting;
 - (ii) (in the case of prepaid post sent to an address in another country) on the fifth day after the date of posting by airmail;
 - (iii) (in the case of fax) at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the fax machine from which it was sent; and
 - (iv) (in the case of delivery by hand) on delivery,

but if the communication is taken to be received on a day that is not a working day or after 5.00 pm, it is taken to be received at 9.00 am on the next working day ("working day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

8.2 Governing law

This deed is governed by and must be construed according to the law applying in New South Wales.

8.3 Jurisdiction

Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts of New South Wales, and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this deed; and
- (b) waives any objection it may now or in the future have to the venue of any proceedings, and any claim it may now or in the future have that any proceedings have been brought in an inconvenient forum, if that venue falls within clause 8.3(a).

8.4 Owner as a statutory authority

The parties acknowledge and agree that nothing in this agreement will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of the Owner to exercise any of its functions and powers pursuant to any legislation.

8.5 Amendments

This deed may only be varied by a deed executed by or on behalf of each party.

8.6 Cost of performing obligations

Each party must perform its obligations under this deed at its own cost, unless expressly provided otherwise.

8.7 Further acts and documents

Each party must promptly do all further acts and execute and deliver all further documents (in form and content reasonably satisfactory to that party) required by law or reasonably requested by another party to give effect to this deed.

8.8 Consents

A consent required under this deed from a party may be given or withheld, or may be given subject to any conditions, as that party (in its absolute discretion) thinks fit, unless this deed expressly provides otherwise.

8.9 Replacement Body

Where a reference is made to any body or authority which ceases to exist (**Former Body**), that reference will be to that body or authority (**Replacement Body**) which then serves substantially the same functions as the Former Body. Any reference to any senior officer of the Former Body will be to the equivalent senior officer of the Replacement Body.

8.10 Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

8.11 Expenses

Except as otherwise provided in this deed, each party must pay its own costs and expenses in connection with negotiating, preparing, executing and performing this deed.

8.12 Indemnities

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

8.13 GST

- (a) A party must pay GST on a taxable supply made to it under this document, in addition to any consideration (excluding GST) that is payable for that taxable supply. The party making the taxable supply must provide a valid tax invoice to the other party at or before the time that the other party is required to pay the GST.
- (b) Terms used in this clause 8.13 have the meaning given to them in the A New Tax System (Goods and Services Tax) Act 1999.

Executed as a deed.

Signed for and behalf of
Western Sydney Parklands Trust
by its Director **Suellen Fitzgerald** pursuant to
Section 8 of the *Western Sydney Parklands*
Act 2006 in the presence of:

Signature of witness

Name of witness in full

Executed by **Prospect Aquatic Investments**
Pty Ltd by or in the presence of:

Signature of Director

Name of Director in full

Executed by [**Contractor**] by or in the presence
of:

Signature of Director

Name of Director in full

Signature of Suellen Fitzgerald
Director of the **Western Sydney Parklands**
Trust

Signature of Secretary/other Director

Name of Secretary/other Director in full

Signature of Secretary/other Director

Name of Secretary/other Director in full

Annexure F - Development Program

No.	Major Milestone (see the definition of Major Milestone)	Required Date (the date by which the relevant item is required to be achieved)
1	Lodge Project Application with WSPT	The date which is 2 months after the Commencement Date
2	Lodge Project Application with the Department of Planning	The date which is 10 Business Days after the date WSPT consents to the Project Application
3	Department of Planning to issue environmental assessment requirements (commonly known as Director-General's requirements) following lodgement by the Developer of preliminary environmental assessment under part 3A of the EP&A Act for the Developer's Project Application	Assumed to be 2 months after lodgement by the Developer of preliminary environmental assessment under part 3A of the EP&A Act for the Developer's Project Application at the Department of Planning.
4	Lodge environmental assessment report (based on the Director-General's requirements) for the Project Application to WSPT in a complete form for WSPT's consideration	The date which is 6 months after the Director-General's requirements are received
5	Lodge environmental assessment and revised environmental assessment with the Department of Planning	No later than 10 Business Days after WSPT consents
6	Notice of determination of the Project Approval is issued	Assumed to be 9 months from lodgement of environmental assessment with WSPT for consideration.
7	Project Proceed Date	The later of: (a) 31 October 2012; and (b) 15 months after the Notice of Determination of the Project Application is issued
8	Date for Substantial Commencement	See definition of Date for Substantial Commencement
9	Date for Practical Completion	See definition of Date for Practical Completion
10	Last Date for Practical Completion	See definition of Last Date for Practical Completion

Annexure G - Disclosure Materials

1. Western Sydney Parklands Management Vision DIPNR, dated November 2004.
2. Title search and Deposited Plan for the Land.
3. Western Sydney Regional Parklands - Sydney Regional Environmental Plan No 31 and draft current amendments in relation to identifying the Land as one where structured recreation facilities are permitted.
4. Review of the Remnant Native Vegetation for the Land, Ian Perkins Consulting, dated May 2002.
5. Letter from the Heritage Council to DIPNR asking that a number of issues be addressed relating to the overall heritage significance of the Land.
6. Prospect Heritage Study - Draft Final Report, Terry Kass with Jackson-Stepowski and Robertson & Hindmarsh, dated December 2005 Draft Lot 1 Deposited Plan 1045771.
7. Prospect Heritage Management Plan DIPNR, dated July 2005.

Annexure H - Design Principles

Summary

Sydney, Australia's premier city, home to over 4 million residents and visited by more domestic and international tourists than any other State or Territory in Australia, does not have either a water park or a theme park for the residents and tourists to enjoy.

PAI plans to create a world class water park and entertainment destination in Western Sydney which will be known as Wet'n'Wild SYDNEY. This water "theme" park, utilizing the world's premier water park brand – Wet'n'Wild will provide Sydney with a brand new quality destination for leisure, tourism and entertainment over the years ahead, providing the residents of western Sydney with a beach destination they can call their own.

Wet'n'Wild SYDNEY will enhance the lifestyle of the local community – Greater Western Sydney, bringing the attractions of the coast and much more to their doorstep.

The proposed site provides a blank canvas. A 25.1 hectare parcel of land situated within close proximity to the geographical heart of Sydney and only a 40 minute drive to the Sydney Central Business District. This site is perfect for the intended water park use as it:

- immediately fronts the M4 motorway and is within a short distance to the M7 motorway;
- provides easy access to all residents throughout metropolitan Sydney and beyond; and
- is geographically shaped with a natural "amphitheatre", set to provide guests with a unique water park experience.

This prime site provides the foundation on which a major tourism and recreation precinct can evolve.

Why a Water Park

The genesis of water parks are about good, healthy, exhilarating outdoor fun and entertainment for the young and old alike. Water parks are the theme parks of the 21st century enticing all groups including:

- Families;
- Children;
- Teenagers; and
- Tourists alike,

with high repeat visitation year in year out.

Wet'n'Wild SYDNEY will deliver to the people of Sydney a water park that is set to make its mark as an iconic piece of social infrastructure across the Sydney landscape.

Wet'n'Wild SYDNEY will be 'where the boys are, where the girls are', providing the youth of Sydney with a single venue for all their thrills, fun and entertainment in a secure environment.

For the young, it will become a 'cool' place to be seen, providing all the action and entertainment, aquatic and otherwise, they could imagine - plus more - and for parents it will become an exciting, entertaining environment where they can relax and unwind in the peace of mind of a safe environment for the whole family. The business and corporate market will also be keen with the park being an unrivalled environment for staff parties, picnic days and other special event functions.

The Vision for Wet'n'Wild SYDNEY

- Provision of world class and state of art amenities and facilities set amongst striking architecture, landscaping and foliage.
- Designed to appeal to all markets – children, teens, families and wider domestic and international tourists.
- The very latest water rides and attractions – selected to cater for all tastes.
- Separate themed areas for families, kids and teenagers, ensuing a quality experience for all guests.
- Other complementary outdoor areas and activities such as, beach volley ball, beach cricket, beach soccer, music zones - including ability to hold live performances, major events, exhibits, rollerblading and skating, dive-in movies, family picnic areas, general recreational space, etc.
- Retain the existing "Policeman's Cottage" in the south western corner of the Premises;
- Planned to trade eight months of the year (September to April), taking advantage of Sydney's hot summer months and daylight saving and providing heated water to all rides and pools in the cooler shoulder months. Other complementary attractions and creative programming will be used to promote the site as a destination which may result in expansion of the trading window.
- High quality hospitality and in park retail offerings with quality facilities for the corporate and events sectors.
- Other complementary attractions including indoor water park elements which may be added over time.
- Develop the site over two stages:
 - Stage 1 would comprise the initial construction of Wet'n'Wild SYDNEY.
 - Stage 2 would be an ongoing process of adding new rides and attractions over time, thereby ensuring there is always something new and different on offer as well as further expanding the park capacity over time.
- A wide range of buildings, facilities and support infrastructure will provide guests a truly enjoyable experience at Wet'n'Wild SYDNEY.

CURRENT CONCEPT DESIGN

An initial generic concept for Wet'n'Wild SYDNEY has been created. This concept development has been established to prove up the attendance capacity and capital budget estimates.

As outlined in table 1, this concept, while only preliminary, includes the latest rides and attractions and provides the capacity to deliver on the Wet'n'Wild promise.

It must be emphasised that this concept is only a starting point for indicative purposes and is subject to change.

Upon execution of this Agreement for Lease, a detailed site specific concept and attraction plan will be developed.

A summary of the preliminary proposed rides and attractions is as follows and is separated into three broad categories/themes:

- Children;
- Families; and
- Teenagers.

Table 1 – Attraction/Rides Comparison

	Wet'n'Wild SYDNEY	
	Stage 1	Stage 2
Children		
Attractions		
Toddler Pool Area	✓	
Interactive Waterplay Zone	✓	
Family		
Attractions		
Wave pool	✓	
Lazy River	✓	
Dive in Movies	✓	
Rides		
Body & Raft Flume Waterslides	✓	
Rocket Coaster		✓
8 Lane Racer	✓	
Mammoth Slides	✓	
Speed Slides		✓
Boomerango	✓	
Teenagers		
Rides		
Double Cannon Bowl Slide	✓	
Tornado Ride	✓	
Plummet Slides		✓
Super Bowl		✓
Other Attractions		
Live'n Local - Music	✓	
Beach Sports - Volleyball, Cricket, Soccer	✓	
Large Picnic Area	✓	
Major Events/Exhibits	✓	

Children

Children will be well catered for with a wide variety of attractions that have proven to be popular at Wet'n'Wild Waterworld and other water parks around the world.

The children's area will be located within a themed area that will include:

- Toddlers Pool Area – the toddler’s pool area will include a wide variety of water play attractions designed specifically for ages 1-9 years. Attractions may include soft-play animal **structures**, mushroom fountains, spray structures and large themed interactive soft play features such as Pirate Ships, Submarines and the like.
- Interactive Waterplay Zone – the interactive waterplay area will be located within close proximity to the toddlers pool area and may include a themed tower structure with interactive water wheels, water cannons, sprays, geysers and other water attractions.

Families

Water parks offer all the natural attractions of the beach and Wet’n’Wild SYDNEY will soon become *the beach for the families of Greater Western Sydney*, bringing the pleasures and lifestyle of Sydney’s coastline to the people of western Sydney.

A large number of rides and attractions capable of entertaining the entire family at once will be provided for and include:

- Wave Pool – will form the signature attraction of the park.

The wave pool will also cater for “dive in” movies. Children, teenagers and adults will be able to float around or laze adjacent to the wave pool whilst watching movies on a big screen above the wave pool.
- Lazy River - a lazy river will weave throughout the water park and act as water transport around the water park. This attraction has multiple “rides within a ride” which include various themed sections including rapids, waves, caves and diversions. It is ridden on a tube and can cater for the entire family.
- A combination of family and thrill style water slides including:
 - The mammoth slides - The Mammoth River Ride features 4.5 meter wide troughs winding over more than 200 meters of white water rapids and can be ridden in giant four to six person tubes. The wide flume profile and frequent back to back curves creates an exciting oscillating ride experience with “hang time” on the high bank walls.
 - The boomerang - A spectacular interactive family water adventure on board a six passenger raft with theming and crown participation.
 - Eight lane racers - Plunge head first down the 8 lane, 86 meter long Super 8 Aqua Racer reaching speeds of up to 40 kilometres per hour. Custom drag lights and timing technology make the Super 8 Aqua Racer one of the most advanced racing slides in the world!
 - A variety of body and raft flume waterslides will be included with something to please everyone. Speed fanatics will be able to speeding through twists and turns, guiding their way towards the final splashdown into pools below.

Teenagers

A number of rides listed within the “family entertainment” category above cater to the teenage market as teenagers can use many of the attractions with their friends. However, teenagers will be especially rewarded with two ‘jaw dropping’ water slide rides including the famous double cannon bowl slides and the tornado experience.

- The double cannon bowls - utilises singular and two man tubes allowing for the creation of smaller tunnels, delivering larger levels of speed into the barrelling bowls. Riders exit this attraction via the "centre-core corkscrew exit" - this ground breaking technology creates a safe, smooth and consistent rider motion through the centre of the bowl and into the plunge pool below.
- The tornado - provides for cloverleaf tubing. Riders accelerate through dark tunnel when the bottom drops out! Within split seconds riders are driven upwards into the upper hemisphere of the Tornado flume. Back-to-back "vertical" banks and beyond, the Riders are held on by the high Tornado centrifugal forces.

These rides have proven incredibly popular through out the world and are set to become an instant hit upon the opening of Wet'n'Wild SYDNEY. The progressive implementation of Stage 2 will see the addition of some of the following exciting rides and attractions further delivering the promise of the Wet'n'Wild brand.

- The Rocket - An unmatched uphill water coaster combining open and enclosed flumes. A "Roller Coaster" type ride where riders experience exhilarating steep drops and high speed uphill sections with back to back enclosed tunnel section.
- Plummet Slides - An extreme, single rider, open body ride that delivers a thrilling "dropping" sensation. Round bottom profile for a comfortable high speed experience. Smooth transition into deceleration lanes.
- The Super Bowl – A high energy, high capacity, 4 person cloverleaf tubing bowl ride. 4 riders sit facing each other, accelerate down a steep 9' diameter tunnel, then shoot into the huge bowl feature. After multiple high speed revolutions, riders transition through the patented Corkscrew Centre Core Exit to the landing pool.

Other features within Wet'n'Wild SYDNEY will include:

- An events area to host a wide range of shows and activities promoting the park as a compelling destination.
- A number of picnic grounds and "chill out" areas for guests to relax. Whilst these areas will be typically paved or grassed, they will also include sun lounges, tables and chairs for guests to enjoy. These areas will be shaded by a combination of tree foliage and shade structures such as sails.
- The water park will have a lush or tropical environment throughout all outdoor and indoor facilities with theming inspired by this environment. Foliage preference will be given to evergreens to minimise leaf problems with the park's pools and for this reason eucalyptus will not be included, except in suitable areas. The intention is to create a green haven for visitors that visually and environmentally will greatly enhance the landscape of the site.
- Guests will be able to play beach sports such as beach volleyball, beach cricket and beach soccer and other popular components.

Water Park Buildings

A wide range of buildings and structures will be constructed to house the functions typically required for a major water park operation. These buildings will include:

Entry Building

A stunning and unique entry building will enthrall guests from the moment they step out of their cars. The entry building will set the tone for the water park with all buildings throughout the water park carrying the same theme.

Food & Beverage

Quality food and beverage offerings are important factors for families when choosing to visit a potential venue. The water park will cater to a wide variety of tastes, with regular take away style food being available but also an emphasis on healthy food options.

Merchandise

Merchandise facilities will provide guests with all their souvenirs and gifts typically found within a water park or theme park including all swimming apparel including towels, sunscreen, surf wear and the like.

Administration/First Aid

Administration facilities housing an enquiries reception area, offices and staff and other items, including the park's paramedics and first aid room, will be required and located within close proximity to the entry building.

Restrooms/Lockers

Various restrooms will be strategically located throughout the park together with a high number of lockers for guests to securely store their belongings for the day.

Existing Policeman's Cottage

The Policeman's Cottage and the pine trees within the curtilage of the Policeman's Cottage will be retained and maintained and the protection and future renovation of the Policeman's Cottage will be considered.

Car Parking

Car parking capacity will be provided on both paved and natural terrain. Entry and exit to the car park will likely be from Reservoir Road.

Annexure I - Timeline

Obligation	Clause Reference	Timing
<i>Commencement Date</i>		<i>The date of this deed</i>
Developer gives First Bank Guarantee to WSPT	7.1	Commencement Date
Project Control Group to be established	20.1	Within one month after the Commencement Date
Developer to provide proposed Design Documentation to WSPT	8.3(b)	Within 5 months after the Commencement Date
WSPT gives or refuses consent to Design Documentation	8.3(d)	Within 20 Business Days after WSPT receives the proposed Design Documentation
Developer lodges proposed Project Application with WSPT for consent	9.1	Within 2 months after the Commencement Date
WSPT gives draft Environmental Guidelines and Signage Policy to the Developer	13.2(b), 29.2(b)	Within 45 Business Days after the Commencement Date
WSPT gives or refuses consent to proposed Project Application	9.4	Within 20 Business Days after WSPT receives the proposed Project Application
Developer lodges Project Application with Consent Authority	10.1	No later than 10 Business Days after WSPT consents (or longer time if reasonable)
WSPT and the Developer agree the Environmental Guidelines	13.2(d)	Within 60 Business Days after the Commencement Date
Developer completes Environmental Investigation and Geotechnical Investigation	3.1	Within 3 months of the Commencement Date (Investigation Completion Date)
Developer to provide copy of Environmental Investigation Report and Geotechnical Investigation Report to WSPT	3.2	Within 5 Business Days after the earlier of: (a) the issue of the Investigation Report; and (b) the Investigation Completion Date
Developer and WSPT meet to discuss in good faith whether the Environmental Investigation Report and Geotechnical Investigation Report refers to or contemplates any Contamination and the anticipated Cost of Remediation that Contamination or any structural or	3.2	Within 10 Business Days of the Developer providing a copy of the Environmental Investigation Report and Geotechnical Investigation Report to WSPT

Obligation	Clause Reference	Timing
geotechnical issues with the Land respectively		
Developer to notify WSPT whether the Costs of any Remediation are projected to be in excess of \$1,000,000 and if any structural or geotechnical issues with the Land cannot be reasonably accommodated and managed in the Works	3.3, 3.4	No later than 15 Business Days after the Investigation Completion Date
Developer to notify WSPT if Environmental Investigation Report refers to or contemplates Contamination which the Developer considers to be Developer Excluded Contamination	3.6(a)	Within 15 Business Days after the Investigation Completion Date
WSPT to notify the Developer if it agrees that any Contamination referred to or contemplated by the Environmental Investigation Report is Developer Excluded Contamination	3.6(c)	Within 20 Business Days of notification from the Developer that the Developer considers any Contamination referred to or contemplated by the Environmental Investigation Report to be Developer Excluded Contamination
Developer provides Bi-monthly Report to Project Control Group	20.2	65th Business Day after the Commencement Date and every 2 months thereafter
WSPT and the Developer agree the Signage Policy	29.2(c)	Within 85 Business Days after the Commencement Date
Developer lodges proposed Design Documentation with WSPT for consent	8.3	Within 5 months of the Commencement Date
Developer lodges proposed environmental assessment with WSPT for consent	9.1	By the date which is 6 months after the Director-General's requirements are received
WSPT gives or refuses consent to other proposed Applications (including environmental assessment)	9.4	Within 10 Business Days after WSPT receives the proposed Application, all supporting documentation and a notice from the Developer requesting consent
Developer lodges environmental assessment with Consent Authority	10.3(a)	No later than 10 Business Days after WSPT consents
Developer gives draft Environmental Management Plan to WSPT	13.3	Within 45 Business Days after the finalisation of the Environmental Guidelines
Developer copies Project Approval to WSPT	10.9	5 Business Days after the Developer receives Project Approval
Developer gives WSPT non-binding notice whether or not the Project Approval is on terms acceptable to the Developer	10.9	20 Business Days after the Developer receives Project Approval

Obligation	Clause Reference	Timing
WSPT gives notice to the Developer that it wishes to discuss any conditions in the Project Approval which the Developer considers unacceptable	10.9	Within 10 Business Days after WSPT receives the non-binding notice from the Developer whether or not the Project Approval is on terms acceptable to the Developer
Developer gives WSPT formal notice whether or not the Project Approval is on terms acceptable to the Developer	10.9	3 months after the Developer receives Project Approval
Developer gives WSPT non-binding notice of the date it expects to serve the notice confirming whether it will proceed with the Development	2.6	At least 50 Business Days before the Developer intends to notify WSPT that it has effected the Satisfactory Project Proceed Arrangements
Project Proceed Date	1.1	The later of: (a) 31 October 2012; and (b) 15 months after the Date of the Project Approval is issued
Developer gives Second Bank Guarantee to WSPT	7.1	The earlier of the Project Proceed Date and the date the Developer notifies WSPT it is proceeding with the Development
WSPT returns First Bank Guarantee to the Developer	7.6	Within 10 Business Days of request by the Developer after the Project Proceed Date
Developer starts paying Authority Levies	5.5	Project Proceed Date
Developer notifies WSPT that it has effected the Satisfactory Project Proceed Arrangements or terminates this deed	2.1	No later than the Project Proceed Date
WSPT to procure vacant possession of the whole of the Land	11.1	No later than the Project Proceed Date
WSPT to submit draft Access Guidelines to the Developer	21.1	No later than the Project Proceed Date
Developer appoints Independent Certifier	19.7	Promptly after Project Proceed Date
WSPT to give consent to the Developer's request to proceed with the Development if the Developer has failed to effect the Satisfactory Project Proceed Arrangements or terminate this deed	2.5	No later than 20 Business Days after the Developer's notification that it wishes to proceed with the Project or terminate this deed
WSPT notifies the Developer that it terminates this deed following the Developer's failure to either notify WSPT	2.3	No later than 20 Business Days after the Project Proceed Date

Obligation	Clause Reference	Timing
whether or not it is proceeding with the Development or satisfy WSPT that it has effected the Satisfactory Project Proceed Arrangements		
Developer submits OH&S Plan to WSPT	18.2	Within 45 Business Days after the Project Proceed Date (but in any event, not less than 20 Business Days before the Commencement of the Works)
WSPT to meet with Developer regarding the Developer's notice that it cannot carry out the Works due to WSPT's failure to procure vacant possession of the whole of the Land	11.2(c)	20 Business Days after the date of the Developer's notice that it cannot carry out the Works due to WSPT's failure to procure vacant possession of the whole of the Land
Developer effects third party liability insurance	17.3	Before grant of access to Premises
Developer effects or procures contract works, workers' compensation, professional indemnity and motor vehicle insurances	17.1, 17.5, 17.7, 17.8	Before commencing Works
Date for Substantial Commencement	1.1	Later of: (a) 28 February 2013; and (b) that date extended by the same number of days as the Project Proceed Date occurs after 31 October 2012
Developer gives Notice of Date of Commencement of Works	21.5	At least 20 Business Days before commencing Works
Developer starts paying Outgoings	5.1	Date of Commencement of Works
Developer gives WSPT draft Asset Management Plan	8.8	At least 3 months before Anticipated Date for Practical Completion
WSPT gives consent to draft Asset Management Plan or notifies the Developer of amendments	8.8	Within 20 Business Days of receiving the draft Asset Management Plan from the Developer
Developer gives WSPT and Independent Certifier notice of Anticipated Practical Completion Date	24.3	At least 20 Business Days before Anticipated Date for Practical Completion
Developer delivers signed Lease to WSPT with stamp duty and registration fees	36.5	At least 10 Business Days before Date of Practical Completion
Independent Certifier gives Certificate of Practical Completion or reasons for refusal	24.5	Within 10 Business Days after the Developer requests Certificate

Obligation	Clause Reference	Timing
Date for Practical Completion	1.1	Later of: (a) 31 December 2013; and (b) 18 months after the Project Proceed Date
Last Date for Practical Completion	1.1	Later of: (a) 31 December 2014; and (b) 30 months after the Project Proceed Date
Lease commences	36.2	The Date of Practical Completion
Developer gives Third Bank Guarantee to WSPT	7.1	The Date of Practical Completion
WSPT returns Second Bank Guarantee to Developer	7.6	Within 10 Business Days of request by the Developer after Practical Completion is achieved
WSPT lodges Lease with LPI for registration	36.9	Within 20 Business Days after Lease Commencement Date
Developer gives WSPT and Independent Certifier notice of Anticipated Final Completion	25.6	At least 20 Business Days before Anticipated Final Completion
Independent Certifier gives or refuses Final Certificate	25.6	Within 10 Business Days after the Developer requests Certificate
WSPT returns Third Bank Guarantee to the Developer	7.6	Within 10 Business Days of request by the Developer at later of Rent Commencement Date and after Practical Completion

Annexure J - Moral Rights Consent

Moral Rights Consent

In relation to any Moral Rights the [Author] (Author) has in respect of [*specify the relevant copyright work(s) - eg the relevant architectural plans*] (Copyright Works), the Author hereby consents to [the Developer] (Developer) and Western Sydney Parklands Trust (WSPT), doing or authorising the doing of the following acts or making or authorising the making of the following omissions (whether occurring before or after this consent is given) anywhere in the world:

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- (b) have the Copyright Works bear the name of site [*insert*] [*proponent to nominate*], or such other address of that property, or bear the name of the Developer, WSPT or any other person associated with the development of that property; and
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The Author acknowledges that the Developer and WSPT will be relying on the consents in this document and that those consents are intended to be legally binding.

Dated

Signed by [*namer of Author*] in the presence of:

Signature

Signature of Witness

Name of Witness in full