

Eastern Creek Retail Centre - Development Management Agreement

Dated

Western Sydney Parklands Trust (ABN 85 202 544 800) ("**Owner**")

Fraser's Property Industrial Constructions Pty Limited (ABN 85 095 586 708)
 ("**Developer**")

Fraser's Property Limited (ABN 12 008 443 696) ("**Guarantor**")

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Eastern Creek Retail Centre - Development Management Agreement

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Eastern Creek Retail Centre - Development Management Agreement

Details

Parties	Owner, Developer, Guarantor	
Owner	Name	Western Sydney Parklands Trust
	ABN	85 202 544 800
	Address	Level 7, 10 Valentine Avenue, Parramatta NSW 2150
	Telephone	+61 2 9895 7500
	Fax	+61 2 9895 7580
	Attention	Kerry Jahangir
Developer	Name	Frasers Property Industrial Constructions Pty Limited
	ABN	85 095 586 708
	Address	Building C, Level 3, 1 Homebush Bay Drive, Rhodes NSW 2138
	Telephone	+61 2 9767 2000
	Fax	+61 2 9767 2900
	Attention	Shannon Stewart
Guarantor	Name	Frasers Property Limited
	ABN	12 008 443 696
	Address	Building C, Level 3, 1 Homebush Bay Drive, Rhodes NSW 2138
	Telephone	+61 2 9767 2000
	Fax	+61 2 9767 2900
	Attention	Company Secretary
Recitals	A	The Owner is the registered proprietor of the Retail Centre Land.
	B	The Owner agrees to make the Development Land available at the Retail Centre Land for commercial development.

- C** The Owner agrees to appoint the Developer as the exclusive developer of the Development Land on the terms and conditions contained in this Agreement.
- D** The Guarantor agrees to guarantee the performance of the Developer under this Agreement.

Governing law New South Wales

Date of agreement See Signing page

General terms

1 Interpretation

1.1 Definitions

In this Agreement:

Access Date has the meaning given to that term in clause 14.1(b).

Access Road has the meaning given to Access Roads in clause 3.4(a)(i).

Access Road Works has the meaning given to that term in clause 12A.1(a).

Additional Infrastructure Works has the meaning given to that term in clause 6.2(e).

Agreement means this development agreement and includes any appendices, schedules or annexures.

Agreement for Ground Lease means the agreement entered into between the Owner, Nominated Developer and an Approved Tenant for a Development Site under clause 9.4.

Allowable Delay Event means each of the following:

- (a) any delay as a result of material variation or changes to the External Infrastructure Works;
- (b) any delay in the carrying out and completion of the External Infrastructure Works by the Owner, including any delay caused by an event described in clauses 6.3(a)(ii)(B) to 6.3(a)(ii)(F) (inclusive);
- (c) any delay in the carrying out and completion of the Internal Infrastructure Works or the Developer's Site Works caused or contributed to by:
 - (i) inclement weather or conditions resulting from inclement weather;
 - (ii) latent conditions (for the avoidance of doubt, latent conditions do not include any conditions to the extent identified in reports available to the Developer, or otherwise known to the Developer at the date of this Agreement);

- (ii) any combination of workers or strikes or lockouts or shortage or lack of materials or equipment (where such lockouts or shortages have resulted from industrial action) affecting the Internal Infrastructure Works or the Developer's Site Works (as applicable);
 - (iii) by reason of any earthquake, act of God, natural disaster, fire, riots, civil commotion, malicious damage, sabotage, act of public enemy, war, revolution, radioactive contamination or damage by aircraft or articles dropped from aircraft; or
 - (iv) by reason of any other matter, cause or thing beyond the reasonable control of the Developer;
- (d) any delay to the extent that such delay is caused or contributed to by the Owner (other than by the Owner acting in accordance with this Agreement);
- (e) any delay by the Relevant Authority acting beyond its relevant statutory time limits, including the Council in issuing relevant Approvals or registration of plans of subdivision, consolidation or amalgamation;
- (f) any delay as a result of any proceeding taken by neighbouring owners or occupiers of land adjoining the Development Land in respect of the Development Land to the extent that such proceedings have not been caused by any default by the Developer under this Agreement or failure by the Developer to take reasonable steps to consult with neighbouring owners of occupiers; and
- (g) any delay caused by remediation or management works required to be undertaken in respect of Contamination existing in, on or emanating from the Development Land under clauses 15.1 and 15.3, including any delay caused by an event described in clauses 15.4(a)(ii)(A) and 15.4(a)(ii)(C) to 15.4(a)(ii)(F) (inclusive).

Amended Certification has the meaning given to that term in clause 15.3(d).

Approval includes the Initial Development Consent, any further modification to the Initial Development Consent and any other permit, licence, consent, certificate or other approval or exemption obtained or required to be obtained from a Relevant Authority in relation to:

- (a) the Development of the Development Land; or
- (b) the Developer's Site Works;
- (c) the Internal Infrastructure Works;
- (d) the External Infrastructure Works; or
- (e) the Additional Infrastructure Works (if any).

Approved Development Proposal means a Site Development Proposal or Revised Proposal approved by the Owner under clause 9.3. All documentation provided by the Developer as a part of that Site Development Proposal or Revised Proposal form part of the Approved Development Proposal.

Approved Permitted Use means:

- (a) for Stage 1:
 - (i) supermarket, speciality shops, business premises, commercial offices, retail, medical, childcare, service station and any use permitted by Stage 1 of the Development Masterplan; and
 - (ii) any Other Use which does not exceed 10% of the GLAR for Stage 1;
- (b) for Stage 2:
 - (i) bulky goods and any use permitted by Stage 2 of the Development Masterplan; and
 - (ii) any Other Use which does not exceed 10% of the GLAR for Stage 2;
- (c) for Stage 3:
 - (i) discount department store, discount supermarket, large format retail and service stations and any use permitted by Stage 3 of the Development Masterplan; and
 - (ii) any Other Use which does not exceed 10% of the GLAR for Stage 3; and
- (d) for Stage 4:
 - (i) bulky goods and any use permitted by Stage 4 of the Development Masterplan; and
 - (ii) any Other Use which does not exceed 10% of the GLAR for Stage 4.

Approved Tenant means a tenant under an Approved Development Proposal.

Assignment Tests means that a person:

- (a) is not Insolvent;
- (b) has not been convicted of a criminal offence which carries a maximum sentence of equal to or more than 12 months in prison or multiple sentences that add up to equal to or more than 12 months in prison;
- (c) has not been the subject of a formal adverse finding by the Independent Commission against Corruption for conduct which, if prosecuted, carries a maximum sentence of equal to or more than 12 months in prison;
- (d) (combined with any proposed guarantor) is of sufficient financial standing to perform its obligations under this Agreement;
- (e) (combined with any proposed guarantor) has demonstrable experience in successfully delivering and marketing comparable developments to the Development;

- (f) has an approach to environmental issues in relation to the Development consistent with the requirements of this Agreement;
- (g) has a delivery methodology in terms of design, construction, finance, management and maintenance suitable to effect the Development; and
- (h) is otherwise ready, willing and able to carry out the Development and otherwise perform the obligations of the Developer under this Agreement.

Beggs Road means that part of Beggs Road which is shown in the plan in Schedule 9.

Bulk Earthworks means that part of the Developer's Site Works being the bulk earthworks.

Business Day means a day on which trading banks are opened for general banking business in Sydney.

Commencement of Construction in respect of each Development means the date the Developer (or a relevant appointed subcontractor) commences physical works on the relevant Development Site.

Contamination means the presence in, on or under land, air or water of a substance (including a soil, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment and **Contaminant** has a corresponding meaning;

Contamination Works means the works to be carried out by the Owner to carry out remediation and management of Contamination in accordance with clause 15.

Construction Licence means the licence in respect of a Development Site entered into between the Owner (as licensor) and the Nominated Developer or Approved Tenant (as licensee) under clause 9.4.

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

Design Documentation means schematic drawings, detailed plans and specifications for a Development and/or the Internal Infrastructure Works (as applicable).

Developable Site Area means that part of the Development Land that is not, at the relevant time, subject to any Construction Licence that has commenced or a Ground Lease.

Developer's Agents means the Developer's authorised representatives, consultants, employees, agents, contractors or invitees.

Developer's Site Works means all design, development and construction of the infrastructure works required for each Development Site (but not including the Internal Infrastructure Works and the External Infrastructure Works), including the works specified in the Developer's Site Works Brief, as varied by the Developer from time to time.

Developer's Site Works Brief means the design brief set out in Schedule 13.

Developer's Period has the meaning given to that term in clause 14.6(a)(i).

Development means the design, development, construction and completion of buildings and works on the Development Land or a Development Site, as the case may be, in accordance with the relevant Approved Development Proposal and Agreement for Ground Lease and includes the Developer's Site Works and the Internal Infrastructure Works but does not include the External Infrastructure Works.

Development Access Fee means the sum of \$ _____ per annum, payable by the Developer to the Owner under clause 12.2

Development Land means that part of the Retail Centre Land that is able to accommodate built form projects and excludes roads, water detention or treatment basins, common areas, land that is required to be dedicated to authorities or any other part of the Retail Centre Land affected in a similar way, and as indicated in the plan attached in Schedule 2.

The parties acknowledge that the total site area of the Development Land:

- (a) is approximately _____ square metres as at the date of this Agreement but will be subject to survey which may be carried out before or after the making of this Agreement; and
- (b) may change as a result of further design or any change to the Development Masterplan, subject to the Owner's approval in accordance with this Agreement.

Development Masterplan means the master plan for the development of the Development Land, excluding the Infrastructure Works, being, as at the date of this Agreement, the Initial Development Masterplan and includes each "Updated Development Masterplan" as that term is defined in clause 13.1.

Development Proposal Criteria means the criteria set out in Schedule 1 of this Agreement.

Development Site means an area of the Development Land:

- (a) as indicated on a site plan for a Development in an Approved Development Proposal; or
- (b) which has been or is being developed by the Developer pursuant to an Approved Development Proposal.

DMA Sunset Date means the date which is _____ after the Effective Date, as extended under clause 5.2.

Drainage Basins has the meaning given to that term in clause 3.5(a).

Drainage Basin Works means that Internal Works Package for the construction of the Drainage Basins.

Effective Date means the day after the date of the Developer's notice under clause 2A.2(c) accepting the Minister's consent.

Electrical Services means that Separable Portion of the External Infrastructure Works being electrical services.

Environment includes all aspects of the surroundings of human beings:-

- (a) eco systems and their constitute parts, including people and communities, natural and physical resources;
- (b) the qualities and characteristics of locations, places and areas; and
- (c) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a) or (b).

Environmental Law includes any Law relating to any aspect of the Environment.

External Infrastructure Works means the design and construction of the infrastructure works specified in the External Works Design Brief required to service the Development Land having regard to the requirements, guidelines, scope and extent of such works specified in the External Works Design Brief.

External Works Design Brief means the design brief set out in Schedule 7.

Force Majeure Event means any of the following events:

- (a) earthquake, civil commotion, riot, act of God or the public enemy, sabotage, war, threat of war, demonstrations, insurrections, riots, acts of terrorism or damage caused by articles dropped from an aircraft;
- (b) inclement weather, storm or lightning;
- (c) fire, smoke, flood, water damage, explosion, ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste not caused by the Owner;
- (d) state wide industrial disputes or state wide industrial actions in relation to the Development Land or the External Infrastructure Works or the Contamination Works (as applicable); and
- (e) the provisions of any Law or the direction of any Relevant Authority with respect to the External Infrastructure Works or Contamination Works (as applicable), except those arising from any non-compliance by the Owner with its obligations under this Agreement.

Form of Ministerial Consent means the Minister's consent in the form of consent attached in Schedule 12.

GIPA Act means the *Government Information (Public Access) Act 2009* (NSW).

GLAR means the relevant area calculated using the gross lettable area (retail) method of measurement determined in accordance with the PCA Method of Measurement March 1997.

Ground Lease means the ground lease to be granted to the Approved Tenant in accordance with an Agreement for Ground Lease.

Ground Rent means the total rent payable by an Approved Tenant under a Ground Lease.

GST means GST within the meaning of the GST Act and includes penalties and interest.

GST Act means *A New Tax System (Goods & Services Tax) Act 1999* (Cth).

Guarantor means Frasers Property Limited (ABN 12 008 443 696) and includes its respective successors and permitted assigns.

Implementation Guidelines means the Implementation Guidelines to the NSW Code of Practice for Procurement: Building and Construction (July 2013) (as enforced pursuant to any Practice Direction issued pursuant to the Implementation Guidelines).

Independent Quantity Surveyor means one of:

Infrastructure Works means the Internal Infrastructure Works and/or External Infrastructure Works (as applicable).

Initial Certification has the meaning given to that term in clause 15.3(a).

Initial Development Consent means the development consent issued by the Minister for Planning for the development of the Retail Centre Land known as "SSD 5175 Eastern Creek Business Hub", as varied by the modification known as "Modification 1 to SSD 5175 Eastern Creek Business Hub".

Initial Development Masterplan means the document attached at Schedule 3.

Initial Ground Rent means the annual rent payable by an Approved Tenant under a Ground Lease for the first year of the term of the relevant Ground Lease, calculated in accordance with Part 2 of Schedule 4.

Insolvent means in relation to a body corporate:

- (a) a "controller" (as defined in the Corporations Act), Manager, Trustee, Receiver, Receiver and Manager, Administrator or similar officer is appointed in respect of the body corporate or any asset of the body corporate;
- (b) a liquidator or provisional liquidator is appointed in respect of the body corporate;
- (c) an application is made to the court for an order, a court makes an order, a meeting is convened or a resolution is passed, for the purpose of:

- (i) appointing a person referred to in paragraph (a) or (b);
- (ii) winding up or deregistering the body corporate; or
- (iii) proposing or implementing a scheme of arrangement (other than a scheme of arrangement relating to a reconstruction or amalgamation while solvent),

other than an application which is withdrawn, dismissed or set aside within 21 days after it is made; and

- (d) the body corporate enters into, resolves to enter into or proposes a reorganisation, moratorium or other form of administration involving an arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally or any class of them, other than for the purposes of a reconstruction or amalgamation while solvent.

Institute means the Australian Property Institute Inc. (New South Wales) or any body replacing it.

Internal Infrastructure Works means the design, development and construction of the following infrastructure works as specified in the Internal Works Design Brief:

- (a) the Access Road;
- (b) landscaping and streetscape around the Access Road; and
- (c) the Drainage Basin Works.

Internal Works Design Brief means the design brief set out in Schedule 6.

Internal Works Packages means the relevant part of the Internal Infrastructure Works for a package as set out in the Internal Works Design Brief.

Law means any statute, ordinance, code, regulation, by-law, local law, official directive, order, instrument, undertaking, obligation or applicable judicial administrative or regulatory decree judgment or order and includes the conditions and standards authorisations, licences, permits, consents, assurances, bonds or similar requirements including all applicable standards and obligations under the common law.

Leasing Commission means a lease commission for the relevant Agreement for Ground Lease, calculated at the standard market rates for commission for a development similar to that contemplated under the relevant Agreement for Ground Lease.

LPI means the New South Wales Land and Property Information.

Minister means the Minister for the Environment. As at the date of this Agreement the Minister is the Honourable Mark Speakman SC MP.

Net Land Payment has the meaning given to that term in clause 12.4(d).

Nominated Developer means the "Developer" entity nominated in respect of an Agreement for Ground Lease under clause 9.2(b), which may be the Developer or a Nominee.

NSW Code means the NSW Government's Code of Practice for the Building and Construction Industry.

Occupy in respect of an Owner/Occupier Transaction means an Approved Tenant occupying all or part of the relevant Development Site as tenant on the commencement date of the relevant Ground Lease.

Other Use means, in respect of each Stage, any retail or quasi-retail use permitted by Law but not residential use.

Outgoings means the following expenses payable in relation to the Development Land or the relevant Development Site:

- (a) costs of insurances of the Development Land or the relevant Development Site;
- (b) costs of maintaining the Development Land in the state or condition as at the date of this Agreement. For the avoidance of doubt, this does not in any way limit the Owner's obligation to undertake and complete the External Infrastructure Works; and
- (c) any costs incurred by the Owner in compliance with any laws or requirements in respect of the Development Land or a Development Site.

Owner/Occupier Transaction means either an Owner/Occupier Transaction (Builder) or Owner/Occupier Transaction (No Builder).

Owner/Occupier Transaction (Builder) means a transaction in respect of a Development Site where:

- (a) the relevant Approved Tenant will Occupy the Development Site; and

- (b) the Developer or its Nominee has been or will be appointed by the relevant Approved Tenant to construct all or part of the relevant Development of that Development Site on terms which satisfy paragraph (c) of Schedule 1; and
- (c) neither the Developer nor its Nominee has received or will receive any payment or other financial benefit in relation to the transaction except as provided in this Agreement or except for payments for construction of all or part of the relevant Development of that Development Site on terms which satisfy paragraph (c) of Schedule 1.

Owner/Occupier Transaction (No Builder) means a transaction in respect of a Development Site where:

- (a) the relevant Approved Tenant will Occupy the Development Site; and
- (b) neither the Developer nor its Nominee has been or will be appointed by the relevant Approved Tenant to construct all or part of the relevant Development of that Development Site, and
- (c) neither the Developer nor its Nominee has received or will receive any payment or other financial benefit in relation to the transaction except as provided in this Agreement.

Owner/Occupier Transaction Developer Payment means the amount payable by the Owner to the Developer as calculated in accordance with Part 3 of Schedule 4.

Owner's Agents means the Owner's authorised representatives, consultants, employees, agents, contractors or invitees.

Owner's Period has the meaning given to that term in clause 14.6(a)(ii).

Planning Documentation means the Initial Development Consent and all documentation prepared and provided to the Relevant Authority as part of the application for the Initial Development Consent.

Practical Completion in relation to a Development has the meaning given to "Practical Completion" under the relevant Agreement for Ground Lease.

Practical Completion in relation to any Separable Portion of the External Infrastructure Works (irrespective of whether such works are undertaken by the Owner, the Developer or another party) is achieved when:

- (a) the relevant works are complete except for minor omissions and defects which do not prevent the works from being reasonably capable of being used for their intended purpose without unreasonable interruption or interference; and
- (b) the relevant requirements set out in the External Works Design Brief are satisfied.

Pro-Forma Agreement for Ground Lease means the forms of agreements for ground lease and ground lease as set out in Annexure A.

Pro-Forma Construction Licence means the forms of licences as set out in Annexure B.

Project Control Group means the group established under clause 16.

Project Management Agreement means the document in the form set out in Annexure D.

Project Manager means Frasers Property Industrial Constructions Pty Limited ABN 85 095 586 708.

Related Body Corporate means related bodies corporate as defined in section 50 of the Corporations Act.

Relevant Authority means:

- (a) any government department or Minister;
- (b) the Council or any other local government;
- (c) any government or statutory authority; or
- (d) any other person under a Law who or which has a right to impose a requirement, or whose consent is required, with respect to the Development Land or the Infrastructure Works or the Contamination Works.

Retail Centre Land means the land located on the corner of Rooty Hill Road South and Great Western Highway, Eastern Creek NSW, being land contained in the following:

- (a) Lot 1 in DP135665;
- (b) part Lot A in DP358346;
- (c) Lots 1, 3, 4, 5, 6, 7 and 8 in DP31130;
- (d) Lots 1B, 2A, 3A, 3B, 4B and 13B in DP8681;
- (e) part Lots 3 and 7 in DP830836;
- (f) Lots 5, 6, 8, 9 and 10 in DP830836;
- (g) Lots 11, 12 and 14 in DP882325; and
- (h) Lots 1 and 2 in DP1069269,

as shown in the plan in Schedule 9.

Revised Proposal has the meaning given to it in clause 9.3(g).

Security Interest means a security interest within the meaning of section 12(1) of the *Personal Properties Securities Act (Cth)*.

Separable Portion means the separable portions for the External Infrastructure Works as set out in the External Works Design Brief.

Services means the services outlined in the External Works Design Brief.

Site Audit Statement means a site audit statement under the *Contaminated Land Management Act 1997 (NSW)*.

Site Development Proposal means a written submission or proposal from the Developer to the Owner for Development of a particular Development Site, which proposal must be prepared in accordance with clause 9.2.

Site Development Works means any construction of buildings and other works on a Development Site including the Developer's Site Works but excluding the Internal Infrastructure Works, undertaken by the Developer on behalf of an Approved Tenant.

Stage means the 4 step staging of the Development as contemplated and described in the Development Masterplan and references to "Stage 1", "Stage 2", "Stage 3" and "Stage 4" are references to each of those stages.

Statutory Costs means all statutory charges and taxes which are payable in relation to the Development Land or the relevant Development Site including:

- (a) rates, assessment, or other fees, levies or charges (for example Council rates, water rates, sewerage rates); and
- (b) land tax,

but excludes stamp duty.

Sublease means a proposed form of sublease or other tenancy agreement between an occupier (as sublessee) of a Development Site and an Approved Tenant (as sublessor).

Take Out Transaction means a transaction in respect of a Development Site whereby an Approved Tenant under the Ground Lease:

- (a) will not occupy the relevant Development Site; and
- (b) will sublease or sublicense its interest in the Ground Lease to tenants and other occupiers.

Tender means the Owner's Request for Expressions of Interest 03WSPT2015 dated May 2015 and Request for Proposal No. 05WSPT2015 dated 25 August 2015 in respect of the development and lease of the Retail Centre Land and the Developer's (or a Related Body Corporate of the Developer's) response to that request for proposal.

Term means the term commencing on the Effective Date and terminating in accordance with clause 2.2.

Termination Event has the meaning given in clause 21.1.

Umpire means a Valuer who has not been appointed by a party under clause Part 3 of Schedule 4.

Updated Development Masterplan has the meaning given to that term in clause 13.1(b).

Upfront Development Fee means \$

Value Management Plan means the value management plan for the Development Land prepared in accordance with clause 13.2, and includes each "Updated Value Management Plan" as that term is defined in clause 13.2.

Valuer means a valuer who:

- (a) is a full member of the Institute of at least 5 years' standing;
- (b) holds a licence to practice as a valuer of land similar to the Development Land; and
- (c) has at least 5 years' experience in valuing land like the Development Land and is active in that market when appointed.

Works Schedule means the document attached at schedule 5.

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

1.2 Construction

Unless expressed to the contrary:

- (a) words importing:
 - (i) the singular include the plural and vice versa; and
 - (ii) any gender includes the other genders;
- (b) if a word or phrase is defined cognate words and phrases have corresponding definitions;
- (c) a reference to:
 - (i) a person includes a firm, unincorporated association, corporation and a government or statutory body or authority;
 - (ii) a person includes its legal personal representatives, successors and assigns;
 - (iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
 - (iv) a Right includes a benefit, remedy, discretion, authority or power;
 - (v) an Obligation includes a warranty or representation and a reference to a failure to observe or perform an Obligation includes a breach of warranty or representation;
 - (vi) provisions or terms of this Agreement or another document, agreement, understanding or arrangement include a reference to both express and implied provisions and terms;
 - (vii) time is to local time in Sydney;

- (viii) "\$" or "dollars" is a reference to the lawful currency of Australia;
 - (ix) any body (other than a party to this Agreement) which ceases to exist, is reconstituted, renamed or replaced or has its powers transferred, refers to the body established in its place or which serves substantially the same objects as or succeeds to its powers;
 - (x) this or any other document includes the document as varied or replaced and notwithstanding any change in the identity of the parties; and
 - (xi) writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmission;
- (d) where any form of the word "include" appears, it is to be read as if followed by the words "without limitation"; and
- (e) a reference to this Agreement includes all schedules and annexures referred to in it.

1.3 Headings

Headings do not affect the interpretation of this Agreement.

1.4 Severability

If any provision of this Agreement or its application to any person or circumstance is or becomes invalid illegal or unenforceable the provision shall so far as possible be read down to such extent as may be necessary to ensure that it is not illegal invalid or unenforceable. If any provision or part of it cannot be so read down the provision or part of it shall be deemed to be void and severable and the remaining provisions of this Agreement shall not in any way be affected or impaired.

2A Conditions subsequent

2A.1 Condition subsequent

- (a) This Agreement is subject to and conditional upon the Owner obtaining the Minister's consent to:
- (i) this Agreement; and
 - (ii) all of the transactions contemplated by this Agreement, including the Agreements for Ground Lease and Ground Leases,
- on terms and conditions acceptable to the Owner and the Developer.
- (b) Clauses 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 12A, 13, 14, 15, 16 and 17 will have no effect and the parties will have no obligations under such clauses until the condition subsequent in clause 2A.1(a) is satisfied.

2A.2 The Owner to use reasonable endeavours

- (a) The Owner must use reasonable endeavours to obtain the Minister's consent to satisfy the condition subsequent under clause 2A.1(a) as soon as reasonably practicable after the date

of this Agreement, and on terms and conditions acceptable to the parties.

- (b) The Owner must give written notice to the Developer stating that the Minister has provided his consent within 5 Business Days after it receives such consent from the Minister. The Owner must provide a copy of the Minister's consent together with the notice to the Developer. The Owner must state in its notice whether or not the Minister's consent is acceptable to the Owner.
- (c) Within 5 Business Days of the later of the date the Developer receives:
 - (i) the notice in clause 2A.2(b) confirming the Minister has given his consent; and
 - (ii) a copy of the Minister's consent,the Developer must give written notice to the Owner as to whether or not the Minister's consent is acceptable to the Developer.
- (d) The parties must accept the Minister's consent under clauses 2A.2(b) and 2A.2(c) if the Minister's consent is substantially in the Form of Ministerial Consent.
- (e) If the Minister's consent is not substantially in the Form of Ministerial Consent, then either party may accept or reject the Minister's consent under this clause 2A.2 at its absolute discretion.
- (f) If either party does not accept the Minister's consent under this clause 2A.2, the Owner must use reasonable endeavours to obtain the Minister's consent on terms and conditions acceptable to the parties. Clauses 2A.2(b) to 2A.2(e) will apply again to any further Minister's consent that the Owner obtains.
- (g) If the Owner does not obtain the Minister's consent on terms and conditions acceptable to the parties in accordance with this clause 2A, by the date that is 60 days from the date of this Agreement, then either the Owner or the Developer may terminate this Agreement by notice to each other party to this Agreement. Any termination of this Agreement under this clause 2A.2(g) will be without prejudice to any preceding breach of this Agreement.

2 Appointment and term

2.1 Appointment

The Owner appoints the Developer as the exclusive developer in accordance with this Agreement for the Development of the Development Land and the Developer accepts that appointment.

2.2 Term

- (a) The Term commences on the Effective Date and expires on the earlier of:
 - (i)

- (ii) the date the Owner has entered into Ground Leases for the whole of the Development Land other than areas not capable of being developed; and
- (iii) any sooner determination of this Agreement.

2.3 Exclusivity

- (a) The Owner acknowledges that the Developer is the exclusive developer for the Development Land and the Owner must not, during the Term:
 - (i) deal with any person other than the Developer in relation to the Development and leasing of the Development Land (or any part of the Development Land) except the Approved Tenant in relation to an Owner/Occupier Transaction; or
 - (ii) develop itself or allow another person to develop the Development Land (or any part of the Development Land) except the Approved Tenant in relation to an Owner/Occupier Transaction.
- (b) During the Term, the Developer has an exclusive right, subject to the provisions of this Agreement, to:
 - (i) market the Development Land, in conjunction with the Owner;
 - (ii) develop Site Development Proposals;
 - (iii) negotiate Agreements for Ground Lease on the same terms as the Pro-Forma Agreement for Ground Lease (subject to this Agreement); and
 - (iv) carry out and manage the Development on the Development Land.
- (c) The Owner must, as soon as practicable, refer any persons who approach the Owner regarding any proposed Development of the Development Land to the Developer.
- (d) This clause 2.3 does not prohibit or restrict the Owner from dealing with any government or statutory authority in relation to the carrying out of the External Infrastructure Works or any other obligations of the Owner under this Agreement or from referring leasing or other queries in relation to the Development Land to the Developer.
- (e) The Developer acknowledges that with an Owner/Occupier Transaction, the Owner may make arrangements directly with an Approved Tenant under an Agreement for Ground Lease in relation to the relevant Owner/Occupier Transaction as a result of an Approved Development Proposal.

3 The Developer's role and responsibilities

3.1 Marketing and management responsibilities

- (a) The Developer must;
- (i) develop and implement a marketing strategy for the Development Land, which may include advertising if this is appropriate and necessary to properly promote the Development Land;
 - (ii) spend a minimum of \$ _____ during the Term on marketing activities (including the provision of the Developer's internal architectural and graphic design services) for the Development Land;
 - (iii) provide the Owner with written evidence of the Developer's expenditure on marketing activities;
 - (iv) undertake marketing activities for the Development Land in accordance with the marketing strategy prepared by the Developer under this clause 3.1(a); and
 - (v) pay all marketing and promotional expenses incurred in the course of complying with clause 3.1(a)(i) and clause 3.1(a)(iv).
- (b) As soon as reasonably practicable after the Effective Date, the Developer must prepare and submit details of its marketing strategy for the Development Land to the Owner for approval.
- (c) The Owner:
- (i) must review the marketing strategy;
 - (ii) may request further information in respect of the marketing strategy or may request reasonable amendments to the marketing strategy;
 - (iii) must notify the Developer of whether it approves or does not approve the marketing strategy within 10 Business Days of the date of submission of the marketing strategy by the Developer, and if it does not approve the marketing strategy, must give reasons for its decision; and
 - (iv) if a marketing strategy is not approved by the Owner, the Developer must re-submit to the Owner a revised marketing strategy containing proposals to address the reasons for the Owner's rejection and the provisions of this clause 3.1(c) apply to the revised marketing strategy.

The Owner must not unreasonably withhold its approval of the marketing strategy.

- (d) The Developer agrees to undertake its marketing activities for the Development Land in a manner generally consistent with the marketing strategy approved by the Owner, unless otherwise approved by the Owner (such approval not to be unreasonably withheld).

- (e) If the Developer wants to change the marketing strategy, then the Owner must review the changes to the marketing strategy and clauses 3.1(c) and 3.1(d) will apply.
- (f) The Owner's logo must be displayed on all signs and other advertising material. The logo must be displayed in such manner as the Owner and the Developer agree (both acting reasonably) from time to time.

3.2 Leasing responsibilities

The Developer must:

- (a) actively promote the Development Land to potential tenants during the Term for the Approved Permitted Use;
- (b) use reasonable endeavours to source tenants that meet the Development Proposal Criteria for the Development Land;
- (c) undertake all design and other preparatory work necessary to develop Site Development Proposals; and
- (d) negotiate Agreements for Ground Lease and Ground Leases with Approved Tenants for parts of the Development Land in accordance with this Agreement;
- (e) organise execution of Agreements for Ground Lease and Ground Leases prepared in accordance with this Agreement; and
- (f) collect the Approved Tenant's security deposits or bank guarantees, and provide such items to the Owner.

3.3 Reimbursement of costs

The Developer must comply with all of its obligations under this Agreement at its own cost and expense in all respects, except to the extent that a right of payment or reimbursement is expressly provided under this Agreement.

3.4 Access Road Costs

- (a) In this Agreement:
 - (i) **Access Roads** means the internal access roads to be constructed by the Developer as part of the Internal Infrastructure Works (including associated stormwater drainage); and
 - (ii) **Trafficable Vehicular Roadway** means a roadway of such engineering, structure, materials and design appropriate for the effective long term use of the traffic and vehicles which from time to time use the Access Roads.
- (b) Despite any other provision of this Agreement, if during the Term:
 - (i) in carrying out a Development in accordance with this Agreement, the Developer causes damage to the Access Roads after completion of the Access Roads; and

- (ii) as a result of the damage referred to in clause 3.4(b)(i), work in respect of the ongoing repair and maintenance of the Access Roads as a Trafficable Vehicular Roadway is required,

then the works will be undertaken by the Owner and the costs of the works must be paid by the Developer to the extent that those costs were incurred as a result of the damage referred to in clause 3.4(b)(i).

- (c) The Owner will provide the Developer with such information and documentary evidence as the Developer may reasonably require to evidence the actual expenditure by the Owner pursuant to clause 3.4(b).
- (d) The Developer must reimburse the Owner for the costs referred to in clause 3.4(b) within 30 days of demand.
- (e) The Owner must use its reasonable endeavours to minimise the costs referred to in clause 3.4(b) to ensure that the amount of those costs is fair and reasonable having regard to the standard, quality and condition of the Access Roads prior to the damage caused by the Developer.

3.5 Drainage Basin Costs

- (a) In this Agreement, **Drainage Basins** means the drainage basins servicing the Development Land.
- (b) Despite any other provision of this Agreement, the Developer is responsible for the repair and maintenance of the Drainage Basins until the expiry of the Term.
- (c) If during the Term:
 - (i) in carrying out a Development, the Developer causes damage to the Drainage Basins (other than by fair wear and tear) after completion of the Drainage Basins; and
 - (ii) as a result of the damage referred to in clause 3.5(c)(i), additional work in respect of the ongoing repair and maintenance of the Drainage Basins is required,

then the additional works will be undertaken by the Owner and the costs of those works must be paid by the Developer to the extent that those costs were incurred as a result of the damage referred to in clause 3.5(c)(i).

- (d) The Owner will provide the Developer with such information and documentary evidence as the Developer may reasonably require to evidence the actual expenditure by the Owner pursuant to clause 3.5(c).
- (e) The Developer must reimburse the Owner for the costs referred to in clause 3.5(c) within 30 days of demand.
- (f) The Owner must use its reasonable endeavours to minimise the costs referred to in clause 3.5(c) to ensure that the amount of those costs is fair and reasonable having regard to the condition of the Drainage Basins prior to the damage caused by the Developer.

3.6 Developer's warranties

The Developer represents and warrants to the Owner that:

- (a) it will use all due skill and care in carrying out its obligations under this Agreement;
- (b) it has the necessary expertise and resources to carry out and complete the Development or to cause the Development to be carried out and completed in accordance with this Agreement; and
- (c) the Development will be carried out in a proper and workmanlike manner under adequate and competent supervision and in any case in accordance with:
 - (i) all applicable Law;
 - (ii) the relevant Approvals;
 - (iii) this Agreement and relevant Agreement for Ground Lease (if applicable); and
 - (iv) in accordance with the relevant Australian Standards and the National Construction Code in respect of the Internal Infrastructure Works; and
- (d) materials used will be new and of merchantable quality in respect of the Internal Infrastructure Works.

4 The Owner's role and responsibilities

4.1 Not used

4.2 The Owner's role and responsibilities

The Owner must:

- (a) consider Site Development Proposals and Revised Proposals put forward by the Developer in good faith and in a prompt and reasonable manner, subject to the other provisions of this Agreement;
- (b) enter into Agreements for Ground Lease in accordance with this Agreement;
- (c) enter into Ground Leases in accordance with this Agreement;
- (d) as and when required under this Agreement, enter into a Construction Licence;
- (e) pay or reimburse the Developer for the amounts specified under this Agreement as being payable or reimbursable to the Developer;
- (f) pay all Statutory Costs and Outgoings in relation to the Development Land. However, the Owner may cease to pay Statutory Costs and Outgoings in respect of a Development Site from the commencement date of the Construction Licence, or the commencement date of the Ground Lease, in respect of that Development Site, whichever is the earlier, and the Developer must pay any land tax assessed in relation to the Development

Land to the extent that such land tax is assessed as a result of this Agreement or the transactions contemplated by this Agreement. Despite the previous sentence, the parties agree that the Developer is not responsible for, and is not required to pay any land tax (including any back dated charges, penalties or fees) charged or payable on the whole or any part of the Development Land in respect of a period prior to the Effective Date; and

- (g) carry out the External Infrastructure Works in accordance with this Agreement.

4.3 Beggs Road

As at the date of this Agreement the Owner is not the registered proprietor of Beggs Road. The parties acknowledge and agree that:

- (a) the Developer may, by written notice to the Owner, request that the Owner use reasonable endeavours to procure the Relevant Authority to close Beggs Road and transfer the title for Beggs Road to the Owner;
- (b) upon receipt of the Developer's notice under clause 4.3(a), the Owner must use reasonable endeavours to procure the Relevant Authority to close Beggs Road and transfer the title for Beggs Road to the Owner;
- (c) if:
 - (i) the Developer gives notice under clause 4.3(a); and
 - (ii) the Owner procures the Relevant Authority to close Beggs Road and transfer title for Beggs Road to the Owner under clause 4.3(b),

the Developer must pay the Owner's reasonable costs of the closure and transfer of Beggs Road including legal costs, survey costs, advertising costs, valuation costs, the costs of the Relevant Authority, subdivision costs and registration fees; and

- (d) in the event the Developer gives notice under clause 4.3(a) and the Owner becomes or becomes entitled to be the registered proprietor of Beggs Road, the Owner and the Developer agree:
 - (i) the definition of 'Retail Centre Land' will be expanded to include Beggs Road;
 - (ii) the definition of 'Development Land' will be amended to reflect the area of Beggs Road in the total site area of the Development Land; and
 - (iii)

4.4 Removal of expired covenants

- (b) The Owner authorises the Developer to negotiate with the relevant counterparties and do all other things necessary to procure removal of the expired registered covenants and the

obsolete easement from the relevant titles of the Development Land, including:

- (i) registered covenant H657215, H657216 and D743934; and
 - (ii) easement H614401,
- ("Obsolete Encumbrances").**
- (c) The Owner must:
 - (i) put the relevant certificates of title on deposit at LPI to facilitate the removal of the Obsolete Encumbrances from title; and
 - (ii) provide any assistance reasonably required by the Developer to procure removal of the Obsolete Encumbrances including signing any consents or deeds necessary to remove the Obsolete Encumbrances provided those consents and deeds are in a form acceptable to the Owner (acting reasonably).
 - (d) The Developer must pay the Owner's reasonable legal costs and disbursements incurred pursuant to clause 4.4(c).

5 DMA Sunset Date

5.1 Owner's right to terminate

- (a) If one or more Approved Tenants have not entered into Agreements for Ground Lease for _____ by the DMA Sunset Date, the Owner may within 60 days after that date (but not otherwise) terminate this Agreement and neither party will have any liability to the other, except in relation to any prior breaches.
- (b) The Developer acknowledges that if this Agreement is terminated under this clause 5.1, the Owner is entitled to retain the Upfront Development Fee and any instalments of the Development Access Fee paid under this Agreement up to the date of termination.

5.2 Extension of DMA Sunset Date

- (a) Subject to clause 5.3, if:
 - (i) the Developer gives to the Owner a written claim for extension of the DMA Sunset Date stating:
 - (A) the fact or likelihood of delay in the Developer procuring one or more Approved Tenants to enter into Agreements for Ground Lease for _____ ;
 - (B) the cause of the delay;
 - (C) the date on which the cause of the delay first arose and the date on which the delay ceased; and

(D) the number of days of extension claimed; and

(ii) there is a delay and the cause of the delay is an Allowable Delay Event,

then the Developer is entitled to an extension of the DMA Sunset Date, and the Owner must, within 20 Business Days of the Developer's notice under clause 5.2(a), give:

(iii) written notice to the Developer of any extension of the DMA Sunset Date granted; or

(iv) if the claimed extension is not granted, written notice of and the reasons for that decision.

(b) If the Owner:

(i) gives a notice under clause 5.2(a)(iii) stating it does not agree with the Developer's notice under clause 5.2(a); or

(ii) does not give a notice within the relevant time period under clause 5.2(a),

the Owner is deemed to dispute the Developer's notice under clause 5.2(a), and the parties must resolve the dispute in accordance with clause 20.

(c) The DMA Sunset Date cannot be extended beyond the date that the Term expires under clause 2.2.

5.3 Conditions precedent to extension of DMA Sunset Date

(a) The Developer is only entitled to an extension of the DMA Sunset Date under clause 5.2 if:

(i) the Developer gives notice under clause 5.2 within 30 days after it has become aware of the fact or likelihood of delay;

(ii) the Developer has used reasonable endeavours to minimise the delay; and

(iii) the Developer is continuing to use reasonable endeavours to procure Approved Tenants to enter into Agreements for Ground Lease.

(b) The extension of the DMA Sunset Date will be either:

(i) if the Owner agrees with the Developer's notice under clause 5.2(a), as set out in the Developer's notice under clause 5.2(a); or

(ii) if clause 5.2(b) applies, as determined under clause 20.

5.4 Delay caused by the Owner

If:

(a) the Developer is granted an extension of the DMA Sunset Date under clause 5.2; and

- (b) the cause of the delay is a result of the event contemplated in paragraph (b) or paragraph (d) of the definition of Allowable Delay Event,

then:

- (c) the Developer is entitled to an abatement or reimbursement of the Development Access Fee (if any) payable or paid during the period of that delay calculated on a pro rata basis in the proportion that the area of the Development Land affected by the delay bears to the total Developable Site Area;
- (d) the Developer may by written notice to the Owner, claim a reimbursement of relevant amounts in respect of the Development Access Fee (if any) paid by the Developer; and
- (e) the Owner must pay or reimburse to the Developer the relevant amount that the Developer is entitled to under clause 5.4(c).

6 Owner's works

6.1 The Owner to carry out External Infrastructure Works

- (a) The Owner must, at its sole cost, carry out the External Infrastructure Works (or procure that the External Infrastructure Works are carried out) to the Retail Centre Land.
- (b) The Owner must use reasonable endeavours to commence the External Infrastructure Works by the relevant date specified in the Works Schedule.
- (c) The Developer acknowledges and agrees that:
 - (i) the Owner cannot commence the Electrical Services before the Developer completes the Bulk Earthworks; and
 - (ii) if the Owner is delayed in carrying out the Electrical Services as a result of a delay in the Developer carrying out the Bulk Earthworks, the Developer must reimburse the Owner for any reasonable additional costs incurred by the Owner in carrying out the Electrical Services as a result of that delay.
- (d) The Owner must provide the Developer with such information and documentary evidence as the Developer may reasonably require to evidence the actual additional costs incurred by the Owner pursuant to clause 6.1(c).
- (e) The Owner must use its reasonable endeavours to minimise the additional costs referred to in clause 6.1(c) to ensure that the amount of those costs is fair and reasonable having regard to the scope of the Electrical Services.
- (f) The Developer must reimburse the Owner for the costs referred to in clause 6.1(c)(ii) within 30 days of demand.
- (g) The Owner must achieve Practical Completion of each Separable Portion of the External Infrastructure Works by the date for Practical Completion of the External Infrastructure Works specified in the Works Schedule.

- (h) Achievement of Practical Completion in respect of a Separable Portion of the External Infrastructure Works does not limit or affect the Owner's obligation to procure final completion of that Separable Portion of the External Infrastructure Works.

6.2 Variations to External Infrastructure Works

- (a) The Developer may request a variation to the External Infrastructure Works at any time prior to Practical Completion of the relevant Separable Portion of the External Infrastructure Works. The Owner must, if the Owner approves the request for the variation to the External Infrastructure Works (acting reasonably), at the Developer's cost, carry out any variation to the External Infrastructure Works requested by the Developer under this clause 6.2(a).
- (b) The Owner must provide the Developer with such information and documentary evidence as the Developer may reasonably require to evidence the actual expenditure by the Owner pursuant to clause 6.2(a).
- (c) The Developer must reimburse the Owner for the costs referred to in clause 6.2(a) within 30 days of demand.
- (d) The Owner must use its reasonable endeavours to minimise the costs referred to in clause 6.2(a) to ensure that the amount of those costs is fair and reasonable having regard to the scope of the variation to the External Infrastructure Works.
- (e) The Developer may request additional external infrastructure works after Practical Completion of the relevant Separable Portion of the External Infrastructure Works. The Developer may, if the Owner approves the request for the additional external infrastructure works (acting reasonably), elect to carry out additional external infrastructure works, at the Developer's cost, at any time after Practical Completion of the relevant Separable Portion of the External Infrastructure Works ("**Additional Infrastructure Works**"). The Owner must, at the request of the Developer:
 - (i) permit the Developer and the Developer's authorised representatives, consultants and agents to access any land which is owned by the Owner required by the Developer for the purpose of undertaking the Additional Infrastructure Works ("**Additional Land**"); and
 - (ii) provide the Developer with any assistance reasonably required by the Developer for the purpose of the Developer undertaking the Additional Infrastructure Works.
- (f) Subject to complying with clauses 6.1(h) and 6.2(a) and despite any condition of the Development Consent or Subdivision Approval (each as defined under the Agreement for Ground Lease), the Owner has no further obligation to deliver any external infrastructure works of a type being a Separable Portion of External Infrastructure Works after Practical Completion of that Separable Portion of External Infrastructure Works.
- (g) In applying for and obtaining all Approvals required for the External Infrastructure Works set out in the External Works Design Brief in accordance with clause 6.5(b)(ii), the Owner may

reject a condition of the development consent for the External Infrastructure Works ("**External Infrastructure Works Consent**") if the condition:

- (i) could not reasonably have been anticipated by the Owner as at the date of this Agreement; and
 - (ii)
- (h) In applying for and obtaining all Approvals required for variations to the External Infrastructure Works set out in the External Works Design Brief requested by the Developer under clause 6.2(a) in accordance with clause 6.5(b)(ii), the Owner may reject a condition of the development consent for the varied External Infrastructure Works ("**Varied External Infrastructure Works Consent**") if the condition could not reasonably have been anticipated by the Owner as at the date of this Agreement. The Owner acknowledges that the Owner is not entitled to reject a condition of the Varied External Infrastructure Works Consent on the basis that the condition will increase the costs of undertaking the External Infrastructure Works.
- (i) The Owner must, within 10 Business Days of receipt of the External Infrastructure Works Consent or the Varied External Infrastructure Works Consent, notify the Developer whether or not the External Infrastructure Works Consent or the Varied External Infrastructure Works Consent is on conditions acceptable to the Owner having regard to the provisions of clause 6.2(g) or clause 6.2(h) (as relevant).
- (j) If the Owner rejects a condition of the External Infrastructure Works Consent or the Varied External Infrastructure Works Consent in accordance with clause 6.2(g) or clause 6.2(h) (as relevant), the Owner must, if requested to do so by the Developer, take steps to object to or appeal against the relevant conditions and the Owner and the Developer must co-operate with each other in pursuing such objection or appeal without delay. If the appeal relates to the Varied External Infrastructure Works Consent, the Developer must pay the Owner's costs of the objection or appeal under this clause 6.2(j) within 30 days of demand.
- (k) The parties agree that _____ or another reputable independent certifier appointed by the Owner and agreed to by the Developer will certify to the Owner and the Developer that the External Infrastructure Works have reached Practical Completion.

6.3 Extension of External Works Dates

- (a) For the purposes of this clause 6.3, the times for completion of works provided for in clause 6.1 are referred to as "**External Works Dates**". Subject to clause 6.4, if:
- (i) the Owner gives to the Developer a written claim for extension of an External Works Date or External Works Dates stating:

- (A) the fact or likelihood of delay in the Owner completing the relevant External Infrastructure Works;
 - (B) the cause of the delay;
 - (C) the date on which the cause of the delay first arose and the date on which the delay ceased; and
 - (D) the number of days of extension claimed; and
- (ii) there is a delay and the cause of the delay is any or all of the following:
- (A) any delay to the extent that such delay is caused or contributed to by the Developer (other than by the Developer acting in accordance with this Agreement);
 - (B) delay of a Relevant Authority in connection with the External Infrastructure Works not caused by the Owner, including any delay by the Council or a Relevant Authority in issuing relevant Approvals;
 - (C) latent conditions causing delay to the relevant External Infrastructure Works;
 - (D) any proceedings, whether taken or threatened, of neighbouring owners or occupiers of land adjoining the Development Land in respect of the Development Land;
 - (E) remediation or management works required to be undertaken in respect of Contamination existing in, on or emanating from the Development Land under clause 15;
 - (F) any delay to the extent that such delay is caused by a Force Majeure Event in respect of the External Infrastructure Works;
 - (G) any delay as a result of a variation or change to the External Infrastructure Works requested by the Developer pursuant to clause 6.2(a);
 - (H) any delay to the Electrical Services to the extent that such delay is caused by the non completion of the Bulk Earthworks; and
 - (I) any delay to the extent that such delay is caused or contributed to by a breach by the Project Manager of the Project Management Agreement,

then the Owner is entitled to an extension of the relevant External Works Date or External Works Dates, and the Developer must, within 20 Business Days of the Owner's notice under clause 6.3(a), give:

- (iii) written notice to the Owner of any extension of the External Works Date or External Works Dates granted; or
 - (iv) if the claimed extension is not granted, written notice of and the reasons for that decision.
- (b) If the Developer:
- (i) gives a notice under clause 6.3(a) stating it does not agree with the Owner's notice under clause 6.3(a); or
 - (ii) does not give a notice within the relevant time period under clause 6.3(a),

the Developer is deemed to dispute the Owner's notice under clause 6.3(a), and the parties must resolve the dispute in accordance with clause 20.

6.4 Conditions precedent to extension of External Works Date

- (a) The Owner is only entitled to an extension of an External Works Date or External Works Dates under clause 6.3 if:
- (i) the Owner gives notice under clause 6.3 within 30 days after it has become aware of the fact or likelihood of delay;
 - (ii) the Owner has used reasonable endeavours to minimise the delay; and
 - (iii) the Owner is continuing to use reasonable endeavours to complete the relevant External Infrastructure Works.
- (b) The extension of the relevant External Works Date or External Works Dates will be either:
- (i) if the Developer agrees with the Owner's notice under clause 6.3(a), as set out in the Developer's notice under clause 6.3(a); or
 - (ii) if clause 6.3(b) applies, as determined under clause 20.

6.5 External Infrastructure Works

- (a) The Owner must ensure the design and construction of the External Infrastructure Works:
- (i) are undertaken by employees, consultants and subcontractors with appropriate professional qualification and experience;
 - (ii) are in accordance with the External Works Design Brief;
 - (iii) are in accordance with all Laws;
 - (iv) are in accordance with all Approvals; and
 - (v) are developed using skilled design consultants with relevant expertise.

- (b) The Owner is responsible for (and will control, co-ordinate, administer and direct) all activities necessary for the completion of the External Infrastructure Works including, without limitation:
 - (i) the appointment, procurement and removal of builders, contractors, tradesmen, development managers, architects, quantity surveyors, engineers and all other consultants, but no such appointment operates to relieve the Owner of its obligations under this Agreement;
 - (ii) the obtaining of all Approvals required to complete the External Infrastructure Works, except for any Approvals in connection with any subdivision required to be undertaken by the Developer under clause 17, which Approvals must be obtained by the Developer;
 - (iii) the obtaining of all Approvals required to complete any subdivisions contemplated under clause 4.3; and
 - (iv) the supervision, control and direction of any contracts relating to the External Infrastructure Works.
- (c) The Developer is responsible for (and will control, co-ordinate, administer and direct) all activities necessary for the completion of any Additional Infrastructure Works including, without limitation:
 - (i) the appointment, procurement and removal of builders, contractors, tradesmen, development managers, architects, quantity surveyors, engineers and all other consultants, but no such appointment operates to relieve the Developer of its obligations under this Agreement;
 - (ii) the obtaining of all Approvals required to complete the Additional Infrastructure Works; and
 - (iii) the supervision, control and direction of any contracts relating to the Additional Infrastructure Works.

6.6 Owner's warranties

The Owner represents and warrants to the Developer that:

- (a) it will use all due skill and care in carrying out its obligations under this Agreement;
- (b) it has the necessary expertise and resources to carry out and complete the External Infrastructure Works or to cause the External Infrastructure Works to be carried out and completed in accordance with this Agreement; and
- (c) the External Infrastructure Works will be carried out in a proper and workmanlike manner under adequate and competent supervision and in any case in accordance with:
 - (i) the Law;
 - (ii) the Approvals; and
 - (iii) this Agreement.

6.7 Developer appointed as project manager

The parties acknowledge that the Owner and Developer must enter into a project management agreement on or about the date of this Agreement in the form of the Project Management Agreement under which the Owner appoints the Developer as the project manager to manage the design and delivery of External Infrastructure Works.

7 Internal Infrastructure Works and Developer's Site Works

7.1 Principal Contractor

(a) The Owner appoints the Developer as the principal contractor for the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works and authorises the Developer to:

- (i) have management or control of those parts of the Development Land on which the Internal Infrastructure Works, Developer's Site Works and any Additional Infrastructure Works are performed; and
- (ii) discharge the duties imposed on the principal contractor for the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works under the *Work, Health and Safety Regulations 2011* (NSW).

(b) The Developer:

- (i) accepts its appointment as the principal contractor under clause 7.1(a); and
- (ii) must discharge the duties imposed on the principal contractor for the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works under the *Work, Health and Safety Regulations 2011* (NSW) (regardless of whether that appointment is effective).

7.2 Internal Infrastructure Works and Developer's Site Works

(a) Subject to clause 7.2(d), the Developer must carry out the Internal Infrastructure Works relevant or required for each Development Site:

- (i) progressively and in sequence in accordance with clause 7.2(b); and
- (ii) in accordance with designs and specifications developed by the Developer, in accordance with the Development Masterplan (including any Updated Development Masterplan) and the other requirements of this Agreement.

- (b) The parties agree that, subject to clause 7.2(d), the Developer will undertake Internal Infrastructure Works and the Developer's Site Works as such works are required in order to undertake the Development of each Development Site.
- (c) Nothing in this Agreement obliges the Developer to undertake the Internal Infrastructure Works or the Developer's Site Works until such works are required for the Developer to undertake and complete a Development.
- (d) Despite clauses 7.2(a) and 7.2(b), and for the avoidance of doubt, the Owner agrees that the Developer may undertake the Internal Infrastructure Works and the Developer's Site Works for each Stage at any time after the Owner provides to the Developer the Initial Certification or Amended Certification (as relevant) under clause 15, including before the Developer submits a Site Development Proposal to the Owner in relation to the relevant Stage.

7.3 Design and construction of Internal Infrastructure Works

- (a) The Developer must, either itself or through consultants engaged by it, undertake the design of the Internal Infrastructure Works, and the Developer must ensure that the Design Documentation in respect of such works:
 - (i) are undertaken by employees, consultants and subcontractors with appropriate professional qualification and experience;
 - (ii) have regard to and are generally consistent with an Approved Development Proposal (if any) in respect of the relevant Stage;
 - (iii) are in accordance with all Approvals and all applicable Laws;
 - (iv) are developed using skilled design consultants with relevant expertise; and
 - (v) are in accordance with the relevant Australian Standards and the National Construction Code.
- (b) The Developer must, either itself or through consultants engaged by it, undertake the construction of any Internal Infrastructure Works, and the Developer must ensure the construction of the Internal Infrastructure Works for each Stage:
 - (i) are undertaken by employees, consultants and subcontractors with appropriate professional qualification and experience;
 - (ii) have regard to and are generally consistent with the requirements of the approved Development (if any) in respect of the relevant Stage;
 - (iii) are in accordance with all Approvals and all applicable Laws;
 - (iv) are in accordance with the Design Documentation in respect of the Internal Infrastructure Works;

- (v) are in accordance with the relevant Australian Standards and the National Construction Code; and
- (vi) are undertaken with materials that are new and of merchantable quality.

7.4 Practical completion of works

- (a) The parties agree that the superintendent or project manager in respect of the Internal Works Packages will certify (as an independent certifier) to the Owner and the Developer that the Internal Works Packages have reached Practical Completion.
- (b) Achievement of Practical Completion in respect of an Internal Works Package does not limit or affect the Developer's obligation to procure final completion of that Internal Works Package.
- (c) Subject to clause 7.4(b) and despite any provision of this Agreement or the Ground Lease, the Owner becomes responsible for the repair and maintenance of:
 - (A) the Access Road; and
 - (B) the Drainage Basins,in accordance with this Agreement and the Ground Lease after Practical Completion of the relevant works.

7.5 Variations to the Internal Infrastructure Works

Subject to clauses 7.3(a)(ii) and 7.3(a)(iii), the Developer may make any changes to the Internal Works Design Brief and the Design Documentation in respect of the Internal Infrastructure Works that:

- (a) it considers necessary or desirable, subject to obtaining the Owner's consent (acting reasonably); or
- (b) are required by a Relevant Authority.

7.6 Variations to the Developer's Site Works

The Developer may make any changes to the Developer's Site Works Brief and the Design Documentation in respect of the Developer's Site Works that:

- (a) it considers necessary or desirable; or
- (b) are required by a Relevant Authority.

7.7 Defects rectification

- (a) The Developer must repair or rectify, within a reasonable time after notice has been given by the Owner, any defects or faults in the Internal Infrastructure Works due to faulty design or faulty materials or workmanship which are notified in writing to the Developer within 12 months after Practical Completion of the Internal Infrastructure Works. This clause does not limit any liability that the Developer may have under this Agreement or at Law in relation to defects or faults in relation to the Internal Infrastructure Works.

- (b) The provisions of this clause 7.7 apply in relation to any repair or rectification work carried out by the Developer under clause 7.7(a) for a period of 12 months after practical completion of such repair or rectification work.

7.8 Internal Infrastructure and Developer's Site Works Program

- (a) The Developer must prepare and submit to the Owner a draft program showing the proposed time table for carrying out of the Internal Infrastructure Works and Developer's Site Works ("**Draft Program**"):
 - (i) as soon as reasonably practicable after the Effective Date but in any event prior to the first submission of a Site Development Proposal under clause 9; and
 - (ii) once every 6 months during the Term,
- (b) The Draft Program must set out the following:
 - (i) the Internal Infrastructure Works and Developer's Site Works carried out to date for each Stage; and
 - (ii) the Developer's estimated time table for the carrying out of future Internal Infrastructure Works and Developer's Site Works.
- (c) Despite any provision of this Agreement, the Owner acknowledges and agrees that the Draft Program is provided on an information only basis and the Developer:
 - (i) may, at its discretion, make changes to the Draft Program at any time; and
 - (ii) is under no obligation to carry out the Internal Infrastructure Works or the Developer's Site Works in accordance with the Draft Program.

7.9 Internal Infrastructure Works and Developer's Site Works costs

7.10 Health Safety and Environmental matters

- (a) In carrying out the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works, the Developer will, subject to clause 18, be responsible for complying with all relevant Environmental Laws, and relevant work, health and safety Laws.
- (b) The Developer must prepare and submit to the Owner a draft environmental management plan and a draft work health and safety management plan, prepared in accordance with best industry practice:

- (c) The Owner:
- (i) must review each draft environmental management plan and each draft work health and safety management plan submitted to the Owner;
 - (ii) may (acting reasonably) request further information from the Developer in relation to the draft plans submitted to the Owner, and the Developer must provide such other requested information; and
 - (iii) must notify the Developer of whether it approves (acting reasonably) or does not approve (acting reasonably) the draft plans within 10 Business Days of the date of submission of the draft plans, and if it does not approve a draft plan, must give reasons for its decisions.

The Owner must not unreasonably withhold its approval of the draft plans.

- (d) If a draft plan is not approved by the Owner, the Developer must resubmit to the Owner a revised plan containing proposals to address the reasons for the Owner's rejection and the provisions of clause 7.8(c) apply to the revised plan.
- (e) The Developer must promptly notify the Owner in writing of any environmental management incidents and work health and safety incidents, must investigate such incidents, must report the results of such investigations in writing to the Owner and must implement such action as may be reasonably required to rectify such incidents and to ensure that such incidents are not repeated.
- (f) When requested to do so, the Developer must make available to the Owner or its consultants its records in relation to environmental management and work health and safety management of the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works.
- (g) Nothing the Owner does, including approving the environmental management plan and the work health and safety plan, will relieve or be deemed to relieve the Developer in any way from its obligations, or diminish its responsibilities, as principal contractor for the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works.

8 Development

8.1 Supply of the Development Land for development

- (a) The Owner agrees to supply the Development Land to the Developer in accordance with this Agreement for the Development in accordance with the Developer's demand for the Development of the Development Land.
- (b) The Owner agrees to make available the Development Land to the Developer for Development at the Effective Date in accordance with clause 14.1.

8.2 Staging

- (a) The parties' intention at the Effective Date is that the Development will be undertaken in the Stages specified in the Development Masterplan subject to the changes permitted pursuant to this Agreement. Despite the previous sentence, the Owner acknowledges that:
 - (i) the commencement of Site Development Works will be dependent on the Developer obtaining a pre-commitment from an Approved Tenant for each Stage or execution of an Agreement for Lease; and
 - (ii) each Development Site may not be equal to a Stage, and may be part of a Stage or across more than one Stage.
- (b) The Developer may vary the Stages and the sequence of Stages in respect of the Development from time to time by notification to the Owner provided that:
 - (i) the Development is undertaken in four overall Stages;
 - (ii) the proposed change to the Stages and sequencing of Stages cannot apply to any Stage which has already been completed.

9 Developments on the Development Land

9.1 Submission of Site Development Proposals

- (a) The Developer must use reasonable endeavours to prepare and submit to the Owner Site Development Proposals during the Term.
- (b) The parties agree that:
 - (i) the Developer may procure Developments by way of an Owner/Occupier Transaction or a Take Out Transaction;
 - (ii) the Developer may, at any time, submit a Site Development Proposal nominating itself or a Nominee as a proposed tenant in respect of a Development Site to enter into an Agreement for Ground Lease with the Owner;

- (iv) clause 9.1(b)(ii) does not in any way limit the Developer's ability to nominate third parties as a proposed tenant in respect of a Development Site; and
- (v) any proposed tenant is an Approved Tenant for the purposes of this Agreement if the proposed tenant:
 - (A) is not Insolvent;
 - (B) (combined with any proposed guarantor), is of sufficient financial standing to perform its relevant obligations under the Agreement for Ground Lease, Ground Lease and Construction Licence (if applicable); and
 - (C) has not been convicted of a criminal offence which carries a maximum sentence of equal to or more than 12 months in prison or multiple sentences that add up to equal to or more than 12 months in prison; and
 - (D) has not been the subject of a formal adverse finding by the Independent Commission against Corruption for conduct which, if prosecuted, carries a maximum sentence of equal to or more than 12 months in prison.
- (c) The Developer must regularly report to the Project Control Group on its activities in seeking and procuring Site Development Proposals.
- (d) The Developer and Owner must liaise and co-operate with each other in relation to the development of Site Development Proposals.
- (e)

9.2 Site Development Proposal

A Site Development Proposal must:

- (a) indicate whether the proposed Development is an Owner/Occupier Transaction or a Take Out Transaction;
- (b) if the proposed Development is a Take Out Transaction, indicate whether the party to be the "Developer" under the Agreement for Ground Lease and the Construction Licence will be the Developer or a Nominee, and if a Nominee, details of the Nominee;

- (c) include a heads of agreement setting out the commercial terms for an Agreement for Ground Lease and Ground Lease including particulars of the proposed tenant (and guarantor, if any) under the Ground Lease;
- (d) indicate the proposed initial permitted use under the Ground Lease;
- (e)
 - (ii) indicate whether the proposal is an Owner/Occupier Transaction (Builder) or Owner/Occupier Transaction (No Builder); and
 - (iii) if the Site Development Proposal is in respect of an Owner/Occupier Transaction (Builder), a certification from an Independent Quantity Surveyor in favour of both the Owner and the Developer certifying that the proposed appointment of the Developer or Nominee by the proposed tenant to construct all or part of the proposed Development is consistent with paragraph (c) of the Development Proposal Criteria.
- (h) include the draft Design Documentation for the proposed Development (to the extent available);
- (i) include the dates or times for commencement and completion of construction and occupation of the Development Site;
- (j) include plans and specifications of the Development Site;
- (k) include details of the Internal Infrastructure Works and the Developer's Site Works required to be completed for the Development;
- (l) include details of any requested variations to the External Infrastructure Works or Additional Infrastructure Works;
- (m) include audited financial statements of the proposed tenant (and guarantor, if any) under the Ground Lease (unless a new entity supported by a parent entity) and any holding company of the proposed tenant for the period 2 years preceding the date of the relevant Site Development Proposal;
- (n) include a diagram showing the corporate relationship between the proposed tenant (and guarantor, if any) and other companies within the relevant corporate group;
- (o) include the proposed size of the area of the Development Site;

- (p) include the Developer's estimate of the cost of the relevant Development, together with:
 - (i) reasonable details of the Developer's calculation of that estimate; and

9.3 Development Proposal Criteria

- (a) The Owner must notify the Developer whether it approves or does not approve a Site Development Proposal or Revised Proposal within 10 Business Days of the date the Developer submits a Site Development Proposal under clause 9.1(a) or within 10 Business Days of the date the Developer submits a Revised Proposal under clause 9.3(g).
- (b) If:
 - (i) a Site Development Proposal submitted under clause 9.1(a); or
 - (ii) a Revised Proposal submitted under clause 9.3(g),
 satisfies the Development Proposal Criteria, and would not require any material changes to the Pro-Forma Agreement for Ground Lease or Pro-forma Construction Licence, then the Owner must approve (by giving written notice to the Developer) that Site Development Proposal or Revised Proposal. The Owner must not take into account the provisions of clause 9.1(e) in considering a Site Development Proposal or Revised Proposal submitted by the Developer under this clause 9.
- (c) If a Site Development Proposal or a Revised Proposal does not comply with the Development Proposal Criteria, the Owner must approve or reject that Site Development Proposal or Revised Proposal. If the Owner rejects a Site Development Proposal or Revised Proposal, the Owner must give written details of the grounds for the rejection.

For the avoidance of any doubt, the Owner's approval of any Site Development Proposal or Revised Proposal which does not comply with the Development Proposal Criteria is not to be taken in any way as a waiver of or amendment to the Development Proposal Criteria.
- (d) If a Site Development Proposal or a Revised Proposal satisfies the Development Proposal Criteria, other than the criteria listed in paragraph (h) of Schedule 1, then the Owner must act reasonably in deciding to approve or reject the Site Development Proposal or Revised Proposal, including that, subject to clause 9.3(e), the Owner must act reasonably in deciding whether to approve a proposed initial permitted use which is not an Approved Permitted Use and, if approved, the provisions of clause 9.3(f) apply to the calculation of the land value rate for that initial permitted use (as relevant).

- (e) If the Developer submits a Site Development Proposal or Revised Proposal which includes:
 - (A) A proposed initial permitted use for Stage 1 other than the Approved Permitted Use; or
 - (B) residential use in any Stage,

then the Owner has an absolute discretion in approving the proposed initial permitted use and, if approved, the provisions of clause 9.3(f) apply to the calculation of the initial land value rate (as relevant).

- (f) If the Developer submits a Site Development Proposal or Revised Proposal which includes a proposed initial permitted use under the Ground Lease which differs from the Approved Permitted Use for the relevant Stage then:
 - (i) if the proposed initial permitted use is an Approved

- (g) If a Site Development Proposal is rejected by the Owner, the Developer may re-submit to the Owner for the Owner's consideration a revised Site Development Proposal containing proposals to address the reason for rejection ("**Revised Proposal**"). The provisions of this clause 9 apply to a Revised Proposal.

9.4 **Owner to enter into the Agreement for Ground Lease, Ground Lease and Construction Licence**

- (a) In respect of an Approved Development Proposal:
 - (i) the Developer must procure the drawing up of the Agreement for Ground Lease and Ground Lease by the Developer's solicitors for the relevant Development Site the subject of the Approved Development Proposal:
 - (A) in the form of the Pro Forma Agreement for Lease as completed or amended as required to:
 - (aa) reflect an Owner/Occupier Transaction or a Take Out Transaction;
 - (ab) include the Approved Tenant's guarantor, if any;
 - (ac) fill in any other blank spaces or do anything else to the Pro Forma Agreement for Ground Lease and Ground Lease necessary to complete the documents;
 - (B) to include the terms of the Approved Development Proposal;
 - (C) if the Approved Development Proposal is in respect of a Take Out Transaction, the Agreement for Ground Lease is to be between the Owner (as landlord), the Nominated Developer (as developer) and the Approved Tenant;
 - (D) if the Approved Development Proposal is in respect of an Owner/Occupier Transaction, the Agreement for Ground Lease is to be between the Owner (as landlord), Developer (as developer) and the Approved Tenant;
 - (E) to include the Approved Tenant's (and guarantor's, if any) limitation of liability clauses (if relevant) provided that the Agreement for Ground Lease and Ground Lease include warranties by the Approved Tenant (and

guarantor, if any) in their capacity as trustee, responsible entity or custodian of the Approved Tenant (and guarantor, if any) that it is the holder of the assets of the relevant trust, that (in the case of the Approved Tenant) its interest in the leased property will be an asset of the relevant trust and that the Approved Tenant (and guarantor, if any) is and will be entitled to be indemnified out of the assets of the relevant trust in relation to its obligations under or in relation to the Agreement for Ground Lease and Ground Lease (but subject to the usual exclusions);

(G) to include the relevant "Architect" nominated by the Developer at the time of entering into the Agreement for Ground Lease;

(ii) the Developer must procure the drawing up of the Construction Licence by the Developer's solicitors for the relevant Development Site the subject of the Approved Development Proposal:

(A) in the form of the Pro Forma Construction Licence as completed or amended as required to reflect an Owner/Occupier Transaction or a Take Out Transaction;

(B) if the Approved Development Proposal is in respect of a Take Out Transaction, the Construction Licence is to be between the Owner and the Nominated Developer;

(C) if the Approved Development Proposal is in respect of an Owner/Occupier Transaction, the Construction Licence is to be between the Owner and the Approved Tenant;

(D) to include the Approved Tenant's (and guarantor's, if any) limitation of liability clauses if any (if an Owner/Occupier Transaction), provided that the Construction Licence includes warranties by the Approved Tenant (and guarantor, if any) in their capacity as trustee, responsible entity or custodian of the Approved Tenant (and guarantor, if any) that it is the holder of the assets of the relevant trust, that (in the case of the Approved Tenant) its interest in the licensed property will be an asset of the relevant trust and that the Approved Tenant (and guarantor if any) is and will be entitled to be indemnified out of the assets of the relevant trust in relation to its obligations under or in relation to the Construction Licence (but subject to the usual exclusions);

- (iii) the Developer must, in conjunction with the Owner and the Owner's solicitors:
 - (A) finalise the Agreement for Ground Lease, Ground Lease and Construction Licence;
 - (B) have the final version of the Agreement for Ground Lease, Ground Lease and Construction Licence prepared and executed by the Nominated Developer, Approved Tenant and/or any guarantor of the Approved Tenant (as required);
 - (C) deliver the Agreement for Ground Lease, Ground Lease and Construction Licence, duly executed by the Nominated Developer, the Approved Tenant and any guarantor of the Approved Tenant (as required), and any bank guarantee or other security required under the Agreement for Ground Lease or Ground Lease to the Owner;
 - (iv) the Developer must, when submitting an Agreement for Ground Lease, Ground Lease or Construction Licence to the Owner for execution, ensure that marked up versions of those documents are submitted showing all differences between the Pro-Forma Agreement for Ground Lease and Pro-Forma Construction Licence and the proposed final form of those documents;
 - (v) the Owner must:
 - (A) finalise the Agreement for Ground Lease, Ground Lease and Construction Licence, promptly, and in good faith; and
 - (B) execute the Agreement for Ground Lease, Ground Lease and Construction Licence promptly after receiving the Agreement for Ground Lease, Ground Lease and Construction Licence from the Developer for execution;
 - (C) grant a Ground Lease to an Approved Tenant as and when required under the relevant Agreement for Ground Lease; and
 - (D) comply with the Owner's other obligations under each Agreement for Ground Lease, Ground Lease and Construction Licence (including obtaining necessary mortgagee or chargee consents); and
 - (vi) the Owner must consider any amendments to the Agreement for Ground Lease, Ground Lease or Construction Licence requested by the Approved Tenant.
- (b) The Developer must give prompt written notice to the Landlord and Tenant after the Agreement for Ground Lease becomes unconditional.

9.5 Compliance with Agreement for Ground Lease

- (a) The Developer must:
- (i) comply with its obligations under each Agreement for Ground Lease and Construction Licence (where applicable);
 - (ii) not do or allow anything to be done which would or might cause the Owner to be in breach of any Agreement for Ground Lease, Construction Licence or Ground Lease;
 - (iii) notify the Owner promptly if the Developer is in breach of any obligation under an Agreement for Ground Lease or Construction Licence (where applicable) or if the

Developer becomes aware of any dispute in relation to an Agreement for Ground Lease or Construction Licence (where applicable) or the performance of the Developer's duties under an Agreement for Ground Lease or Construction Licence (where applicable);

- (iv) notify the Owner promptly if any representation or warranty made or taken to be made by or on behalf of the Developer in connection with an Agreement for Ground Lease or Construction Licence (where applicable) is found to be incorrect or misleading when made or taken to be made; and
- (v) notify the Owner promptly if it becomes aware that any other party to an Agreement for Ground Lease or Construction Licence is in material breach of any term, condition or obligation under that document.

(b) The Owner must:

- (i) comply with its obligations under each Agreement for Ground Lease and Construction Licence;
- (ii) not do or allow anything to be done which would or might cause the Developer to be in breach of any obligation under an Agreement for Ground Lease or Construction Licence; and
- (iii) execute, enter into or grant the Ground Lease as required under the relevant Agreement for Ground Lease.

9.6 Termination of Agreement for Ground Lease

If an Agreement for Ground Lease is subsequently rescinded or terminated prior to the commencement date of the Ground Lease due to any act, default or insolvency of the Approved Tenant, then despite anything else in this Agreement:

- (a) if directed by the Owner, the Developer must immediately cease the relevant Development; and
- (b) the Developer may source and submit a new Site Development Proposal for the Development Site under clause 9, and if that Site Development Proposal becomes an Approved Development, then the Developer must carry out and complete the Development contemplated by that Approved Development Proposal.

9.7 Construction Licence

The Construction Licence must:

- (a) be for a term commencing on the date the Developer under the Agreement for Ground Lease pays the Net Land Payment to the Owner and notifies the Owner that it has paid the Net Land Payment to the Owner; and

- (c) include any necessary changes agreed between the relevant parties.

9.8 Measurement of the Development Site

When the ground area of each Development Site has been determined the Developer will at its cost engage a surveyor to measure the ground area and advise the Developer and the Owner of the dimensions of the relevant Development Site.

9.9 Owner/Occupier Transactions

If a Site Development Proposal indicates that a proposed Development is an Owner/Occupier Transaction:

- (a) the Developer must notify the Owner in writing if a Development or proposed Development is not, or ceases to be, an Owner/Occupier Transaction; and

9.10 Multi-party Side Deed

- (a) The parties agree that the Developer and an Approved Tenant may (and is entitled to) grant a security interest (including a Security Interest) over its rights under this Agreement, an Agreement for Ground Lease and a Construction Licence to its financier or financiers.
- (b) If requested by the Developer or an Approved Tenant, the Owner must enter into a deed or deeds with the Developer, Approved Tenant and the Approved Tenant's and/or Developer's financier in a form reasonably required by the Approved Tenant's and/or the Developer's financier ("**Multi-Party Side Deed**").
- (c) The Multi-Party Side Deed referred to in clause 9.10(b) above will generally be consistent with the principles contained in Schedule 10 or must otherwise be on terms reasonably acceptable to the parties.
- (d) The parties agree to act reasonably and in good faith in relation to things requested by the Developer or Approved Tenant or their respective financier or financiers, including the negotiation and execution of a Multi-Party Side Deed. Without limiting the previous sentence, the Owner accepts that the Approved Tenant's and/or the Developer's financier may have requirements that are different to the principles contained in Schedule 10 (including the financier's form of Multi-Party Side Deed) and the Owner must act reasonably and in good faith in relation to the financier's requirements.

9.11 Ownership of fixtures

- (a) The Owner acknowledges that:
- (i) (in respect of a Take Out Transaction) the Nominated Developer will undertake and complete the relevant Development in accordance with the relevant Agreement for Ground Lease; and
 - (ii) (in respect of a Take Out Transaction) the Approved Tenant will pay certain amounts to the Nominated Developer for the construction and completion of the Development; or
 - (iii) (in respect of an Owner/Occupier Transaction), the Approved Tenant will (at its cost) undertake and complete the relevant Development in accordance with the relevant Agreement for Ground Lease.
- (b) Other than as required by Law, and subject to clause 6.3 of the Pro-Forma Agreement for Ground Lease, it is the express intention of the parties that all improvements forming part of the Development that are constructed on the relevant Development Site vest in the Approved Tenant until expiry or earlier determination of the relevant Ground Lease, and each party must execute such further document as may be required to effect that vesting.

10 Approvals

10.1 The Developer responsible

- (a) With the exception of the Initial Development Consent and, subject to clause 10.1(b), Approvals in connection with the External Infrastructure Works, the Developer must use its reasonable endeavours at its cost to obtain all Approvals required to lawfully:
- (i) enter into and properly execute, perform, observe and discharge its rights and obligations under this Agreement;
 - (ii) plan, design, execute and complete each Development;
 - (iii) plan, design, execute and complete the Internal Infrastructure Works;
 - (iv) plan, design, executed and complete the Developer's Site Works; and
 - (v) plan, design, execute and complete the Additional Infrastructure Works (if any),

and the Owner, if so requested by the Developer, must co-operate with and assist the Developer in obtaining all Approvals, including promptly executing each application for an Approval upon request by the Developer.

- (b) The Developer must pay the cost of all Approvals required as a result of a variation or change to the External Infrastructure Works requested by the Developer pursuant to clause 6.2(a).

10.2 Approval Process

- (a) In order to remove any doubt, the Developer and the Owner acknowledge and agree that:
- (i) Subject to clause 10.2(b)(ii), the normal development process for any particular Development Site is that:
 - (A) the Developer will lodge a Site Development Proposal and obtain the Owner's approval to such proposal on the terms and conditions of this Agreement and for the purposes of obtaining the Approved Development Proposal; and
 - (B) if an Approved Development Proposal is obtained and the relevant parties enter into an Agreement for Ground Lease, the Developer will obtain all other Approvals required by Law (other than Approvals in connection with External Infrastructure Works as those works may be varied), including a development consent from the Relevant Authority in relation to the Internal Infrastructure Works for the relevant Stage or Development Site ("**Internal Works Development Consent**").
 - (ii) The Developer must provide a copy of the Internal Works Development Consent to the Owner promptly after it is issued to the Developer.
 - (iii) The Developer must,
 - notify the Owner whether or not the relevant Internal Works Development Consent is on conditions acceptable to the Developer and the Approved Tenant. The Developer may only reject conditions of the Internal Works Development Consent if:
 - (A) the conditions materially adversely affect the Developer's ability to comply with its obligations under this Agreement, an Agreement for Ground Lease or an agreement for lease with a future occupier of the Development Site; or
 - (B) compliance with the conditions of the relevant Internal Works Development Consent will result in a material increase of the Internal Infrastructure Works costs.
 - (iv) If the Developer gives notice under clause 10.2(a)(iii) that the Internal Works Development Consent is on conditions which are not acceptable to the Developer, the Developer may require that steps be taken to object to or appeal against the relevant conditions in which case the Owner and the Developer must co-operate with each other in pursuing such objection or appeal without delay. If after any objection or appeal process required by the Developer has been exhausted, the Internal Works Development Consent is still subject to conditions which are not acceptable to the Developer,

having regard to the provisions of clause 10.2(a)(iii), the Developer may require that the Development of the relevant Development Land not proceed until such time as an Internal Works Development Consent is obtained on conditions which are acceptable to the Developer having regard to the provisions of clause 10.2(a)(iii).

- (b) Despite clause 10.2(a), and for the avoidance of doubt, the Owner agrees that the Developer may:
 - (i) obtain the relevant Internal Works Development Consent at the same time as the Developer obtains the Approvals (including the development consent) for the relevant Development; and
 - (ii) prepare and submit applications for development consent from the Relevant Authority in relation to proposed Developments for each Stage (or part of a Stage) before the Developer submits a Site Development Proposal to the Owner in relation to the relevant Stage (or part of a Stage).

10.3 Development of a Development Site

If the Developer obtains all relevant Approvals for the Development on terms acceptable to it, the Developer must procure the design and construction of the buildings and works on the Development Site in accordance with the Approved Development Proposal (but not including the External Infrastructure Works, which are the Owner's responsibility), the Agreement for Ground Lease and all applicable Laws. The Developer must commence and complete the construction of the works on the Development Site within the time frames specified in the Approved Development Proposal.

11 Construction

11.1 Complete Development

The Developer shall complete each Development or cause each Development to be completed in accordance with:

- (a) this Agreement;
- (b) the Development Masterplan, subject to minor variations from the Development Masterplan or other variations from the Development Masterplan approved by the Owner in accordance with this Agreement;
- (c) the Approved Development Proposal, subject to minor variations which are not inconsistent with the Approved Development Proposal or other variations approved by the Owner (which approval must not be unreasonably withheld provided the variations are consistent with the requirements of this Agreement); and
- (d) all Approvals and applicable Laws.

11.2 Comply with Requirements

The Developer at its expense must:

- (a) comply with all proper and lawful requirements of any Relevant Authority in relation to each Development; and

- (b) comply with and give all notices and obtain all certificates, licences and permits required by any law and pay and indemnify the Owner against any statutory fees or charges legally payable in respect of each Development; and
- (c) for the avoidance of doubt, the Developer must pay all long service leave levies required to be paid by Law in respect of each Development.

11.3 Insurance

- (a) From the date of commencement of any Development until the date of expiry of the defects liability period for such Development, the Developer must keep, or must ensure that its contractor carrying out the Development keeps:
 - (i) contracts work insurance in the name of the Developer with the Owner to be listed as an additional insured;
 - (ii) public liability insurance in the name of the Developer as well as any contractor, with the Owner to be listed as an additional insured for liability arising out of the Developer's or contractor's actions;
 - (iii) motor vehicle third party property insurance in the name of the Developer in respect of the Developer's passenger motor vehicles;
 - (iv) workers compensation insurance for all workers; and
 - (v) professional indemnity insurance in the name of the Developer for its potential liability in relation to civil liability claims, by reason of any act, error or omission of the Developer which results in an actual or alleged breach of professional duty under this Agreement;
 - (b) All insurers for the insurances referred to in clauses 11.3(a)(i), (ii) and (v) must be from a reputable insurer.
 - (c) Each insurance policy referred to in clauses 11.3(a)(i) and (ii) must include a cross liability clause under which the insurer agrees to waive all rights of subrogation against each party noted on the policy.
 - (d) Prior to commencement of any works, the Developer must produce to the Owner a copy of the certificate of currency of each policy and evidence that such policies satisfy the requirements of this clause 11.3.
-

Infrastructure Works. if the delay to the External

12A NSW Code and Implementation Guidelines

In addition to terms defined in this Agreement, terms used in clauses 12A.1 to 12A.5 have the same meaning as is attributed to them in the Implementation Guidelines (as published by the NSW Treasury July 2013). The NSW Code and Implementation Guidelines are available at www.industrialrelations.nsw.gov.au.

12A.1 Primary Obligation

- (a) The Developer must at all times comply with, and meet any obligations imposed by:
- (i) the NSW Code, in undertaking the construction of the Access Road ("**Access Road Works**") and the Drainage Basin Works; and
 - (ii) the Implementation Guidelines in undertaking the Site Development Works and the Internal Infrastructure Works.
- (b) The Developer must notify the Construction Compliance Unit (CCU) and the Owner of any possible non-compliance with:
- (i) the NSW Code, in relation to the Access Road Works and the Drainage Basin Works; and
 - (ii) the Implementation Guidelines, in relation to the Site Development Works and the Internal Infrastructure Works,
- and of remedial action taken, within 24 hours of becoming aware of the possible non-compliance.
- (c) Where the Developer engages a subcontractor or consultant (including, without limitation, the Builder) in relation to the Site Development Works and the Internal Infrastructure Works after the Effective Date, the Developer must ensure that the contract imposes on the subcontractor or consultant equivalent obligations to those in clauses 12A.1 to 12A.4, including that the subcontractor or consultant must, at all times comply with, and meet any obligations imposed by:
- (i) the NSW Code, in relation to the Access Road Works and the Drainage Basin Works only; and
 - (ii) the Implementation Guidelines, in relation to the Site Development Works and the Internal Infrastructure Works.

- (d) The Developer must not appoint or engage another party in relation to the Site Development Works and the Internal Infrastructure Works where that appointment or engagement would breach a sanction imposed on the other party in relation to:
 - (i) the NSW Code, in relation to the Access Road Works and the Drainage Basin Works only; and
 - (ii) the Implementation Guidelines, in relation to the Site Development Works and the Internal Infrastructure Works.
- (e) For the avoidance of doubt, the Developer is not required to comply with the NSW Code in relation to the Site Development Works and the Internal Infrastructure Works (other than the Access Road Works and the Drainage Basin Works) including any provisions of the Implementation Guidelines that refer to the NSW Code.

12A.2 Access and information

- (a) The Developer must maintain adequate records of compliance with:
 - (i) the NSW Code, in relation to the Access Road Works and the Drainage Basin Works only; and
 - (ii) the Implementation Guidelines, in relation to the Site Development Works and the Internal Infrastructure Works,
 by it, its subcontractors, consultants and Related Entities (as applicable).
- (b) The Developer must allow, and take reasonable steps to facilitate, authorised personnel (including personnel of the CCU) to:
 - (i) enter and have access to Development Sites controlled by the Developer;
 - (ii) inspect any work, material, machinery, appliance, article or facility;
 - (iii) access information and documents;
 - (iv) inspect and copy any record relevant to the Access Road Works and the Drainage Basin Works;
 - (v) have access to personnel; and
 - (vi) interview any person,
 as is necessary for the authorised personnel to monitor and investigate compliance with:
 - (vii) the NSW Code, in relation to the Access Road Works and the Drainage Basin Works; and

- (viii) the Implementation Guidelines, in relation to the Site Development Works and the Internal Infrastructure Works,

by the Developer, its subcontractors, consultants and Related Entities.

- (c) The Developer must agree to, and comply with (and procure its Related Entities agree to, and comply with), a request from authorised personnel (including personnel of the CCU) for the production of specified documents, in relation to the Access Road Works and the Drainage Basin Works, by a certain date, whether in person, by post or electronic means.

12A.3 Sanctions

- (a) The Developer warrants that at the time of entering into this Agreement, neither it, nor any of its Related Entities, are subject to a sanction in connection with the NSW Code or Implementation Guidelines that would have precluded it from responding to a procurement process for work to which the NSW Code and Implementation Guidelines apply.
- (b) If the Developer does not comply with, or fails to meet any obligation imposed by:
 - (i) the NSW Code, in relation to the Access Road Works and the Drainage Basin Works only; or
 - (ii) the Implementation Guidelines, in relation to the Site Development Works and the Internal Infrastructure Works,

a sanction may be imposed against it in connection with the NSW Code or Implementation Guidelines (as applicable).

- (c) Where a sanction is imposed:
 - (i) it is without prejudice to any rights that would otherwise accrue to the parties; and
 - (ii) the State of NSW (through its agencies, Ministers and the CCU) is entitled to:
 - (A) record and disclose details of non-compliance with the NSW Code or Implementation Guidelines and the sanction; and
 - (B) take them into account in the evaluation of future procurement processes and responses that may be submitted by the Developer, or its Related Entities, in respect of work to which the NSW Code and Implementation Guidelines apply.

12A.4 Compliance

- (a) The Developer bears the cost of ensuring its compliance with:
 - (i) the NSW Code, in relation to the Access Road Works and the Drainage Basin Works only; and

- (ii) the Implementation Guidelines, in relation to the Site Development Works and the Internal Infrastructure Works, including in respect of any positive steps it is obliged to take to meet its obligations under the Implementation Guidelines.

The Developer is not entitled to make a claim for reimbursement or an extension of time from the Owner or the State of NSW for such costs.

- (b) Compliance with the NSW Code and Implementation Guidelines in accordance with this clause 12A does not relieve the Developer from responsibility to perform the Access Road Works and the Drainage Basin Works and any other obligation under this Agreement, or from liability for any defect in the Access Road Works, the Drainage Basin Works or from any other legal liability, whether or not arising from its compliance with the NSW Code and Implementation Guidelines (as applicable).
- (c) Where a change in this Agreement, the Access Road Works or the Drainage Basin Works is proposed, and that change may, or may be likely to, affect compliance with the NSW Code and Implementation Guidelines, as required by this Agreement, the Developer must immediately notify the Owner (or nominee) of the change, or likely change and specify:
 - (i) the circumstances of the proposed change;
 - (ii) the extent to which compliance with the NSW Code and Implementation Guidelines in accordance with this Agreement will be, or is likely to be, affected by the change; and
 - (iii) what steps the Developer proposes to take to mitigate any adverse impact of the change (including any amendments it proposes to a Workplace Relations Management Plan or Work Health and Safety Management Plan).

12A.5 General

The parties agree that clauses 12A.1 to 12A.4 is the Owner's (as a New South Wales Government agency) implementation of the NSW Code and Implementation Guidelines as a result of the Tender and this Agreement.

13 Development Masterplan and Value Management Plan

13.1 Development Masterplan

- (a) The parties acknowledge that the Initial Development Masterplan is attached at Schedule 5.
- (b) The Developer must prepare an updated Development Masterplan every 6 months after the Effective Date during the Term ("**Updated Development Masterplan**").
- (c) Each Development Masterplan must include a statement of the Developable Site Area as at the relevant date of the Development Masterplan.

- (d) The Owner may provide its reasonable comments and any reasonable amendments to the draft Updated Development Masterplan submitted by the Developer within 14 Business Days of receipt of that draft Updated Development Masterplan from the Developer.
- (e) The Developer must incorporate any of the Owner's comments or amendments that it considers is appropriate (acting reasonably), and must submit a final Updated Development Masterplan to the Owner. The parties must initial the final Updated Development Masterplan for identification purposes.
- (f) With respect to the Development Masterplan, the parties agree that:

- (ii) the Development Masterplan or Updated Development Masterplan may be changed by the Developer from time to time, provided:
 - (A) the Developer prepares and submits the amended draft Development Masterplan to the Owner; and
 - (B) the parties comply with the provisions of clauses 13.1(d) and 13.1(e) in respect of the amended draft Development Masterplan;

and

- (g) Without limiting the above, the parties agree that the Developer may change the "access roads" shown on the Development Masterplan or the Updated Development Masterplan (including but not limited to the layout or location of the access road) as is required for the Development, provided such change does not materially adversely affect the access to or through the Development Land.

13.2 Value Management Plan

- (a) As soon as reasonably practicable after the Effective Date, the Developer must prepare a draft Value Management Plan in accordance with clause 13.2(b), and submit the draft Value Management Plan to the Owner.
- (b) The Value Management Plan must include a 'risks and opportunities' register addressing the following items:
 - (i) a review of any development applications and recommendations for future development applications; and
 - (ii) possible options for minimising costs of any remediation works required to be undertaken by the Owner and/or the Developer.
- (c) The Owner may provide its reasonable comments and any reasonable amendments to the draft Value Management Plan submitted to the Owner within 20 Business Days of receipt of that draft Value Management Plan from the Developer under clause 13.2(a).
- (d) The Developer must incorporate any of the Owner's comments or amendments that it considers is appropriate (acting reasonably), and submit a final Value Management Plan to the Owner. The parties must initial the final Value Management Plan for identification purposes.
- (e) At least 20 Business Days prior to each anniversary of the Effective Date, the Developer must review and update the Value Management Plan and submit an updated Value Management Plan ("**Updated Value Management Plan**") to the Owner, and the provisions of clauses 13.2(b), 13.2(c) and 13.2(d) apply to each Updated Value Management Plan.

14 Access

14.1 Owner must permit access to Undeveloped Land

- (a) From the Effective Date, the Owner must permit the Developer and authorised representatives, consultants and agents of the Developer to enter the Undeveloped Land at reasonable times and upon reasonable notice to the Owner for the purposes of:
 - (i) undertaking pre-development investigations, including testing and other investigation of the condition of the site;

- (ii) undertaking a survey or surveys;
 - (iii) showing prospective investors and users over the site; and
 - (iv) any other purpose requested by the Developer (acting reasonably).
- (b) From the date the Owner provides the Initial Certification or the Amended Certification (as relevant) to the Developer ("**Access Date**"), and in addition to the access rights granted to the Developer under clause 14.1(a), the Owner must permit the Developer and authorised representatives, consultants and agents of the Developer to enter the Undeveloped Land at reasonable times and upon reasonable notice to the Owner for the purposes of:
- (i) undertaking the Internal Infrastructure Works; and
 - (ii) undertaking the Developer's Site Works.
- (c) Despite any other provision of this Agreement, the Developer acknowledges that the Developer's employees, contractors, agents, invitees and visitors may not access the Undeveloped Land before receiving the Owner's site induction training. The Owner must make the Owner's site induction training available to the Developer's employees, contractors, agents, invitees and visitors on reasonable notice by the Developer.
- (d) The Owner must comply and cause its representatives and consultants to comply at all times with the reasonable requirements for the time being of the Developer and not to delay a Development.

14.2 Not used

14.3 Not used

14.4 Conditions

The Developer must:

- (a) keep the Owner informed in relation to the exercise of its rights under this clause 14;
- (b) comply with the reasonable directions of the Owner from time to time in relation to its access to and use of the Undeveloped Land.

For the purpose of clause 14.4(b), the Owner has approved the 'batter' works in clause 14.3.

14.5 Release and Indemnity

- (a) The Developer releases the Owner from any claim, action, damage, loss, liability, cost or expense which the Developer incurs or is liable for in connection with any damage, loss, injury or death to or of any person or property arising from the Developer's access to or use of the Undeveloped Land and any liability for damage to the Developer's property arising from the Developer's access to or use of the Undeveloped Land.
- (b) The Developer indemnifies the Owner against any claim, action, damage, loss, liability, cost or expense which the Owner incurs or is

liable for in connection with any damage, loss, injury or death caused or contributed to by the Developer or the Developer's authorised representatives, consultants, employees, agents, contractors or invitees, access to or use of the Undeveloped Land, except to the extent such damage, loss, injury or death caused or contributed to by the act or omission of the Owner or the Owner's authorised representative, consultants, employees, agents, contractors or invitees.

14.6 Undeveloped Land

- (a) In this clause 14.6:
 - (i) **"Developer's Period"** means, for each part of the Development Land, the period during which the Developer is carrying out physical works for the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works on that part of the Development Land; and
 - (ii) **"Owner's Period"** means, for each part of the Development Land, the period from the Effective Date until the commencement date of the Construction Licence for that part of the Development Land, but excluding the Developer's Period.
- (b) The Owner retains control of the Undeveloped Land during the Owner's Period and the Undeveloped Land remains at the risk of the Owner during the Owner's Period.
- (c) During the Owner's Period, the Owner must:
 - (i) maintain the Undeveloped Land in substantially the same condition that it was in at the date of this Agreement, subject to the Developer carrying out the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works (but the Owner may carry out the Contamination Works and the External Infrastructure Works);
 - (ii) use reasonable endeavours to secure the Undeveloped Land; and
 - (iii) comply on time with all Laws and requirements of any Relevant Authority in connection with the Undeveloped Land.
- (d) During the Developer's Period for each part of the Development Land, the Developer controls that part of the Development Land and that part of the Development Land remains at the risk of the Developer during the Developer's Period.
- (e) During the Developer's Period, the Developer must:
 - (i) maintain the relevant part of the Development Land in substantially the same condition that it was in at the date the Developer took control of that part of the Development Land (but the Developer may carry out the Development and any Additional Infrastructure Works in accordance with this Agreement); and
 - (ii) use reasonable endeavours to secure the relevant part of the Development Land.

- (f) The Developer must notify the Owner when the Developer's Period in respect of any part of the Development Land expires.

14.7 Definition

For the purposes of this clause 14 and clause 21, "**Undeveloped Land**" means that part of the Development Land which is not at the relevant time subject to a Construction Licence between the Owner and Developer or the Owner and Approved Tenant in respect of an Owner/Occupier Transaction (as applicable).

15 Environmental monitoring

15.1 Owner responsible for Contamination

- (a) The Owner is responsible for:
 - (i) the remediation and management of any Contamination existing in, on or emanating from the Development Land identified in the Planning Documentation; and
 - (ii) the remediation and management of any Contamination existing in, on or emanating from the Development Land to the extent that such Contamination renders the land unsuitable for commercial and industrial use and, with respect to that part of the Development Land identified for childcare on the Initial Development Masterplan (**Childcare Area**), unsuitable for childcare use; and
 - (iii) the remediation and management of any Contamination in the Development Land to the extent such Contamination:
 - (A) renders the Development Land unsuitable for commercial and industrial use and, with respect to the Childcare Area, unsuitable for childcare use; and
 - (B) is caused or contributed to by:
 - (aa) the Owner or the Owner's Agents at any time after the date of the Initial Certification or Amended Certification (as relevant); or
 - (ab) any person (other than the Developer or the Developer's Agents) during that part of the Owner's Period after the date of the Initial Certification or Amended Certification (as relevant).
- (b) The parties agree that:
 - (i) clauses 15.1(a)(i) and 15.1(a)(ii) are deemed to be satisfied on the date of the Initial Certification or Amended Certification (as required); and
 - (ii) clause 15.1(a) does not apply to any Contamination existing in, on or emanating from the Development Land to the extent such Contamination was caused by the Developer or the Developer's Agents.
- (c) The Owner must as soon as reasonably practicable remediate and manage any Contamination existing in, on or emanating from the Development Land for which the Owner is responsible pursuant to

clause 15.1(a)(iii). For the avoidance of doubt this clause does not apply to any Contamination:

- (i) existing in, on or emanating from the Development Land as at the date of the Initial Certification or Amended Certification (as relevant) but not identified as at the date of the Initial Certification or Amended Certification (as relevant); or
- (ii) caused or contributed to by any person during the Developer's Period unless that Contamination is caused or contributed to by the Owner or the Owner's Agents.

15.2 Not used

15.3 Owner's responsibility for certification

(a)

the Owner must (at its cost) procure and deliver:

- (i) a Site Audit Statement from the Consultant addressed to the Owner and the Developer certifying that the Development Land is suitable for commercial and industrial use without the need for any further remediation or management works (**Initial Commercial Certification**); and
- (ii) a Site Audit Statement from the Consultant addressed to the Owner and the Developer certifying that the Childcare Area is suitable for residential with gardens and accessible soil use without the need for any further remediation or management works (**Initial Childcare Certification**),

(collectively "**Initial Certification**").

(b) For the avoidance of doubt, the Owner is responsible for the remediation and management of all Contamination as is required to obtain the Initial Certification, even if that Contamination is not identified in the Planning Documentation.

(c) after the Developer receives:

- (i) the Initial Commercial Certification, the Developer must give written notice as to whether or not the Initial Commercial Certification is acceptable to the Developer (acting reasonably). If the Developer's written notice states that it is not satisfied with the Initial Commercial Certification, the Developer must give reasons for its decisions; and
- (ii) the Initial Childcare Certification, the Developer must give written notice as to whether or not the Initial Childcare Certification is acceptable to the Developer (acting reasonably). If the Developer's written notice states that it is not satisfied with the Initial Childcare Certification, the Developer must give reasons for its decisions.

(d) If:

- (i) the Initial Commercial Certification is rejected by the Developer under clause 15.3(c), the Owner must procure the Consultant to amend the Initial Commercial Certification or otherwise address the reason(s) for rejection, and deliver the amended certification to the Developer ("**Amended Commercial Certification**"). The

provisions of this clause 15.3 will apply again to the Amended Commercial Certification; and

- (ii) the Initial Childcare Certification is rejected by the Developer under clause 15.3(c), the Owner must procure the Consultant to amend the Initial Childcare Certification or otherwise address the reason(s) for rejection, and deliver the amended certification to the Developer ("**Amended Childcare Certification**"). The provisions of this clause 15.3 will apply again to the Amended Childcare Certification.

Amended Certification means the Amended Commercial Certification and the Amended Childcare Certification.

- (e) If the Owner (acting reasonably) does not agree with the Developer's reason(s) for rejecting the Initial Commercial Certification, the Initial Childcare Certification, the Amended Commercial Certification or Amended Childcare Certification, then the parties must refer the matter for determination under clause 20.
- (f) If the Owner does not procure and deliver the Initial Certification or Amended Certification (as relevant) to the Developer in accordance with this clause 15.3 by the Remediation Date:

- (h) In this clause 15.3, "**Consultant**" means a suitably qualified and accredited environmental consultant nominated by the Owner and approved by the Developer, such approval not to be unreasonably withheld.

15.4 Extension of time

- (a) If:
 - (i) the Owner gives to the Developer a written claim for an extension of the Remediation Date stating:
 - (A) the fact or likelihood of delay in the Owner providing the Initial Certification or Amended Certification (as relevant);

- (B) the cause of the delay;
 - (C) the date on which the cause of the delay first arose and the date on which the delay ceased; and
 - (D) the number of days of extension claimed; and
- (ii) there is a delay and the cause of the delay is due to:
- (A) additional remediation or management works being required to be undertaken by the Owner in respect of Contamination existing in, on or emanating from the Development Land that was not identified in the Planning Documentation;
 - (B) any delay to the extent that such delay is caused or contributed to by the Developer (other than by the Developer acting in accordance with this Agreement);
 - (C) delay of a Relevant Authority in connection with the Contamination Works not caused by the Owner, including any delay by Council in issuing relevant Approvals;
 - (D) latent conditions causing delay to the Contamination Works;
 - (E) any proceedings, whether taken or threatened, of neighbouring owners or occupiers of land adjoining the Development Land in respect of the Development Land; or
 - (F) any delay to the extent that such delay is caused by a Force Majeure Event in respect of the Contamination Works,

then the Owner is entitled to an extension to the Remediation Date, and the Developer must,

give:

- (iii) written notice to the Owner of any extension of the Remediation Date granted; or
- (iv) if the claimed extension is not granted, written notice of and the reasons for that decision.

(b) If the Developer:

- (i) gives a notice under clause 15.4(a) stating it does not agree with the Owner's notice under clause 15.4(a)(i); or
- (ii) does not give a notice within the relevant time period under clause 15.4(a),

the Developer is deemed to dispute the Owner's notice under clause 15.4(a)(i), and the parties must resolve the dispute in accordance with clause 20.

- (c) The Owner is only entitled to an extension of the Remediation Date under clause 15.4(a) if:
 - (i) the Owner gives notice under clause 15.4(a)(i) ;
 - (ii) the Owner has used reasonable endeavours to minimise the delay; and
 - (iii) the Owner is continuing to use reasonable endeavours to provide the Initial Commercial Certification, the Initial Childcare Certification, the Amended Commercial Certification or the Amended Childcare Certification (as relevant).
- (d) The extension of the Remediation Date will be either:
 - (i) if the Developer agrees with the Owner's notice under clause 15.4(a)(i), as set out in the Developer's notice under clause 15.4(a); or
 - (ii) if clause 15.4(b) applies, as determined under clause 20.

15.5 Owner to provide reports

The Owner must:

- (a) promptly provide the Developer with copies of all environmental reports and statement obtained by or on behalf of the Owner in relation to the Development Land; and
- (b) ensure the Developer and any Approved Tenant are entitled to rely on all environmental reports and statements obtained by or on behalf of the Owner in relation to the Development Land.

15.6 Developer accepts Development Site

- (a) Subject to clause 15.1(a)(iii) and the Owner complying with its obligations under this clause 15, the Developer:
 - (i) subject to clause 15.6(b), accepts:
 - (A) any Contamination existing in or on each Development Site (excluding the Childcare Area) during the Developer's Period;
 - (B) any Contamination existing in each Development Site (excluding the Childcare Area) as at the commencement date of the Construction Licence for the relevant Development Site;
 - (C) any Contamination existing in or on the Childcare Area during the Developer's Period; and
 - (D) any Contamination existing in or on the Childcare Area as at the commencement date of the Construction Licence for the Childcare Area; and
 - (ii) subject to clause 15.6(b), releases the Owner from any liability in respect of any Contamination existing in or on:
 - (A) the Development Site (excluding the Childcare Area) during the Developer's Period;

- (B) the Development Site (excluding the Childcare Area) after the commencement date of the Construction Licence for the relevant Development Site;
 - (C) the Childcare Area during the Developer's Period; and
 - (D) the Childcare Area after the commencement date of the Construction Licence for the Childcare Area.
- (b) Despite any other provision of this Agreement, clauses 15.6(a)(i), 15.6(a)(ii), 15.6(d) also apply to any Contamination leaching from a Development Site onto adjoining land but only to the extent the leaching is caused or contributed to by the Developer or the Developer's Agents.
- (c) Subject to the Owner complying with its obligations under this clause 15, if any activity carried out by or on behalf of the Developer on a Development Site necessitates remediation of any Contamination, then any remediation works to be carried out by the Developer will be:
- (i) subject to the consent of the Owner (which must not be unreasonably withheld or delayed); and
 - (ii) at the Developer's cost.
- (d) Subject to clause 15.6(b), the Developer is responsible for:
- (i) the remediation and management of any Contamination existing in or on the Development Land to the extent such Contamination:
 - (A) renders the Development Land unsuitable for commercial and industrial use; and
 - (B) is caused or contributed to by:
 - (aa) the Developer or the Developer's Agents; and
 - (ab) any person other than the Owner or the Owner's Agents during the Developer's Period in respect of a Development Site.
- (e) The Developer must as soon as reasonably practicable remediate and manage any Contamination for which the Developer is responsible pursuant to clause 15.6(d) to the extent that such Contamination renders the land unsuitable for commercial and industrial use.

15.8 Notice of Contamination

During the Term:

- (a) the Owner must promptly notify the Developer if it becomes aware of the existence of Contamination in, on or emanating from the Development Land to the extent the existence of that Contamination is not already known by the Developer; and
- (b) the Developer must promptly notify the Owner if it becomes aware of the existence of Contamination in, on or emanating from the Development Land to the extent the existence of that Contamination is not already known by the Owner.

15.9 Owner gives no warranties

Except as provided in this clause 15, the Owner gives no warranties and makes no representations as to the physical condition of the Retail Centre Land (including latent conditions and Contamination) or other conditions or existing services or structures on the Retail Centre Land. The Developer will accept the Development Land subject to any physical conditions, services or structures, including any changes to such physical conditions, services or structures during the Term.

16 Project Control Group

16.1 Creation of Project Control Group

- (a) Not later than 10 Business Days from the Effective Date, the parties must establish a Project Control Group, which will consist of:
 - (i) at least two (2) representatives of the Developer; and
 - (ii) at least two (2) representative of the Owner.
- (b) The purpose of the Project Control Group is to provide a forum for consultation between the Owner and the Developer with a view to:
 - (i) coordinating the efficient implementation of each Development and monitoring the progress of each Development; and
 - (ii) coordinating the efficient implementation of the Infrastructure Works and monitoring the progress of the Infrastructure Works.
- (c) Either party may request any other person to attend a meeting of the Project Control Group.
- (d) The Developer and the Owner agree to cooperate and use all reasonable endeavours to use the mechanisms of the Project Control Group to achieve mutually acceptable outcomes in relation to all matters discussed at the Project Control Group.

16.2 Meetings of Project Control Group

- (a) The Project Control Group must meet bi-monthly, commencing promptly after its establishment and until Practical Completion of the last Development, or as otherwise agreed.
- (b) Meetings will be minuted by the representative of the Developer. The Developer's representative will chair meetings of the Project Control Group.

- (c) If a member of the Project Control Group is unable to be present at a meeting, the member may authorise another person to attend the meeting in their place, or may participate in the meeting by telephone or other electronic means.
- (d) A quorum for the Project Control Group meeting requires at least one representative of the Developer and at least one representative of the Owner.

16.3 Conduct of Project Control Group meetings

- (a) The role of the Project Control Group is to monitor, identify and discuss:
 - (i) relevant opportunities to procure a Development on the Development Land;
 - (ii) market conditions;
 - (iii) competitor movements and any other factors relevant to this Agreement;
 - (iv) failures to comply with this Agreement by either party;
 - (v) progress of the Development;
 - (vi) current claims for extensions of time, including details of dates submitted, dates determined and extensions granted;
 - (vii) any other relevant matters suggested by either party (both acting reasonably in this regard); and
 - (viii) status of matters in dispute.
- (b) The Developer's representative must provide notice of each meeting to the Owner's representative at least 5 Business Days before each meeting. The notice must contain an agenda for the meeting.
- (c) The Developer must maintain up to date minutes of each meeting of the Project Control Group, and provide a copy of such minutes to the Owner if requested by the Owner.

16.4 Reporting

- (a) The Developer must, at least 5 Business Days before each meeting of the Project Control Group, provide a written report to the Owner setting out reasonable details in relation to the items listed in clause 16.4(b).
- (b) The Developer must prepare a report for each meeting of the Project Control Group, which includes the following areas of reporting:
 - (i) executive summary;
 - (ii) copy of previous minutes;
 - (iii) marketing and leasing status, including the current opportunities, marketing initiatives and budget, competitor analysis and market conditions;
 - (iv) legal issues;
 - (v) Approvals;

- (vi) Value Management Plan;
- (vii) Design Documentation;
- (viii) construction, including details and progress of the External Infrastructure Works, Internal Infrastructure Works and other facilities;
- (ix) financials;
- (x) programme;
- (xi) occupation health and safety issues;
- (xii) occupational health and safety policies and procedures with regards to principal contractors on the Development Land; and
- (xiii) any other general issues relating to this Agreement.

16.5 Costs of Project Control Group

The Owner and the Developer shall bear their own costs in relation to the Project Control Group.

17 Single Sites

17.1 Single Site for each Development Site

- (a) The parties agree it is intended that each Development Site will be contained in a separate folio identifier to identify each Development Site as a single site and a separate Certificate of Title will be issued in respect of that folio identifier to facilitate the registration of each Ground Lease.
- (b) In respect of each Development Site the Developer must prepare proposed plans of subdivision, consolidation or amalgamation (as applicable) for each Development Site to ensure each Development Site is contained within a separate folio identifier ("**Subdivision Plan**").
- (c) In respect of each Subdivision Plan:
 - (i) the Developer must lodge the Subdivision Plan for approval to the Relevant Authority, and must use reasonable endeavours to procure the Relevant Authority's approval to the Subdivision Plan;
 - (ii) the Developer must lodge the Subdivision Plan for registration with the LPI and must use reasonable endeavours to procure registration of the Subdivision Plan and issue of a Certificate of Title in respect of the relevant Development Site; and
 - (iii) the Owner must execute all documentation and do all things reasonably required by the Developer to assist the Developer to prepare the Subdivision Plan or procure registration of the Subdivision Plan with the LPI.
- (d) The parties agree that a Subdivision Plan may include easements, covenants and such other encumbrances as reasonably required (including as required by any Authority), affecting the Development Land, to facilitate the relevant subdivision, provided that such easements, covenants and other encumbrances have been approved by the Owner, such approval not to be unreasonably withheld. The Owner must

execute all documentation and do all things reasonably required by the Developer in respect of any such required easements, covenants and other encumbrances.

17.2 Development Site Contributions or Levies

- (a) The Developer and Owner agree that:
 - (i) the Initial Development Consent does not require the payment of any developer contributions under section 94 of the *Environmental Planning and Assessment Act 1979* (NSW) in respect of the Development Land or any Development Site (**Developer Contributions**);
 - (ii) any Developer Contributions levied in respect of the External Infrastructure Works set out in the External Works Design Brief will be the responsibility of and must be paid by the Owner;
 - (iii) any Developer Contributions levied in respect of the Internal Infrastructure Works, the Developer's Site Works, any variations to the External Infrastructure Works requested by the Developer pursuant to clause 6.2(a), any Additional Infrastructure Works and any subdivision works to the Development Land will be the responsibility of the Developer; and
 - (iv) any Developer Contributions levied in respect of the buildings or other improvements or proposed use (and not the subdivision) in relation to an Approved Development Proposal or an Approved Tenant or a particular Development Site are the responsibility of the Developer or an Approved Tenant and must be paid by the Developer or an Approved Tenant.

18 No assignment by the Developer

18.1 Consent

- (a) The Developer shall not assign or dispose of any right, interest, duty or obligation under this Agreement to any person, firm or corporation.
- (b) An assignment of the Developer's interest under this Agreement shall be deemed not to be a breach of clause 18.1(a) if:
 - (i) the Developer has given the Owner at least one month's notice in writing of the proposed assignment together with details of the parties and a copy of all proposed documentation and all other relevant information; and
 - (ii) the Developer is not in default under this Agreement, unless the default is waived by the Owner; and
 - (iii) the Developer establishes to the Owner's satisfaction that any proposed assignee meets each of the Assignment Tests; and
 - (iv) the Developer, assignee, Guarantor and any guarantor of the proposed assignee (if applicable) enter into a deed in the form reasonably required by the Owner and Developer under which (amongst other things):
 - (A) the assignee agrees to perform all of the Developer's express and implied obligations under this Agreement, including the obligation to indemnify the Owner, and (if applicable) the proposed guarantor agrees to guarantee

the proposed assignee's obligations in accordance with clause 25 of this Agreement;

- (B) the Developer releases the Owner from all obligations under this Agreement from the date of assignment except in respect of any claim(s) that have arisen before the date of assignment;
 - (C) the Owner releases the Developer and Guarantor from all obligations under this Agreement from the date of assignment;
 - (D) despite paragraph (C), if there is an assignment of the Developer's rights or obligations under this Agreement to a Related Body Corporate of the Developer and the Developer does not satisfy the condition in clause 18.1(b)(iii), the Developer and Guarantor acknowledge that they are not released from their obligations under this Agreement or such guarantee as a result of such assignment; and
 - (E) the assignee's and its guarantor's (if applicable) limitation of liability clause is included, provided that the limitation of liability includes warranties by the assignee and guarantor (if applicable) in their capacity as trustee, responsible entity or custodian of the Developer and its guarantor (if applicable) that it is the holder of the assets of the relevant trust, that (in the case of the assignee) its interest in this agreement and in the premises to be leased pursuant to the Ground Lease will be assets of the relevant trust and that the assignee and guarantor (if applicable) is and will be entitled to be indemnified out of the assets of the relevant trust in relation to its obligations under or in relation to this Agreement (but subject to the usual exclusions).
- (v) The Owner has given its written consent to the proposed assignment, which consent is not to be unreasonably withheld.
- (c) Despite the provisions of clause 18.1(b) :
- (i) the Developer need not satisfy the condition in clause 18.1(b)(iii) in relation to an assignment of the Developer's rights or obligations under this Agreement to a Related Body Corporate of the Developer (including in relation to a solvent reconstruction); and
 - (ii) if the condition in clause 18.1(b)(iii) is not satisfied, such assignment shall not release or diminish the obligations of the Developer or the Guarantor under this Agreement.
- (d) The parties agree that if the Developer:
- (i) elects to satisfy clause 18.1(b)(iii) in relation to a proposed assignment to a Related Body Corporate of the Developer (including in relation to a solvent reconstruction); and
 - (ii) satisfies clause 18.1(b)(iii) in respect of such assignment,
- then clause 18.1(c) does not apply in respect of such assignment.

- (e) The Owner must execute the deed referred to in clause 18.1(b)(iv) in a timely manner.
- (f) The Developer will pay to the Owner all reasonable costs of and incidental to enquiries concerning the proposed dealing or persons concerned in such dealing and of the perusal, negotiation, preparation and stamping of all documents and obtaining the mortgagee's consent to such documents reasonably required by the Owner and all stamp duty and mortgagee consent fees.

19 No sale by Owner

- (a) The Owner must not:
 - (i) sell, assign, or transfer its interest in the Development Land, or any Development Site or Development or this Agreement; or
 - (ii) do anything which is analogous or in substitution of a sale, assignment or transfer referred to in clause 19(a)(i).
- (b) Clause 19(a) will not apply in relation to any transfer to any government or statutory authority, or any transfer effected by any statute, provided that in the case of a transfer to any government or statutory authority which is not effected by statute, the Owner procures the proposed new registered proprietor to enter into a deed with the Developer and the Guarantor and all other parties to any Agreement for Ground Lease, Ground Lease or Construction Licence assuming the Owner's obligations under this Agreement and any Agreement for Ground Lease, Ground Lease and Construction Licence and covenanting to comply with the Owner's obligations under this Agreement and any Agreement for Ground Lease, Ground Lease and Construction Licence from the date of transfer.
- (c) Any such deed will include covenants by the Developer and the Guarantor to perform the Developer's and Guarantor's obligations under this Agreement and any Agreement for Ground Lease, Ground Lease and Construction Licence from the date of transfer, and a release of the Owner's obligations under this Agreement and any Agreement for Ground Lease, Ground Lease and Construction Licence and the Developer and the Guarantor must and must procure that all other parties to any Agreement for Ground Lease, Ground Lease or Construction Licence, enter into any such deed when requested to do so.
- (d) The Owner must not:
 - (i) create or allow to exist a mortgage, security agreement, bill of sale, charge, lien or pledge or Security Interest over any or all of the Development Land, Development Site, Development or this Agreement; or
 - (ii) do anything which is analogous or in substitution of the items described in clause 19(a)(i).
- (e) The deed referred to in clause 19(c) must also include the Developer's or Guarantor's (or any assignee's or any guarantor of the assignee's (if applicable)) limitation of liability clause, provided that the limitation of liability includes warranties by the Developer, Guarantor, assignee or the guarantor of the assignee (if applicable) in their capacity as trustee, responsible entity or custodian of the Developer, Guarantor (or any assignee or any guarantor of the assignee) (if applicable) that it is the holder of the assets of the relevant trust, that its interest in this

Agreement will be assets of the relevant trust and that the Developer, Guarantor, assignee or the guarantor of the assignee is and will be entitled to be indemnified out of the assets of the relevant trust in relation to its obligations under or in relation to this Agreement (but subject to the usual exclusions).

20 Dispute resolution

20.1 Notification

If a dispute between the Owner and the Developer arises out of or in connection with this Agreement (other than under clause 9.3(f) or under Part 3.1(f) of Schedule 4), each party must (except in any proceedings for equitable relief, in which case this clause 20.1 does not apply) furnish in writing to the other party detailed particulars of that party's claim, or, where the other party is not the claimant, the reasons for rejecting the claimant's claim.

20.2 The reply

The party against whom the claim is made must reply within 14 days after receipt of the detailed particulars.

20.3 The dispute

If the claim is not accepted within 14 days of the party making the claim then a dispute is deemed to exist.

20.4 Compulsory CEO conference

Upon a dispute being deemed to exist under clause 20.3, the parties must cause their respective chief executives to meet within 14 days to attempt to resolve the dispute acting reasonably, and if they cannot resolve the dispute to attempt to agree to a process to resolve the dispute between the parties before appointing an expert under clause 20.5.

20.5 Expert

- (a) If the parties fail to resolve the dispute in accordance with clause 20.4, the parties must appoint a person ("**Expert**") to resolve the dispute. If the parties cannot agree on the appointment of the Expert within 7 days, then the Expert must be appointed by the President of the Australian Resolution Institute, New South Wales Chapter. Either party may approach the President of the Australian Resolution Institute, New South Wales Chapter to appoint the Expert.
- (b) The Expert shall be appointed under such form of expert determination agreement as may be customarily recommended or used by the Australian Resolution Institute for that purpose, or if there is no such form of agreement, then in such form as may be reasonable required by the Expert.
- (c) Upon the Expert being appointed under clause 20.5(a) and accepting the appointment, the parties must direct the Expert to make a determination in relation to the dispute within 14 days of the appointment.
- (d) The parties may make submission to the Expert.
- (e) The Expert must act and make a decision acting as an expert and not as an arbitrator.
- (f) The parties agree that the decision of the Expert will be final and binding upon them.

- (g) The costs of the Expert must be borne equally by the Owner and the Developer.
- (h) The parties must sign all documents and do all things reasonably necessary to effect the appointment of the Expert and to give effect to the intention of this clause 20.

21 Default

21.1 Termination Events

A Termination Event occurs if:

- (a) the Developer becomes Insolvent; or
- (b) the Developer fails to pay any amount to the Owner under this Agreement by the due date for payment; and
- (c) the Owner gives written notice to the Developer in respect of such event and demanding that the event be rectified; and
- (d) the Developer fails to rectify the event within 30 days after the giving of the notice referred to in paragraph (c); and
- (e) the Owner gives further written notice to the Developer demanding that the Developer rectify such event and stating its intention to terminate the Agreement; and

the Developer fails to rectify the event within 60 days after the giving of the Owners notice under paragraph (e).

21.2 Termination

- (a) If a Termination Event occurs, the Owner may terminate this Agreement by written notice to each other party to this Agreement, without prejudice to any other rights that the Owner may have against any other party to this Agreement.
- (b) For the avoidance of any doubt, the parties agree that a termination of this Agreement under this clause 21 does not and will not affect any Agreement for Ground Lease, Ground Lease or Construction Licence entered into by the parties as at the date of the termination under clause 21.2(a).

21.3 Obligations on termination

- (a) If this Agreement is terminated under clause 21.1:
 - (i) the Developer must remove the Developer's property from the Undeveloped Land; and
 - (ii) the Developer must return the Undeveloped Land to the condition it was in at the date the Developer was given access to it if required by the Owner; and
 - (iii) the Developer must vacate the Undeveloped Land; and
 - (iv) the Developer must give the Owner the keys, access cards and similar devices in respect of the Undeveloped Land held by the Developer, the Developer's employees and agents and any person who has been given them by the Developer or the Developer's employees and agents.

- (b) The Owner may treat the Developer's property on the Undeveloped Land as abandoned and deal with it in any way it sees fit at the Developer's expense if the Developer does not remove its property in accordance with this clause 21.3 or a notice given under it.
- (c) Despite any other provision of this Agreement, the Developer must not remove property which:
 - (i) the Owner has stated (as a condition of giving approval to the works) may not be removed; or
 - (ii) is part of structural work done by the Developer to the Development Land unless the Owner give the Developer a notice requiring the Developer to remove that property.

21.4 No other right to terminate

Despite any Law to the contrary, no party may terminate this Agreement other than in accordance with an express provision of this Agreement.

22 Notices

22.1 General

Any notice, demand, certification or other communication in this Agreement:

- (a) shall be given in writing and in the English language; and
- (b) may be given by an authorised representative of the sender.

22.2 Method of service

In addition to any means authorised by law any communication may be given by:

- (a) being personally served on a party;
- (b) being left at the party's current address for service;
- (c) being sent to the party's current address for service by pre-paid ordinary mail or if the address is outside Australia, by pre-paid airmail; or
- (d) facsimile to the party's current numbers for service; or
- (e) being sent by email to the party's current email address.

22.3 Address for service

- (a) The addresses and numbers for service are initially:

THE OWNER

address: Level 7, 10 Valentine Avenue, Parramatta NSW 2150

facsimile: +61 2 9895 7580

email: Kerry.Jahangir@wspt.com.au

attention: Kerry Jahangir

DEVELOPER

address: Level 3, Building C, 1 Homebush Bay Drive, Rhodes,
NSW 2138

facsimile: +61 2 9767 2900

email: Shannon.Stewart@frasersproperty.com.au

attention: Shannon Stewart

GUARANTOR

address: Level 3, Building C, 1 Homebush Bay Drive, Rhodes,
NSW 2138

facsimile: +61 2 9767 2900

attention: Company Secretary

- (b) A party may from time to time change its address or numbers for service by notice to the other party.

22.4 Service by post

A communication given by post shall be deemed received:

- (a) if posted within Australia to an Australian address, on the third Business Day after posting; and
- (b) in any other case, on the tenth Business Day after posting.

22.5 Service by facsimile

A communication sent by facsimile shall be deemed received when the sender's facsimile machine produces a transmission report stating that the facsimile was sent to the addressee's facsimile number.

22.6 Service by email

A communication sent by email shall be deemed received when the sender's email system confirms that it has been successfully sent and provided an undeliverable message is not subsequently received by the sender.

22.7 Form received

A communication sent by facsimile shall be deemed given in the form transmitted unless the message is not fully received in a legible form and the addressee immediately notifies the sender of that fact.

22.8 Service after hours

If a communication to a party is received by it:

- (a) after 5.00 pm; or
- (b) on a day which is not a Business Day,

it will be deemed to have been received on the next Business Day.

22A GST

- (a) An amount payable by a party under this Agreement in respect of a taxable supply by the other party, unless expressed to represent the price of supply, represents the value of the supply and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST in respect of the supply.
- (b) If this Agreement requires a party to pay, reimburse or contribute to an amount paid or payable by the other party in respect of a creditable acquisition from a third party, the amount for payment, reimbursement or contribution will be the value of the acquisition by the other party plus, if the payment, reimbursement or contribution is consideration for a taxable supply, the GST payable in respect of that supply.
- (c) A party is not obliged under clauses 22A(a) or 22A(b) to pay the GST on a taxable supply to it under this Agreement until that party is given a valid tax invoice for the supply.
- (d) Expressions used in this clause 22A have the meanings given to them in the GST Act.

23 Representations and warranties

23.1 Owner representation and warranties

- (a) The Owner represents and warrants that:
 - (i) it has been duly constituted under the WSPT Act;
 - (ii) it has power to enter into and observe its obligations under this Agreement and all documents and transactions contemplated by this Agreement, including without limitation the Agreement for Ground Lease, Ground Lease and Construction Licence (each a "**Transaction Document**") and together the "**Transaction Documents**"; and
 - (iii) it has in full force and effect the authorisations necessary under the WSPT Act to enter into each Transaction Document, observe obligations under each Transaction Document, and allow each Transaction Document to be enforced; and
 - (iv) its obligations under this Agreement and each Transaction Document are valid and binding and are enforceable against it in accordance with its terms; and
 - (v) this Agreement and the Transaction Documents the transactions contemplated under them do not contravene its constituent documents, WSPT Act or any other Law, regulation or official directive or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers; and
 - (vi) except as provided in the WSPT Act, it does not hold its interest under this Agreement as trustee.
- (b) The Owner represents and warrants to the Developer that, the Owner has obtained all necessary consents to enter into this Agreement, (including all consents required under the WSPT Act, any finance, security or other documents).

23.2 Developer and Guarantor representations and warranties

The Developer and the Guarantor each represents and warrants that:

- (a) it has power to enter into and observe its obligations under this Agreement and all documents and transactions contemplated by this Agreement; and
- (b) it has in full force and effect the authorisations necessary to enter into this Agreement and all documents and transactions contemplated by this Agreement, observe obligations under them, and allow them to be enforced; and
- (c) its obligations under this Agreement and all documents and transactions contemplated by this Agreement are valid and binding and are enforceable against it in accordance with its terms; and
- (d) this Agreement, the Agreement for Ground Lease, Ground Lease and Construction Licence and the transactions contemplated under them do not contravene its constituent documents or any law, regulation or official directive or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or, the powers of its directors, to be exceeded.

24 Miscellaneous

24.1 Legal costs

- (a) The Developer agrees to reimburse to the Owner, the Owner's reasonable legal costs in relation to:
 - (i) the negotiation, preparation and execution of any heads of agreement prepared prior to execution of this Agreement; and
 - (ii) the negotiation, preparation and execution of this Agreement (including all schedules and annexures to this Agreement),
- (b) The Developer agrees to reimburse to the Owner, the Owner's reasonable legal costs in relation to the negotiation, preparation and execution of:
 - (i) each Agreement for Ground Lease ;
 - (ii) each Ground Lease ; and
 - (iii) each Construction Licence
- (c) Despite clause 24.1(a), the Developer is not obliged to pay any amount to the Owner under this clause until the Owner provides to the Developer a tax invoice in respect of that payment.
- (d) The Developer must pay any amount payable under this clause 24.1 within 14 Business Days of the date the Developer receives a tax invoice from the Owner.

24.2 Stamp Duty

The Developer shall, as between the parties, be liable for and duly pay all stamp duty (including any fine or penalty except where it arises from default by the other party) on or relating to this Agreement and any document executed under it including the Agreements for Ground Lease, Construction Licences and Ground Leases.

24.3 Amendment

This Agreement may only be varied or replaced by a document duly executed by the parties.

24.4 Waiver and exercise of rights

- (a) A single or partial exercise or waiver of a right relating to this Agreement will not prevent any other exercise of that right or the exercise of any other right.
- (b) A party will not be liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

24.5 Rights cumulative

Subject to any express provision in this Agreement to the contrary, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

24.6 Further assurance

Each party shall promptly execute all documents and do all things that any other party from time to time reasonably requires of it to effect, perfect or complete the provisions of this Agreement and any transaction contemplated by it.

24.7 Computation of time

Where time is to be reckoned by reference to a day or event, that day or the day of that event is excluded.

24.8 Governing law and jurisdiction

- (a) This Agreement is governed by and is to be construed in accordance with the laws in force in New South Wales.
- (b) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and any courts which have jurisdiction to hear appeals from any of those courts and waives any right to object to any proceedings being brought in those courts.

24.9 Joint and several liability

An obligation of two or more persons binds them jointly and severally.

24.10 Counterparts

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

24.11 Effect of execution

This Agreement is not binding on any party unless it or a counterpart has been duly executed by, or on behalf of, each person named as a party to the Agreement.

24.12 Entire understanding

- (a) This Agreement embodies the entire understanding and agreement between the parties as to the subject matter of this Agreement.
- (b) All previous negotiations, understandings, representations, warranties, memoranda or commitments in relation to, or in any way affecting, the subject matter of this Agreement are merged in and superseded by this Agreement and shall be of no force or effect whatever and no party shall be liable to any other party in respect of those matters.
- (c) No oral explanation or information provided by any party to another shall:
 - (i) affect the meaning or interpretation of this Agreement; or
 - (ii) constitute any collateral agreement, warranty or understanding between any of the parties.

24.13 No agency

The parties acknowledge that the relationship of the parties under this Agreement does not constitute one of agency, partnership, trust or joint venture.

24.14 Owner must execute

The Owner must execute all documentation and do all things:

- (a) reasonably required by the Developer in respect of the Development; and
- (b) reasonably required for compliance with any agreement, Law or Approval in respect of the Development,

including without limitation, executing any consents, forms, reports, application or plans.

24.15 Exercise of power

Notwithstanding any other provision of this agreement, the Owner must exercise its power under the WSPT Act and the relevant regulations insofar as they relate to this Agreement or the Developer's rights under this Agreement independently and objectively and without regard to the Owner's interests and rights under this Agreement.

25 Guarantee

25.1 Guarantee

In consideration of the Guarantor entering into this Agreement at the request of the Owner and the Developer, the Guarantor unconditionally and irrevocably guarantees to the Owner the due performance, observance and completion of:

- (a) all the terms, conditions and obligations imposed on the Developer under this Agreement including the due and punctual payment of all monies now or hereafter becoming payable under this Agreement at any time; and
- (b) all of the terms conditions and obligations of:
 - (i) the Developer under this Agreement;
 - (ii) the Nominated Developer under the Agreement for Ground Lease and Construction Licence;

- (iii) any assignee of the Developer's obligations under clause 18.1(c) of this Agreement; or
- (iv) any assignee of the Nominated Developer's obligations under an Agreement for Ground Lease or a Construction Licence in respect of a Take Out Transaction, to which clause 5.1(c) of the relevant Agreement for Ground Lease applies,

("Developer Entities"), including the due and punctual payment of all moneys now or hereafter becoming payable under this Agreement, each Agreement for Ground Lease and each Construction Licence by the Developer Entities, but only in relation to terms, conditions, obligations and payments to be observed, performed or made in the period up to the Practical Completion of the relevant Development under the relevant Agreement for Ground Lease.

(the "Guaranteed Obligations").

25.2 Indemnity

As a separate and distinct covenant, the Guarantor unconditionally and irrevocably indemnifies the Owner and shall keep the Owner indemnified and held harmless from and against all losses, damages, costs, claims, charges and expenses whatsoever suffered or incurred (whether direct or consequential) by the Owner by virtue of or as a consequence of the breach, default or failure by any of the Developer Entities for any reason whatsoever to duly and punctually perform, observe and complete the Guaranteed Obligations as contemplated in clause 25.1.

25.3 Payment

The Guarantor must pay to the Owner immediately upon demand any amounts due to the Owner under clauses 25.1 and 25.2.

25.4 Performance

If any of the Developer Entities for any reasons fail to duly perform, observe or complete the Guaranteed Obligations, without affecting the generality of the foregoing, the Owner may require the Guarantor to perform, observe or complete this Agreement and each Agreement for Ground Lease and each Construction Licence under the same terms and conditions and the Guarantor shall be responsible for the satisfaction of all those terms and conditions.

25.5 Effect

This guarantee continues in full force and effect until the whole of the Guaranteed Obligations have been satisfied in full unless the Owner in the meantime gives notice in writing to the Guarantor that this guarantee is no longer required.

25.6 Primary obligations

The Guarantor's obligations with respect to the Guaranteed Obligations are primary obligations and the Owner is not obligated to proceed against or enforce any right against any of the Developer Entities or any other party before making a demand on the Guarantor pursuant to this guarantee or otherwise enforcing this guarantee.

25.7 No limitation

Neither the existence of any legal disability on the part of the Developer Entities or the Guarantor or any one or more of them, nor the granting of any time concession or indulgence to, nor the making of any composition of, nor the waiver of any breach or default on the part of any of the Developer Entities, nor

the neglect or forbearance of the Owner to enforce this Agreement or any Agreement for Ground Lease or Construction Licence, nor any arrangement or release made between the Owner and any of the Developer Entities or any Approved Tenant with or without the consent of the Guarantor, nor any alteration to or variation of this Agreement or any Agreement for Ground Lease or Construction Licence or the powers rights or obligations of any of the parties, nor assignment of any of the Developer Entities' rights or obligations under this Agreement or any Agreement for Ground Lease or Construction Licence nor any of the Developer Entities' becoming insolvent, defunct or otherwise ceasing to exist, nor any assignment being made of the property of any of the Developer Entities for the benefit of creditors, nor this guarantee being executed in counterparts shall limit, vitiate, void, render voidable, release or discharge this guarantee or the Guarantor or any one or more of them nor the guarantee in any Agreement for Ground Lease or Construction Licence not being executed by the Guarantor.

25.8 Guarantor liability continues

No sum or sums of money received by the Owner which it may be obliged to refund to any liquidator of any of the Developer Entities or which it may in its discretion refund to any liquidator of any of the Developer Entities shall be considered as received by the Owner or discharge or diminish in any way the liability of the Guarantor under this guarantee.

25.9 Purpose

The Guarantor is a party to this Agreement solely for the purpose of this clause 25.

25.10 Survival

The obligations of the Guarantor under this clause 25 survive the expiry or earlier termination of this Agreement.

25.11 Guarantor may not transfer

The Guarantor may not transfer or otherwise dispose of its obligations under this clause 25.

25.12 Release under Agreement for Ground Lease and Construction Licence

Despite the provisions of clauses 25.1 to 25.11, the parties agree that if in respect of a Take Out Transaction the relevant Developer Entity assigns its interest in accordance with clause 5.1(b) of the Agreement for Ground Lease or clause 5.1(d) of the Agreement for Ground Lease applies, then the Owner releases the Guarantor from all obligations under the relevant Agreement for Ground Lease and Construction Licence.

26 Confidentiality

26.1 Confidential

The Owner and the Developer agree that the contents of this Agreement are sensitive commercial information and that they must use reasonable endeavours to keep the terms of this Agreement confidential.

26.2 Exceptions

The Owner and the Developer will not be in breach of their obligations under clause 26.1 if they give information to:

- (a) a professional adviser;

- (b) an agent or employee;
- (c) a prospective purchaser of the Retail Centre Land;
- (d) a financier;
- (e) an actual or prospective shareholder; or
- (f) any other person as required by law,

so long as:

- (g) the disclosure is reasonably necessary; and
- (h) the person who discloses the information uses reasonable endeavours to ensure that the person who receives the information keeps the information confidential.

26.3 Overriding Obligations and Rights

- (a) Notwithstanding the other provisions of this clause 26, the parties acknowledge and agree that:
 - (i) under the GIPA Act, the Owner has obligations to:
 - (A) publicly disclose government information that is open access information (as that term is defined in the GIPA Act), including by publishing this Agreement on the Owner's contract register; and
 - (B) release information pursuant to an access application unless the Owner is reasonably satisfied that there is an overriding public interest against disclosure; and
 - (ii) nothing in this clause 26 will limit or otherwise affect the discharge of the Owner's obligations to disclose information in connection with the Development as required by any Law including but not limited to the GIPA Act; and
 - (iii) the Developer may request the redaction of commercial in confidence provisions of this Agreement or any other agreement to which the Developer is a party.

27 No merger

The provisions of this Agreement shall not merge on the commencement or execution of any Agreement for Ground Lease but shall continue in full force and effect after such execution or commencement.

28 Interest

A party must pay the other party interest on any money owing to the first party under this Agreement which is not paid on the due date. The interest payable:

- (a) is at a rate 2% per annum higher than the National Australia Bank Limited ABN 12 004 044 937 Business Lending Indicator Base Rate on the date on which default occurs;
- (b) applies from the day after the money should have been paid to the day that the money is actually paid; and
- (c) is capitalised on the last day of each month.

EXECUTED as an agreement



Signing page

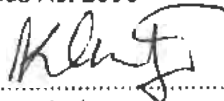
DATED: 31 AUGUST 2016

Owner

Executed on and behalf of the body)
named below by the authorised)
delegate(s) whose signature(s))
appear(s) below pursuant to the)
authority specified.

Body: **Western Sydney Parklands Trust (ABN 85 202 544 800)**

Authority: s 8 of the Western Sydney Parklands Act 2006


Signature of witness

KERRY JAHANCIR
Name of witness (print)

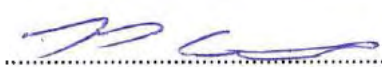
DIRECTOR
Occupation of witness (print)


Signature of delegate

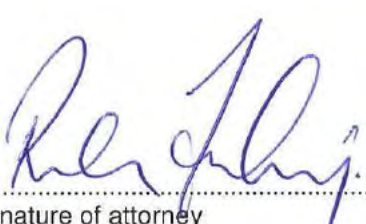
Suellen Fitzgerald
Name of delegate

Executive Director
Position: Executive Director

SIGNED for and on behalf of)
FRASERS PROPERTY INDUSTRIAL)
CONSTRUCTIONS PTY LIMITED)
(ACN 095 586 708) by its attorney)
under power of attorney dated 30)
August 2016 who states that it has)
received no notice of revocation of the)
power of attorney, in the presence of:)


Signature of witness

Shannon Stewart
Name of witness (block letters)


Signature of attorney

RODNEY V FERRARO
Name of attorney

SIGNED for and on behalf of
**FRASERS PROPERTY LIMITED (ACN
008 443 696)** by its attorney under
power of attorney dated 30 August
2016 who states that it has received no
notice of revocation of the power of
attorney, in the presence of:



Signature of witness

Shannon Stewart

Name of witness (block letters)



Signature of attorney

ROONEY V. FENTRIKY

Name of attorney

Schedule 1 – Development Proposal Criteria

Schedule 2 – Plan of Development Land





LOT 3

Stage 3 | DDS 10 815m²
 Stage 4 | Bulky Goods 10 000m²

68 753m²

LOT 2

Stage 1 | Neighbourhood 10 200m²

41 514m²

LOT 1

Stage 2 | Bulky Goods 13 985m²

41 141m²

Total Land Area: 151,408m²

Eastern Creek Retail Centre, NSW 2766

Plan of Development Land

Project No: 2015-088
 Date: 25.08.16
 Planning No: SK18.01b
 Location: TL
 MEL 570
 PER
 I2C
 I2C.COM.AU

Schedule 3 - Initial Development Masterplan



Fraser's Property

2015-088 Eastern Creek Retail Centre

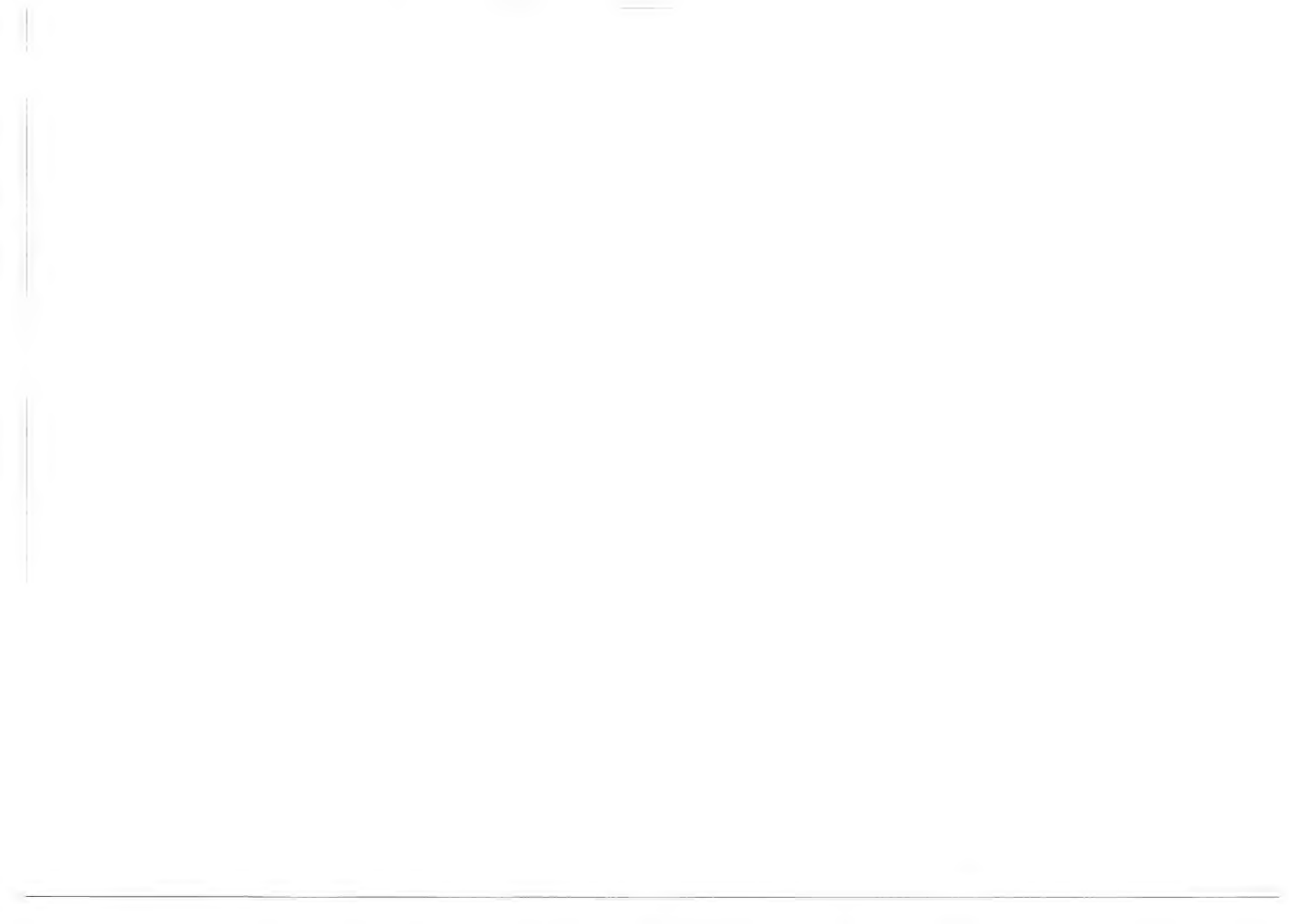
Rooty Hill Road South, Eastern Creek NSW 2766

COVER PAGE	SK18.00
MASTERPLAN	SK18.01
LOT 2 - plan	SK18.02
LOT 3 - plan	SK18.04
LOT 1 - plan	SK18.06
LOT 1 - pad site inspiration	SK18.07

SK 18
19 JULY 2016
Concept Planning









Schedule 4 - Calculations

Schedule 5 – Works Schedule

Schedule 6 – Internal Works Design Brief

Eastern Creek Retail Centre



INTERNAL WORKS DESIGN BRIEF

DATE: 25 August 2016
REVISION G



Table of Contents

1. INTERNAL INFRASTRUCTURE WORKS PACKAGE 1.....	3
2. INTERNAL INFRASTRUCTURE WORKS PACKAGE 2.....	4
3. INTERNAL INFRASTRUCTURE WORKS PACKAGE 3:.....	5

DISCLAIMER

THE SUBJECT DOCUMENT IS A REPRESENTATION OF DESIGN AND APPROVAL WORKS AS AT THE DATE REFERENCED. THIS BRIEF IS NOT FINAL AND IS SUBJECT TO FURTHER DESIGN REVISIONS AS REQUIRED.

The Internal Works Design Brief is to be read in conjunction with the Development Management Agreement (DMA).

Internal Infrastructure Works are to be completed in accordance with authority requirements and the State Significant Development (SSD-5175) documentation and consents.

1. INTERNAL INFRASTRUCTURE WORKS PACKAGE 1

Drainage Basins, Internal access road including associated stormwater drainage, landscaping & streetscape for Pad 2 (Lot 2 of the Development Masterplan).

a) Works:

i) Stormwater

(1) Temporary Stormwater

- (a) The Contractor will provide full sediment and erosion controls as documented by the engineering & geotechnical plans, reports and council requirements.
- (b) Building pads will have temporary channels that will connect to a temporary sediment basin.

(2) Permanent Stormwater Channels & Stormwater Basins

- (a) Provide permanent stormwater channels (Swale) and stormwater basins in accordance with local authority requirements.

(3) Access tracks

- (a) Provide access track to Basin as required.

ii) Internal Access Road (Including associated stormwater drainage)

(1) Internal Access Road

- (a) Construction of proposed new traffic Islands, medium strips, pedestrian footpath, kerb and gutter, pavements, crossings, stormwater provisions, signposting, street lighting, line-marking and associated civil and earthworks as detailed in the design drawings by Costin Roe Consulting (Costin Roe) in the Planning Documentation.
- (b) Provide pedestrian ramps in accordance with authority requirements.
- (c) New pavement to be constructed as per design specification by Costin Roe and grading of road to meet existing levels at surrounding connection points.
- (d) Construction of new stormwater drainage as per design drawings by Costin Roe.
- (e) Construction of new stormwater pits with lintel, pipes and three head walls with stone pitching as per design drawings by Costin Roe.
- (f) Limit of works to match existing levels, line marking, and kerbs at Rooty Hill Road South.

iii) Landscaping and Streetscape

- (1) Construction is to be in accordance with design prepared by Urbis in the Planning Documentation and subject to developer final design and approval by the relevant authorities.

All construction is to be in accordance with Authority Approvals and approved design prepared by the Civil Consultant. Scour protection to all temporary and permanent basins, headwalls and pipe outlets. Permanent basins will also require a concrete cut-off wall. Conservation areas are to be protected and maintained at all times as per the requirements in the Vegetation Management Plan (VMP) and Operational Environmental Management Plan (OEMP) by Eco Logical.

b) Status:

Final design for Stormwater and Internal Access Road to be submitted to the certifying authority prior to the commencement of works.

2. INTERNAL INFRASTRUCTURE WORKS PACKAGE 2

As per IIW Package 1 but for Pads 3 and 4 (Lot 3 of the Development Masterplan).

a) **Works:**

i) **Stormwater**

(1) Temporary Stormwater

- (a) The Contractor will provide full sediment and erosion controls as documented by the engineering & geotechnical plans, reports and council requirements.
- (b) Pad 1 will have temporary channels which will connect to the permanent bio retention basin.

(2) Permanent Stormwater Channels & Stormwater Basins

- (a) Provide permanent stormwater channels (Swale) and stormwater basins in accordance with local authority requirements.

(3) Access tracks

- (a) Provide access track to Basin as required.

ii) **Internal Access Road (Including associated stormwater drainage)**

(1) Internal Access Road

- (a) Construction of proposed new traffic Islands, medium strips, pedestrian footpath, kerb and gutter, pavements, crossings, stormwater provisions, signposting, line-marking and associated civil and earthworks as detailed in the design drawings by Costin Roe.
- (b) Provide pedestrian ramps in accordance with Roads and Maritime Services requirements.
- (c) New pavement to be constructed as per design specification by Costin Roe and grading of road to meet existing levels at surrounding connection points.
- (d) Construction of new stormwater drainage as per design drawings by Costin Roe.
- (e) Construction of new stormwater pits with lintel, pipes and three head walls with stone pitching as per design drawings by Costin Roe.
- (f) Limit of works to match existing levels, line marking, and kerbs at Rooty Hill Road South.

iii) **Landscaping and Streetscape**

- (1) Construction is to be in accordance with design prepared by Urbis in the Planning Documentation and subject to developer final design and approval by the relevant authorities.

All construction is to be in accordance with Authority Approvals and approved design prepared by the Civil Consultant. Scour protection to all temporary and permanent basins, headwalls and pipe outlets. Permanent basins will also require a concrete cut-off wall. Conservation areas are to be protected and maintained at all times as per the requirements in the VMP and OEMP by Eco Logical Australia.

3. INTERNAL INFRASTRUCTURE WORKS PACKAGE 3:

As per IIW Package 1 but for Pad 1 (Lot 1 of the Development Masterplan).

a) Works:

i) Stormwater

(1) Temporary Stormwater

- (a) The Contractor will provide full sediment and erosion controls as documented by the engineering & geotechnical plans, reports and council requirements.
- (b) Pad 3 will have temporary channels which will connect to a temporary sediment basin.
- (c) Pad 4 will have temporary channels which will connect to a temporary sediment basin.

(2) Permanent Stormwater Channels & Stormwater Basins

- (a) Provide permanent stormwater channels (Swale) and stormwater basins in accordance with local authority requirements.
- (b) Construct low height retaining wall adjacent the channel opposite the estate access road.

(3) Access tracks

- (a) Provide access track to Basin as required.

ii) Landscaping and Streetscape

- (1) Construction is to be in accordance with design prepared by Urbis in the Planning Documentation and subject to developer final design and approval by the relevant authorities.

All construction is to be in accordance with Authority Approvals and approved design prepared by the Civil Consultant. Scour protection to all temporary and permanent basins, headwalls and pipe outlets. Permanent basins will also require a concrete cut-off wall. Conservation areas are to be protected and maintained at all times as per the requirements in the VMP and OEMP by Eco Logical Australia.

Schedule 7 – External Works Design Brief



EXTERNAL WORKS DESIGN BRIEF

DATE: 25 AUGUST 2016
REVISION C



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4. Endeavour Energy and Telstra Asset Relocation Works	7
5: Telecommunication Services	8
6: Road Works	9
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APPENDIX B: Wastewater Design Drawing (Rose Atkins Rimmer)	
APPENDIX C: Electrical Design Drawing (UEA)	
APPENDIX D: Intersection and Road Layout plans (Henry & Hymas)	

DISCLAIMER

THE SUBJECT DOCUMENT IS A REPRESENTATION OF DESIGN AND APPROVAL WORKS AS AT THE DATE REFERENCED. THIS BRIEF IS NOT FINAL AND IS SUBJECT TO FURTHER DESIGN REVISIONS AS REQUIRED.

The External Works Design Brief is to be read in conjunction with the Development Management Agreement (DMA) and the Project Management Agreement (PMA).

External Works are to be completed in accordance with the approved plans and Authority requirements including all applications to the authority, testing and inspections as required.

This Design Brief has been prepared on the basis that the Developer will be delivering the External Works on behalf of WSPT (as Project Manager) concurrently with the Internal Works. WSPT reserves the right to revise the External Works Design Brief should this change.

1. Wastewater Service

a) Works:

Extension is required from the connection point at the existing wastewater main on the eastern side of the M7 Motorway to the Development Land, as per the plans in Appendix B, including:

- i) The DN375 main will run approximately 10 metres from the existing Maintenance Hole (MH) located east of the M7 Motorway within the property boundary of Lot 101 DP1195067.
- ii) The wastewater main will be horizontally bored approximately 110 metres west to a connection point at Lot 101 DP1195067 on the western side of the M7 Motorway.
- iii) A DN300 wastewater main will run approximately 192 metres from the connection point on the west side of the M7 to a connection point adjacent the internal access road, of which 45 metres will be bored at the Jemena Gas Easement. From this point the wastewater will branch off into two separate wastewater main lines.
- iv) One line is a DN300 wastewater main that will run from the above junction to Pad 1 for approximately 75 metres.
- v) The junction described in section 1a)iii) will require provision for connection to the DN225 Internal Reticulation wastewater main servicing Pads 2, 3 and 4. Internal reticulation forms part of the Internal Works separate to this Brief.
- vi) Approximately four maintenance holes will be installed as part of these works.
- vii) Disconnection of all disused private wastewater services and isolation.
- viii) The wastewater main will have two sections of concrete encasement to protect any existing and future structures.

b) Practical Completion

Test for Practical Completion for the External Sewer works is achieved when the Water Service Coordinator can view Sydney Water's Connection Report on the online system (SW Connect or equivalent). This report is undertaken by Sydney Water following a satisfactory "Post Connection" inspection. If Internal Reticulation works are included within the same approval – then the duration of the activity shall be extended by the relevant duration of the Internal Works activity and Practical Completion shall be extended accordingly.

c) Approvals:

- i) Final design to be completed and lodged to Sydney Water for approval
 - a. Application for a Section 73 submitted by RARI 2015
 - b. Notice of Requirements received from Sydney Water 6/11/15
 - c. Final design expected from RARI September 2016
 - d. Sydney Water expected to provide a response (comments or approval) in October 2016

d) Status:

Design to be submitted to Sydney Water. Concept design is currently on hold pending feedback from the Developer on the internal reticulation. Design will be appropriate for tender following certification from Sydney Water.

e) Handover

The Certified Design will be provided to the Project Manager.

2. Water Adjustment Services

a) Works:

An existing DN150 Ductile Iron Concrete Lined (DACL) water main is located on the eastern side of Rooty Hill Road South and is currently available to service the Development Land. Due to the upgrade of the intersection at Cable Place and Rooty Hill Road South, the existing DN150 DACL water main will be relocated and the realignment of a new main is required. Works are as follows;

- i) Disconnection of approximately 360 metres and 120 metres of existing DN150 DACL main – recover surface fittings and transfer services (where required). Disused DACL main to be grout filled.
- ii) Lay approximately 360 and 120 metres of DN150 DACL main with stabilised sand backfill.
- iii) Install one off DN150x150 Tee for water main lead-in to the Development Land (located at the estate entrance via cable place intersection)
- iv) Construction of approximately 10 metres of DN150 DACL main to reach the Development Land from the Tee refer to above.
- v) Approximately four existing water hydrants are to be relocated as part of the water main relocation along Rooty Hill Road South for the Cable Place intersection. Further existing water hydrants are to be relocated as part of the Great Western Hwy intersection works as required.
- vi) The DN700 Steel Cement Lined (SCL) and DN500 SCL main running parallel to Great Western Highway (GWH) is to be adjusted as part of the GWH intersection upgrade works.
- vii) Disconnect all disused private water services and isolate them.

b) Practical Completion

Test for Practical Completion for the External watermain adjustment works is achieved when the Water Service Coordinator can view Sydney Water's Connection Report on the online system (SW Connect or equivalent). This report is undertaken by Sydney Water following a satisfactory "Post Connection" inspection.

c) Approvals:

- i) Asset adjustment application to be submitted to Sydney Water for approval includes;
 - 1) Submit application to Sydney Water (4 weeks)
 - 2) Response from Sydney Water (6 weeks)
 - 3) Submit design for Project Certification (4 weeks)
 - 4) Sydney Water Design Approval (8 weeks)

d) Status:

Design and application to be submitted to Sydney Water upon confirmation of external roadworks design and survey works. Design will be appropriate for tender following certification from Sydney Water.

e) Handover

The Project Manager will manage the design and approval of the watermain adjustment works upon completion of the external roadworks design.

3. Electrical Services

a) Works:

- i) Peg all relevant property boundaries, survey and establish final levels prior to commencement of works.
- ii) Construct trench for a length of 155 metres and 48 metres for the HV and LV electrical supply to the Development Land. Within the trench lay 2 x 50 millimetre conduits and 4 x 125 millimetre conduits. PVC warning tape is to be installed to trenches.
- iii) The electrical servicing works will require two power transmission poles to be replaced along Rooty Hill Road South. Works as follows;
 - (a) Replace existing pole 7 with a 14/8kn pole
 - (i) Install HV UGOH on pole 7
 - (ii) Re-string existing electrical mains between pole 6, 7 and 8
 - (iii) Re-string existing electrical mains between pole 7 and 9
 - (iv) Relocate existing electrical services to new pole
 - (v) Relocate existing telecommunication assets to new pole
 - (b) Replace existing Pole 2 (in UEA design drawing 501112) with a 14/8kn pole
 - (i) Install HV UGOH on Pole 2
 - (ii) Re-string existing electrical mains between pole 1, 2 and 3
 - (iii) Re-string existing electrical mains between pole 2 and pole 4
 - (iv) Re-string existing electrical mains between pole 2 and pole 5
 - (v) Relocate existing electrical services to new pole
 - (vi) Relocate existing telecommunication assets to new pole
 - (c) Relocation and make good existing services are to be carried out in accordance with Authority Approvals.
- iv) High Voltage (HV) - Install new 240sqmm AL 3C 11kV XLPE/PVC/HDPE from 11kV feeder 1204 (Doonside ZS) to the Development Land. Install a further 11kV Copper Cable of the same specification from feeder 1294 (Huntingwood ZS) to the Development Land. Refer UEA design drawing 501112 (Appendix C).
- v) Low Voltage (LV) - Install new 240sqmm AL 4C 11kV XLPE/PVC CABLE (LV) for the same path as the HV cables described above.
- vi) Install earth cable in 50mm duct and bond to LV street neutral at Pole 10 using new UGOH connection.
- vii) Re-string existing LV and HV mains maintaining existing conductor tension along Rooty Hill Road South. Pillar earthing to be uninsulated CU laid in trench below ducts and connected to neutral bar of the pillar. Refer to UEA design drawing 501112 (Appendix C).

HV Power supply has been allowed for based on standard load calculations by UEA, this has resulted in approximately 3.6 MVA total load for the site. In the instance that the development requires power demand exceeding this amount, any additional design, approvals and construction works will be the responsibility of the developer. This will form part of the Internal Works separate to this Brief.

The External Works Design Brief includes providing the electrical service from Rooty Hill Road South to the development boundary. That is two separate lead in's, one from feeder 1204 and one from feeder 1294. The first trench is approximately 155 metres in length from existing pole 2 (Feeder 1204) up until the development boundary at Beggs Road. This span includes two road crossings, one at Minchinbury Street and another at Rooty Hill Road South. The second trench is approximately 48 metres in length from existing pole 7 (Feeder 1294) up until the development boundary at the interchange of Cable Place intersection and the

start of the internal access road. This is articulated in the Electrical Design Drawing by UEA dated 10/5/2016 (Appendix C).

b) Practical Completion

Test for Practical Completion for the External Electrical works is achieved when the Independent Certifier certifies that the electrical works have been delivered to the Development Boundary in accordance with the approved plans. This will include the laying of the conduits and backfilling to authority requirements. In the event PC of the external electrical services is delayed due to the internal reticulation works, the deadline shall be adjusted accordingly.

Internal reticulation of the electrical service within the Development Land including street lighting, conduits, substation and easements forms part of the Internal Works separate to this Brief.

c) Approvals:

i) HV Supply:

- a. Connection Offer was received from Endeavour Energy 20/8/15
- b. Method of supply was submitted by UEA on 01/09/15
- c. Design brief was received from Endeavour Energy on 04/11/15
- d. Email correspondence received from Endeavour Energy on 30/11/15
- e. Final design package was submitted by UEA on 6/05/16
- f. Certification from Endeavour Energy received July 2016

The Electrical design is valid for 6 months from the certification date and if the certification lapses, the Developer will need to update and resubmit the design to Endeavour Energy for re-certification. The developer can submit a 'Letter of Intent' to proceed with the works to Endeavour Energy and this will provide a further 6 months for the design to remain valid. If the electrical services construction has not commenced at the end of that 6 months period then the design will need to be re-certified.

d) Status:

Design has been certified by Endeavour Energy.

e) Handover

The design certified by Endeavour Energy will be provided to the Project Manager.

4. Endeavour Energy and Telstra Asset Relocation Works

a) Works:

i) **Electrical Asset Relocations**

Due to the road widening upgrades along Rooty Hill Road South, existing Power Poles and Streetlights will need to be relocated and adjusted. Please refer to the Intersection and Road Layout plans dated 10/11/2015 by Henry & Hymas (Appendix D) to illustrate the extent of relocation works.

ii) **Telecommunication Asset Relocations**

Due to the road widening upgrades along Rooty Hill Road South, existing telecommunications services will need to be relocated for approximately 480 metres. Existing communications pits will also need to be relocated. Please refer to the Intersection and Road Layout plans dated 10/11/2015 by Henry & Hymas (H&H) and the Great Western Highway Intersection plan dated 24/2/2016 by Henry & Hymas (Appendix D) to illustrate the extent of relocation works.

Note: Construction works are to be in accordance with the Authority approved design plans.

b) **Practical Completion**

Test for Practical Completion for the Endeavour Energy Asset Relocation works is achieved following the receipt of a "Job Completion Letter / Notice of Arrangement" (or equivalent) issued by Endeavour Energy. This will be issued after a satisfactory "Final" inspection with Endeavour Energy.

Telecommunication Asset relocations are undertaken by contractors accredited by and under instruction of the relevant authority – therefore it is not appropriate to provide a Test of Practical Completion. The works are to be conducted in conjunction with the external roadworks

c) **Approvals:**

Asset relocation applications to be submitted by the designers following completion of road design works.

- a. Applications to be issued to Endeavour Energy and Telstra (6 weeks)
- b. Application reviewed and processed by authorities (6 weeks)
- c. Submit design for Project Certification (3 weeks)
- d. Service Provider Design Approval (8 weeks)

d) **Status:**

Design and application to be submitted to Endeavour Energy upon confirmation of external roadworks design and survey works. Telstra accredited contractors will undertake the relocation works to the existing telecommunication network.

e) **Handover**

- f) The Project Manager will manage the design and approval of the Endeavour Energy / Telstra adjustment works upon completion of the external roadworks design.

5: Telecommunication Services

a) **Works:**

Copper Telecommunication cables are available within Rooty Hill Road South along the eastern verge and have capacity to service the Development Land. Reticulation of the service forms part of the Developer Site Works and will be managed by the Project Manager.

6: Road Works

a) Works:

i) **Rooty Hill Road South and Cable Place Intersection:**

- a. The existing intersection of Rooty Hill Road South and Cable Place is to be altered to facilitate access to the estate.
- b. Existing services to be demolished, adjusted and/or relocated as shown in the design drawings by Henry & Hymas (Appendix D). This includes stormwater pits and pipes.
 - *Note that Light pole relocations and water main/hydrant adjustments are considered under a separate works package within this design brief.*
- c. Existing concrete kerbs, gutters, pavements and head wall to be crushed and removed. Clearing of trees and vegetation. Scabble old line markings. Adjustment of existing lintel in some areas to suit new kerb alignment.
- d. Existing road signs to be relocated.
- e. Locally widen footpath in south west corner of cable place intersection.
- f. Construction of proposed new traffic islands, medium strips, pedestrian footpath, kerb and gutter, pavements, crossings, stormwater provisions, signposting, line-marking and associated civil and earthworks.
- g. Provide pedestrian ramps in accordance with Roads and Maritime Services requirements.
- h. New pavement to be constructed as per design specification by Henry & Hymas and grading of road to meet existing levels at surrounding connection points.
- i. Construction of new stormwater pit with 2.4m lintel, pipes and three head walls with stone pitching.
- j. Construction of new traffic signals, detectors and accompanying works as per Traffic and Planning Associates drawing.
- k. Limit of works to match existing levels, line marking, and kerbs at Rooty Hill Road South, Cable Place and the estates internal access road. New concrete medium to tie into existing medium on southern side of Rooty Hill Road South.

ii) **Rooty Hill Road South and Great Western Hwy Intersection:**

- a. Adjust angle of signal boom arm on north-west traffic island.
- b. Crush and removal of concrete medium and kerbs, stormwater pits and pipes and pavement. Clearing of trees and vegetation. Scabble old line markings.
- c. Construction of traffic island, medium strips, pedestrian footpath and crossings, signposting, line-marking and associated civil and earthworks.
- d. Construction of stormwater, kerb and gutter, pavements for full length of road widening along Rooty Hill Road South.
- e. Relocation of footpaths in two locations. Remove old and construct new. Installation of pram ramps as per Road and Maritime Services and Blacktown City Council guidelines.
- f. Construction and adjustment of traffic signals, detectors and accompanying works.

Construction is to be in accordance with design prepared by Henry & Hymas and approved by the Roads and Maritime Services and Blacktown City Council. Design may change with the input from the above authorities.

b) Practical Completion

Test for Practical Completion for the External Roadworks is achieved when RMS issues a Notice of Practical Completion following the final inspection by the RMS Project Manager. If the Works Authorisation Deed required the dedication of land (or other subdivision related items) as a pre-requisite of RMS' Notice of Practical Completion – than the test for Practical Completion shall be obtained when an Independent Certifier is satisfied that the works have been completed in accordance with the approved plans.

c) Approvals (WORKS AUTHORISATION DEED):

- a. Concept Design:
 - a. Cable Place intersection design submitted by H&H on 20/10/15
 - b. Meeting with RMS on 18/02/16
 - c. Cable Place intersection design resubmitted by H&H 6/3/16
 - d. Email received from RMS on 28/4/16
 - e. Cable Place and GWH intersection design submitted by H&H 16/5/16
 - f. Response received from RMS 1/6/16
 - g. Design resubmitted by H&H 9/6/16
 - h. Response received from RMS 4/7/16
 - i. Resubmission by H&H July 2016
 - j. RMS expected to provide approval in August 2016
- b. Detailed Design / WAD
 - a. Detailed Design to be prepared & submitted September 2016
 - b. Deed to be prepared and negotiated with RMS September 2016
 - c. Final approvals targeted October 2016.

d) Status:

Concept design is nearing completion following negotiations with RMS. The concept design of the intersections has been submitted to the Developer for review and comment prior to finalising and progressing to detailed design. Design will be appropriate for tender once certification by RMS is completed.

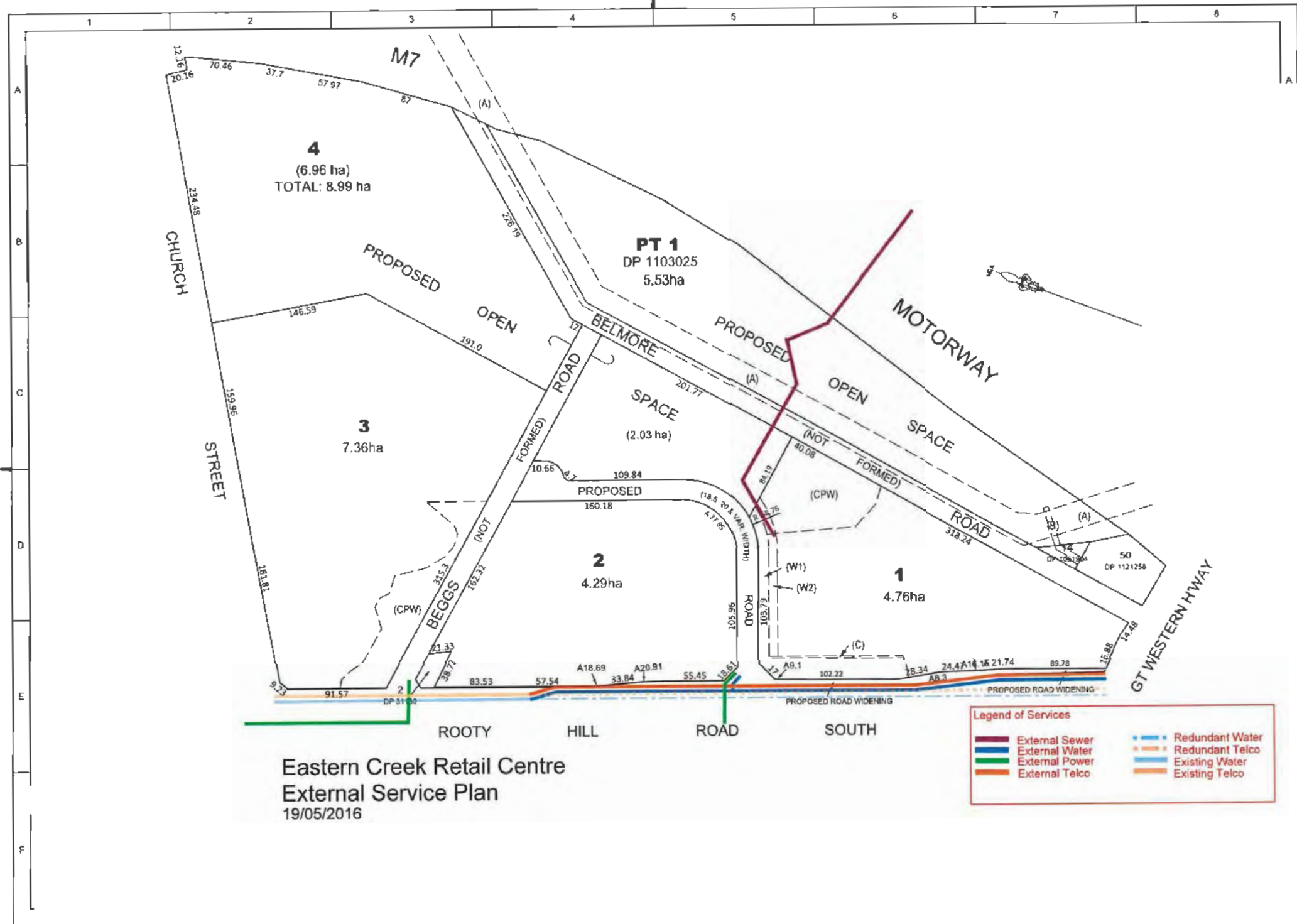
e) Handover

The approved Works Authorisation Deed will be provided to the Project Manager.



APPENDIX A: External Servicing Plan (Hansen Yuncken)





**Eastern Creek Retail Centre
External Service Plan
19/05/2016**

Legend of Services			
—	External Sewer	—	Redundant Water
—	External Water	—	Redundant Telco
—	External Power	—	Existing Water
—	External Telco	—	Existing Telco



APPENDIX B: Wastewater Design Drawing (Rose Atkins Rimmer)



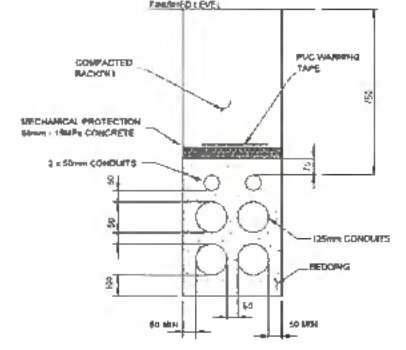


APPENDIX C: Electrical Design Drawing (UEA)



LEGEND

- NEW PROPERTY BOUNDARY
- EXISTING OVERHEAD LINES
- ⊠ NEW PADMOUNT SUBSTATION
- NEW HV TRENCH
- NEW LV TRENCH
- NEW ROAD CROSSING DUCTS
- EXISTING DUCTS
- REPLACE POLE
- EXISTING POLE
- EXISTING COLUMN
- NEW LV PILLAR
- ⊙ EXISTING LUMINAIRE
- ⊙ EXISTING POLE SUBSTATION
- ⊙ EXISTING AIR BREAK SWITCH (ING)
- ⊙ EXISTING AIR BREAK SWITCH (ING)
- ⊙ EXISTING UNDER SLUNG LINK (ING)
- ⊙ EXISTING STREET LIGHT CONTROL POINT
- ⊙ NEW STREET LIGHT CONTROL POINT
- ⊙ EXISTING LV LINK (ING)
- SHAVE DUCT
- DUCT WITH EXISTING CABLE
- DUCT WITH NEW CABLE
- NEW TRENCH SECTION
- EXISTING LV SERVICE



TYPICAL TRENCH CROSS SECTION
(REFER DRAWING SECTION 4.4 - CONDUIT AND CABLE INSTALLATION)
FOR CABLES/ CONDUITS TO BE INSTALLED WITH CONCRETE COVER IN THE 1m WIDE CABLE EASEMENT (NOT TO SCALE)

- REPLACE EXISTING POLE 2 WITH A 140mm POLE
- INSTALL LV UNDER ON POLE 2
- MAINTAIN 20mm CLEARANCE BETWEEN HV AND LV CROSSINGS
- RE-STRING EXISTING HV LV AND SL MAINS BETWEEN POLE 1, 2 AND 3
- MAINTAINING EXISTING CONDUCTOR TENSIONS
- RE-STRING EXISTING LV SL MAINS BETWEEN POLE 7 AND POLE 4
- MAINTAINING EXISTING CONDUCTOR TENSIONS
- RE-STRING EXISTING SL MAINS BETWEEN POLE 2 AND POLE 5
- MAINTAINING EXISTING CONDUCTOR TENSION
- RELOCATE EXISTING LV SERVICES TO NEW POLE
- RELOCATE EXISTING TELECOMMUNICATION ASSETS TO NEW POLE



DUCTING SCHEDULE					
ROUTE	CONFIGURATION	ROUTE LENGTH	EE REIMBURSEMENT CHARGES	EXISTING DUCT USAGE CHARGES	
POLE 2 - A	TRENCH AND INSTALL 3 X 125mm DUCTS	68m	NIL	NIL	
A - B	TRENCH AND INSTALL 3 X 125mm DUCTS	24m	NIL	NIL	
B - POLE 10	TRENCH & INSTALL 3 X 125mm DUCTS	23m	NIL	NIL	
POLE 10 - C	TRENCH & INSTALL 2 X 50mm DUCTS 3 X 125mm DUCTS	19m	NIL	NIL	
C - D	TRENCH & INSTALL 2 X 50mm DUCTS 4 X 125mm DUCTS	30m	NIL	NIL	
D - D1 (CONCRETE COVER IS REQUIRED)	TRENCH & INSTALL 2 X 50mm DUCTS 3 X 125mm DUCTS DIRECT BURY HV CABLE	209m	NIL	NIL	
D1 - PM SUB 2006 (CONCRETE COVER IS REQUIRED)	TRENCH & INSTALL 2 X 50mm DUCTS 3 X 125mm DUCTS DIRECT BURY HV CABLE	9m	NIL	NIL	
PM SUB 2006 - E (CONCRETE COVER IS REQUIRED)	TRENCH & INSTALL 2 X 50mm DUCTS 4 X 125mm DUCTS DIRECT BURY HV CABLE	15m	NIL	NIL	
E - H (CONCRETE COVER IS REQUIRED)	TRENCH & INSTALL 2 X 50mm DUCTS 3 X 125mm DUCTS DIRECT BURY HV CABLE	212m	NIL	NIL	
H - F	TRENCH & INSTALL 2 X 50mm DUCTS 3 X 125mm DUCTS DIRECT BURY HV CABLE	32m	NIL	NIL	
F - J	TRENCH AND INSTALL 2 X 50mm DUCTS 5 X 125mm DUCTS	34m	NIL	NIL	
J - H (CONCRETE COVER IS REQUIRED)	2 X 50mm DUCTS 4 X 125mm DUCTS	15m	NIL	NIL	
H - I (CONCRETE COVER IS REQUIRED)	TRENCH AND INSTALL 2 X 50mm DUCTS 4 X 125mm DUCTS	103m	NIL	NIL	
TOTAL		843m			

* ESTABLISH LOGS (EARTH) ON POLE 10 TERMINATE EARTH CABLE FROM PM SUB 2006 AT THE POLE 10 AND BOND TO LV STREET NEUTRAL

FIELD POLE NUMBER	APPROXIMATE	CONSTRUCTION	MOLE	POLE				
883	X	EX	EX	8				
854	X	EX	EX	9				
846	X	EX	EX	8				
92420	66207	49	B21 + 143504485	B01 + B02 2 B 1478	X	X	7	
783382	X	41	EX	EX	X	X	6	
887	X				X	X	6	
771	X			EX	X	X	4	
886	X			EX	X	X	2	
92401	548	43 24 41	B21 + HUOONABBS	B04 + B05	B06 2 B 1478	X	X	2
808386	X	24	EX	B3		X	X	1

WORKS COMPLETED/FIELD BOOK

CONTROLLED BY: _____

DATE OF COMPLETION: _____

BY: _____

DATE: _____

UNDERGROUND ASSETS

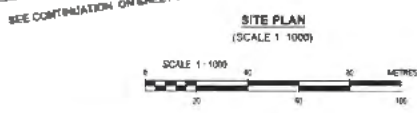
DETAILED BY: _____

RECORDED BY: _____

DATE: _____

NO. OF SHEETS: _____

ESTABLISH LOGS ON POLE 10 AND BOND NEW EARTH CABLE FROM PM SUB 2006 TO LV NEUTRAL



CONTROLLED BY ENDEAVOR ENERGY

Approved: _____

Date Approved: 22/07/18

Engineer's Signature

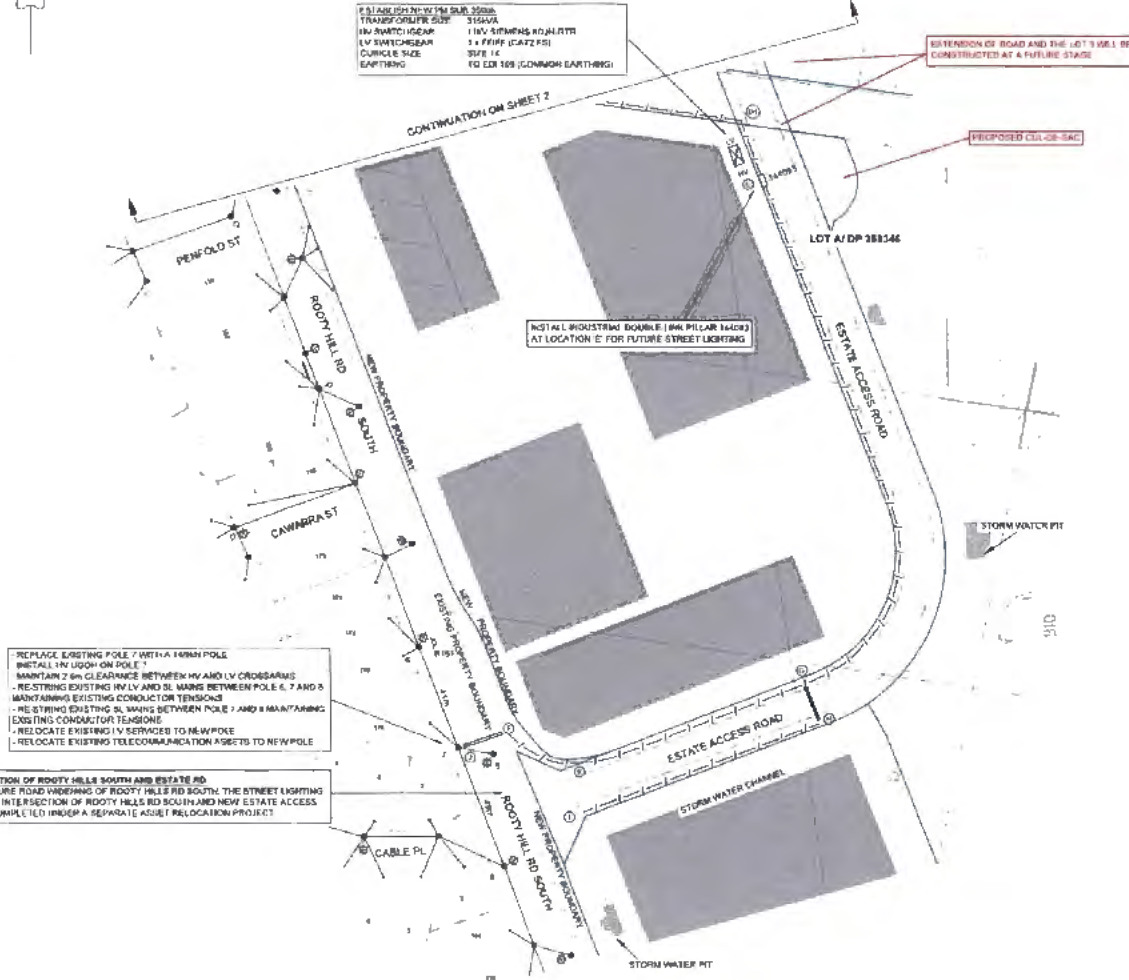
Print Name: Tim Morgana

The Engineer is liable under the Electrical Energy (Vic) Regulations 2011

ASSEMBLIES ORIGINAL DATE: 18/07/18	UEA ELECTRICAL	REFERENCE DRAWINGS	WORK ORDERS	CAP / SAMP NO UEA REF NO UED/PERMAN REF 62/ MAP NO HV OP DIAGRAM LOCAL COV AREA	UCS468 24/07/2018/081 836-71-20/014 MAP 183-10 MAP 1 DOO BLA1	ORIGINAL SCALE DO NOT SCALE DIMENSIONS DATE: 11/07/18 DESIGNED BY: _____ CHECKED BY: _____	ROOTY HILL RD SOUTH EASTERN CREEK VIC 30463 UNDERGROUND COMMERCIAL SUBDIVISION RETICULATION	ENDORSEMENT BY: _____ DATE: _____ SHEET NO. 2 OF 8 SHEETS
		PROJECT NO: _____ DRAWING NO: _____ SHEET NO: _____	PROJECT NAME: _____ PROJECT LOCATION: _____ PROJECT STATUS: _____	PROJECT MANAGER: _____ PROJECT ENGINEER: _____ PROJECT SUPERVISOR: _____	PROJECT START DATE: _____ PROJECT END DATE: _____	PROJECT BUDGET: _____ PROJECT COST: _____	PROJECT RISK: _____ PROJECT COMPLIANCE: _____	PROJECT APPROVAL: _____ PROJECT SIGNATURE: _____

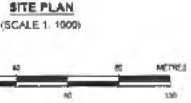
LEGEND

- NEW PROPERTY BOUNDARY
- EXISTING OVERHEAD MAINS
- NEW PADMOUNT SUBSTATION
- NEW HV TRENCH
- NEW LV TRENCH
- NEW ROAD CROSSING DUCTS
- EXISTING DUCTS
- REPLACE POLE
- EXISTING POLE
- EXISTING COLUMN
- NEW LV PEARL
- ⊕ EXISTING LUMINAIR
- ⊕ EXISTING POLE SUBSTATION
- ⊕ EXISTING AIR BREAK SWITCH (ABC)
- ⊕ EXISTING AIR BREAK SWITCH (ABC)
- ⊕ EXISTING UNDER BILMS LINK (UBL)
- ⊕ EXISTING STREET LIGHT CONTROL POINT
- ⊕ NEW STREET LIGHT CONTROL POINT
- ⊕ EXISTING LV LINKS (LVL)
- SPARE DUCT
- DUCT WITH EXISTING CABLE
- DUCT WITH NEW CABLE
- NEW TRENCH SECTION
- EXISTING LV SERVICE

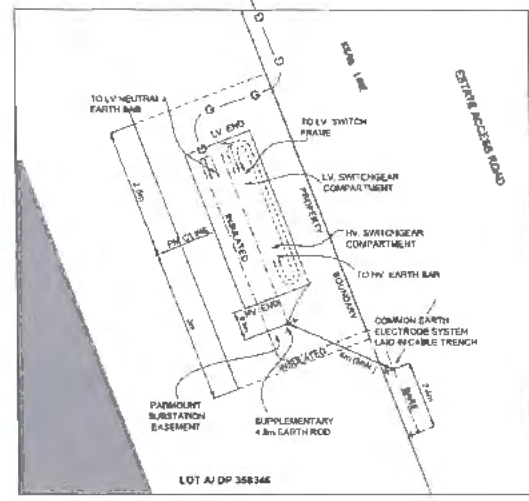


REPLACE EXISTING POLE 7 WITH A TERNH POLE
 INSTALL 1x LV UGH ON POLE 7
 MAINTAIN 2m CLEARANCE BETWEEN HV AND LV CROSSINGS
 RESTRING EXISTING HV LV AND SL WARS BETWEEN POLE 6, 7 AND 8
 MAINTAINING EXISTING CONDUCTOR TENSIONS
 RESTRING EXISTING SL WARS BETWEEN POLE 7 AND 8 MAINTAINING
 EXISTING CONDUCTOR TENSIONS
 RELOCATE EXISTING LV SERVICES TO NEW POLE
 RELOCATE EXISTING TELECOMMUNICATION ASSETS TO NEW POLE

NOTE: INTERSECTION OF ROOTY HILLS SOUTH AND ESTATE RD
 DUE TO THE FUTURE ROAD WIDENING OF ROOTY HILLS RD SOUTH THE STREET LIGHTING
 DESIGN FOR THE INTERSECTION OF ROOTY HILLS RD SOUTH AND NEW ESTATE ACCESS
 ROAD WILL BE COMPLETED UNDER A SEPARATE ASSET RELOCATION PROJECT



INSTALL EARTH CABLE IN 50mm DUCT AND BOND TO LV STREET
 NEUTRAL AT POLE 10 USING A NEW UGH CONNECTION
 (REFER DUCTING SCHEDULE FOR EARTH CABLE ROUTE)



PM SUBSTATION COMMON EARTHING LAYOUT
 NOT TO SCALE

THIS EARTHING DIAGRAM IS A GUIDE ONLY AND SHOWS A MINIMUM REQUIREMENT. ADDITIONAL
 REQUIREMENTS MAY BE REQUIRED TO MEET THE REQUIRED MINIMUM EARTH RESISTANCE
 REQUIREMENTS AS STATED IN ENDEAVOUR ENERGY'S ESI 10.

- CABLE CU ANNEALED 150 14 BARE PVC/PVC
- CABLE CU ANNEALED 150 14 BARE
- ⊕ EARTH ELECTRODE (LOCATION 6 & 7) WITH 1.5m x 1.5m x 1.5m METRES
- INSTALL 70mm² CU OR BLACK PVC CABLE IN 50mm DUCT
 R.L. 248m C.L. 305m

EARTHING DATA TO BE CAPTURE TO GIS	
SUBSTATION NO.	3508
INSTALLATION TYPE	UNDERGROUND
EARTHING SYSTEM TYPE	COMMON
SOIL RESISTIVITY AVERAGE IN OHMS	14.33 OHM METERS
HV SEPARATE EARTHING GRID RESISTANCE (SEPARATE EARTHING ONLY)	N/A
SIZE / NO. OF HV ELEC TRODES (SEPARATE EARTHING ONLY)	N/A
LV SEPARATE EARTHING GRID RESISTANCE (SEPARATE EARTHING ONLY)	N/A
SIZE / NO. OF LV ELECTRODES (SEPARATE EARTHING ONLY)	N/A
COMBINED EARTH RESISTANCE IN OHMS (FOR COMMON EARTHING)	1.008 OHM
SIZE / NO. OF COMBINED ELEC TRODES (COMMON EARTHING)	2 v 2.4m
SIZE / NO. OF THE SUPPLEMENTARY ELECTRODE	1 x 4.5m
BONDING CONDUCTOR SIZE IN MM ² (INSULATED / BARE)	70mm ²
CONNECTION TYPE (CAG OR CMBP)	BOTH
AMBIENT TEMPERATURE / WEATHER CONDITION	30 DEG C SURRY
DATE OF SUR. T.S.	1/30/22/15
INSULATED DEPTH FROM GROUND (LEVEL) (IN METRES)	0 (m)
LENGTH OF MAIN CONNECTION CABLE (IN METRES)	250 (m)
TOTAL LENGTH OF EARTH ELECTRODE SYSTEM (ELEC. INSULATED & BARE) (IN METRES)	0 (m)
MEASURED EARTH RESISTANCE IN OHMS (TO BE MEASURED BY L1 ASP ON COMMISSIONING)	

WORK'S COMPLETED/FIELD BOOK

CONDUCTED BY: _____

DATE: _____

BY: _____

DATE: _____

UNDERGROUND ASSETS

INSTALLED BY: _____

DATE: _____

CONTACT NO: _____

DATE: _____

DESIGNED BY: TIM VOGEL

DATE APPROVED: 22/05/2024

PROJECT NAME: Tim Vogel

THIS CERTIFICATE IS VALID FOR THE PROJECT ONLY AND IS SUBJECT TO THE PROJECT'S TERMS AND CONDITIONS.

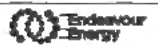
<p>GENERAL</p> <p>DRAWING NO</p> <p>SUBGROUND</p> <p>SUBSTATIONS</p>	<p>BY: _____</p> <p>DATE: _____</p> <p>SCALE: _____</p> <p>DO NOT SCALE DRAWING BY METRES</p>	<p>PROJECT NO: UG0463</p> <p>DATE: 11/04/2024</p> <p>BY: _____</p> <p>DATE: _____</p> <p>SCALE: _____</p>	<p>DO NOT SCALE DRAWING BY METRES</p> <p>PROJECT NO: UG0463</p> <p>DATE: 11/04/2024</p> <p>BY: _____</p> <p>DATE: _____</p> <p>SCALE: _____</p>	<p>PROJECT NO: UG0463</p> <p>DATE: 11/04/2024</p> <p>BY: _____</p> <p>DATE: _____</p> <p>SCALE: _____</p>	<p>PROJECT NO: UG0463</p> <p>DATE: 11/04/2024</p> <p>BY: _____</p> <p>DATE: _____</p> <p>SCALE: _____</p>	<p>PROJECT NO: UG0463</p> <p>DATE: 11/04/2024</p> <p>BY: _____</p> <p>DATE: _____</p> <p>SCALE: _____</p>
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APPENDICES

GENERAL

SCALE

DATE: 11/04/2024



PROJECT NO: UG0463

DATE: 11/04/2024

BY: _____

DATE: _____

SCALE: _____



APPENDIX D: Intersection and Road Layout plans (Henry & Hymas)

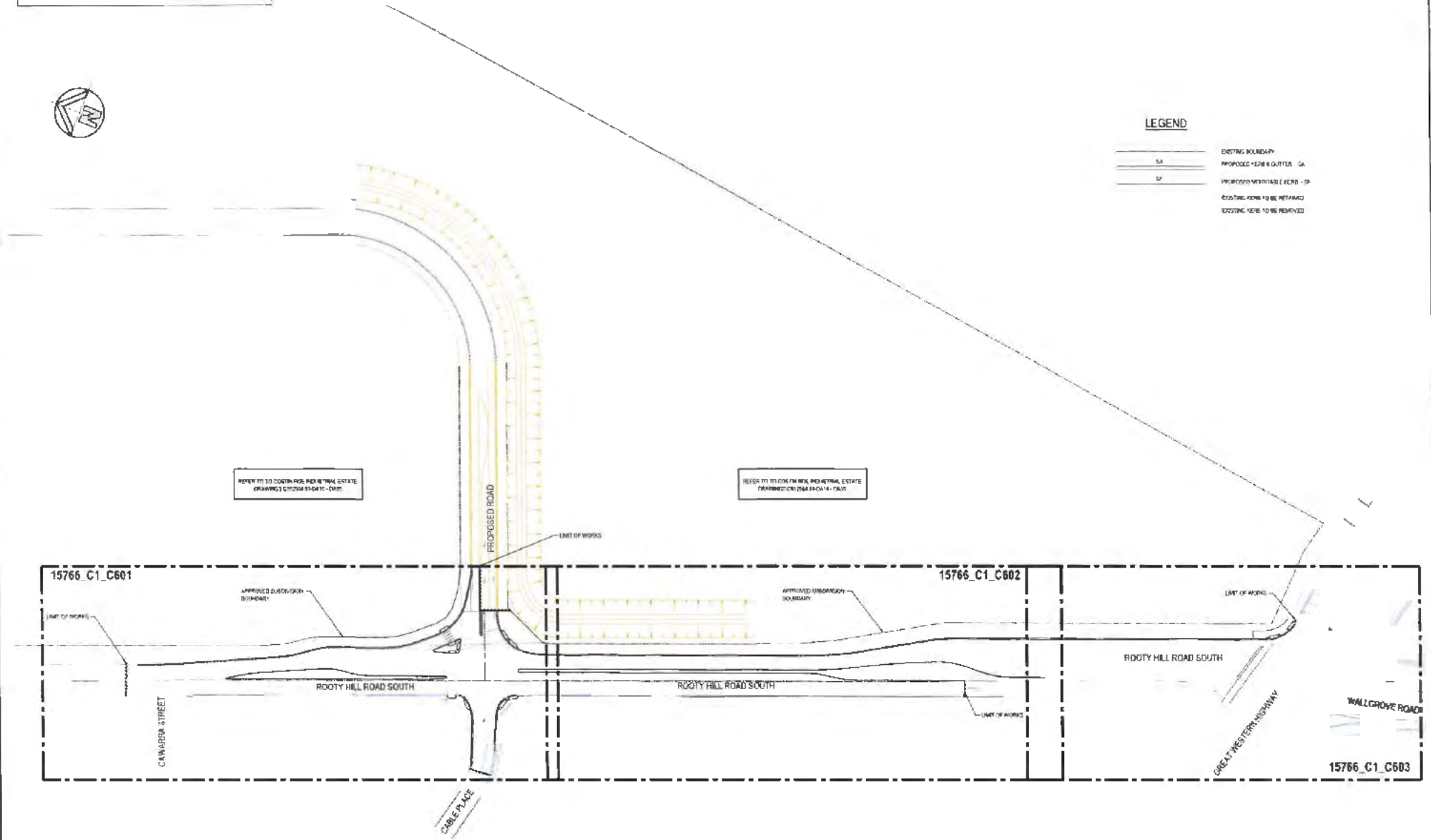


RMS REGISTRATION NUMBER:



LEGEND

	EXISTING BOUNDARY
	PROPOSED 4.5M GUTTER - CA
	PROPOSED METEORABLE PAVEMENT - CP
	EXISTING KERB TO BE RETAINED
	EXISTING KERB TO BE REMOVED



REFER TO DRAWING FOR PERMIT EASEL EASEMENTS ON 15766 C1 C601 - CA10

REFER TO DRAWING FOR PERMIT EASEL EASEMENTS ON 15766 C1 C602 - CA10



INTERSECTION LAYOUT - OVERALL PLAN
SCALE 1:750 (A1)

FOR RMS APPROVAL

SURVEY INFORMATION
SURVEYED BY LANDPARTNERS
DATE AND
SPECIAL TO BE FILLED IN BY THE SURVEYOR

NO.	DESCRIPTION	DATE	BY	CHECKED	SCALE	STATUS
1	AS PER PLAN					
2	AS PER PLAN					
3	AS PER PLAN					
4	AS PER PLAN					
5	AS PER PLAN					
6	AS PER PLAN					
7	AS PER PLAN					
8	AS PER PLAN					
9	AS PER PLAN					
10	AS PER PLAN					

HANSEN YUNCKEN PTY.LTD
LANDPARTNERS
This drawing and design comprise the property of Hansen Yuncken and may not be copied or otherwise used without the prior written approval of Hansen Yuncken.

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15 Victoria Avenue
Cherrybrook NSW 2870
Telephone:
+61 2 9477 8400
Facsimile:
+61 2 9477 8337
Email:
enquiries@hansenyuncken.com.au
www.hansenyuncken.com.au



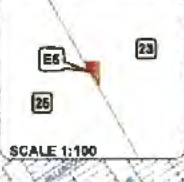
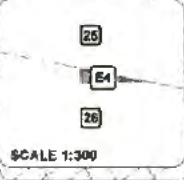
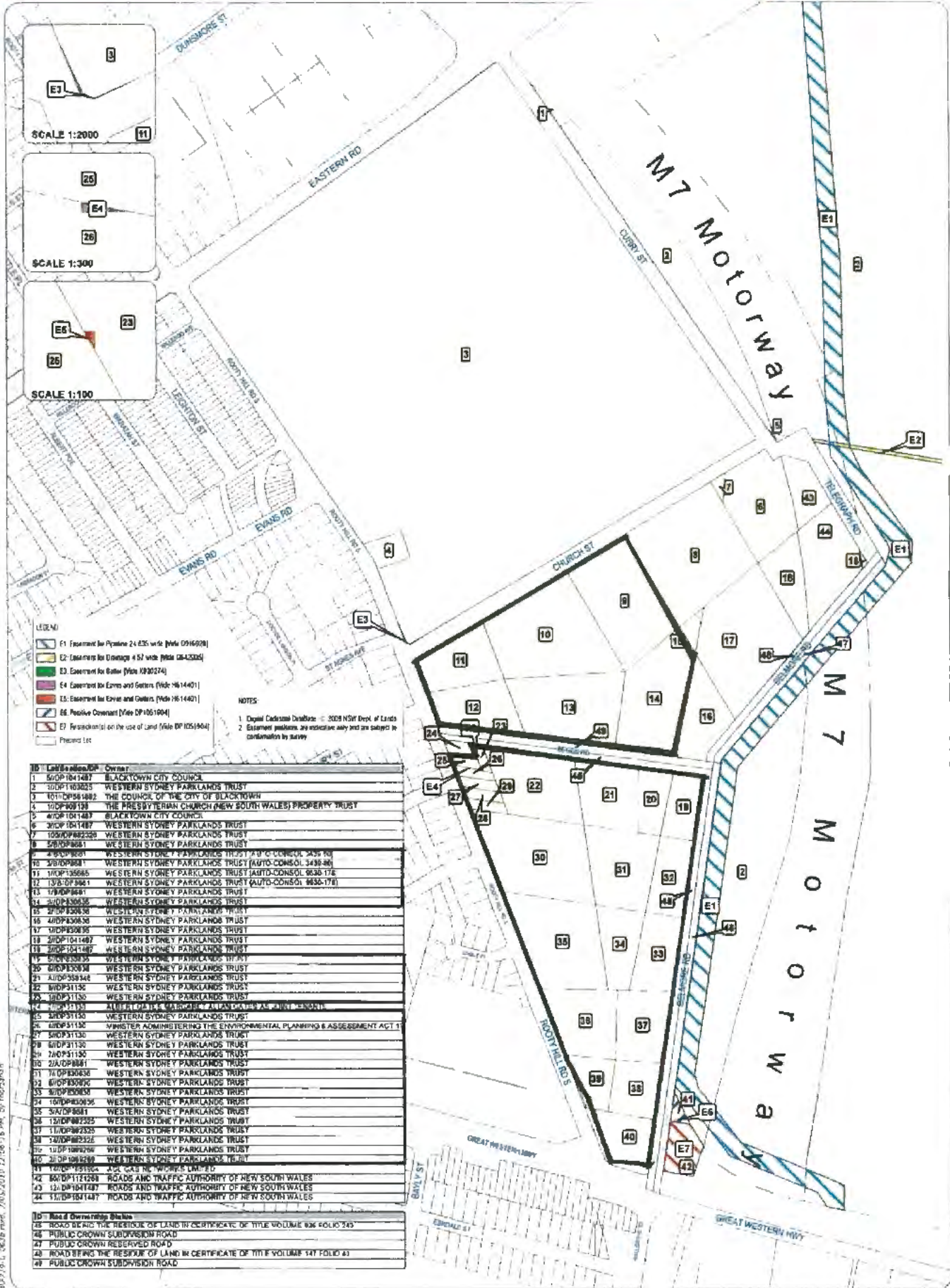
Project:
**INTERSECTION AND ROAD WIDENING
CABLE PLACE, EASTERN CREEK, NSW**
Drawing:
**INTERSECTION LAYOUT - OVERALL PLAN
OPTION 1**

Client:	H. Hansen	Date:	SEP 2013
Author:	J. Thompson	Checked:	A. Frankel
Scale:	1:750 @ A1	Drawn:	
Project No:	15766_C1_C100	Sheet No:	02

Schedule 8 – Not used

Schedule 9 – Plan of Retail Centre Land





- LEGEND**
- E1 Easement for Pipelines 24.825 wide (Title DP166928)
 - E2 Easement for Drainage 4.57 wide (Title DP43202)
 - E3 Easement for Gutter (Title NP20274)
 - E4 Easement for Caves and Gullies (Title N6 14401)
 - E5 Easement for Caves and Gullies (Title N6 14401)
 - E6 Positive Covenant (Title DP1051904)
 - E7 Reservation(s) on the use of Land (Title DP1051904)
 - Preceded Lot

- NOTES**
1. Digital Cadastral Datafile: © 2008 NSW Dept of Lands
 2. Easement positions, any indicative only and are subject to confirmation by survey.

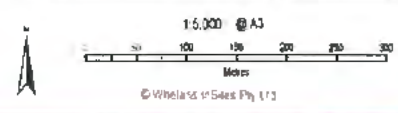
Lot No	Lot Area (sqm)	Owner
1	510P101487	BLACKTOWN CITY COUNCIL
2	310P1103025	WESTERN SYDNEY PARKLANDS TRUST
3	1011DP561082	THE COUNCIL OF THE CITY OF BLACKTOWN
4	101DP109128	THE PRESBYTERIAN CHURCH (NEW SOUTH WALES) PROPERTY TRUST
5	410P101487	BLACKTOWN CITY COUNCIL
6	310P101487	WESTERN SYDNEY PARKLANDS TRUST
7	1050P106228	WESTERN SYDNEY PARKLANDS TRUST
8	210P10681	WESTERN SYDNEY PARKLANDS TRUST
9	410P10681	WESTERN SYDNEY PARKLANDS TRUST (AUTO-CONSOL 3435-16)
10	510P10681	WESTERN SYDNEY PARKLANDS TRUST (AUTO-CONSOL 3435-16)
11	110P135665	WESTERN SYDNEY PARKLANDS TRUST (AUTO-CONSOL 9630-176)
12	131P10681	WESTERN SYDNEY PARKLANDS TRUST (AUTO-CONSOL 9630-176)
13	110P10681	WESTERN SYDNEY PARKLANDS TRUST
14	210P135665	WESTERN SYDNEY PARKLANDS TRUST
15	210P135665	WESTERN SYDNEY PARKLANDS TRUST
16	210P135665	WESTERN SYDNEY PARKLANDS TRUST
17	110P10681	WESTERN SYDNEY PARKLANDS TRUST
18	210P101487	WESTERN SYDNEY PARKLANDS TRUST
19	210P101487	WESTERN SYDNEY PARKLANDS TRUST
20	210P10681	WESTERN SYDNEY PARKLANDS TRUST
21	210P10681	WESTERN SYDNEY PARKLANDS TRUST
22	210P10681	WESTERN SYDNEY PARKLANDS TRUST
23	210P10681	WESTERN SYDNEY PARKLANDS TRUST
24	210P10681	WESTERN SYDNEY PARKLANDS TRUST
25	210P10681	WESTERN SYDNEY PARKLANDS TRUST
26	210P10681	WESTERN SYDNEY PARKLANDS TRUST
27	210P10681	WESTERN SYDNEY PARKLANDS TRUST
28	210P10681	WESTERN SYDNEY PARKLANDS TRUST
29	210P10681	WESTERN SYDNEY PARKLANDS TRUST
30	210P10681	WESTERN SYDNEY PARKLANDS TRUST
31	210P10681	WESTERN SYDNEY PARKLANDS TRUST
32	210P10681	WESTERN SYDNEY PARKLANDS TRUST
33	210P10681	WESTERN SYDNEY PARKLANDS TRUST
34	210P10681	WESTERN SYDNEY PARKLANDS TRUST
35	210P10681	WESTERN SYDNEY PARKLANDS TRUST
36	210P10681	WESTERN SYDNEY PARKLANDS TRUST
37	210P10681	WESTERN SYDNEY PARKLANDS TRUST
38	210P10681	WESTERN SYDNEY PARKLANDS TRUST
39	210P10681	WESTERN SYDNEY PARKLANDS TRUST
40	210P10681	WESTERN SYDNEY PARKLANDS TRUST
41	210P10681	WESTERN SYDNEY PARKLANDS TRUST
42	210P10681	WESTERN SYDNEY PARKLANDS TRUST

Lot No	Lot Area (sqm)	Owner
43	ROAD AND THE RESERVE OF LAND IN CERTIFICATE OF TITLE VOLUME 936 FOLIO 343	PUBLIC CROWN SUBDIVISION ROAD
44	PUBLIC CROWN SUBDIVISION ROAD	PUBLIC CROWN SUBDIVISION ROAD
45	PUBLIC CROWN RESERVED ROAD	PUBLIC CROWN RESERVED ROAD
46	ROAD BEING THE RESERVE OF LAND IN CERTIFICATE OF TITLE VOLUME 147 FOLIO 43	PUBLIC CROWN SUBDIVISION ROAD
47	PUBLIC CROWN SUBDIVISION ROAD	PUBLIC CROWN SUBDIVISION ROAD

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PREPARED FOR: [Blank]
 CHECKED BY DATE: [Blank]
 APPROVED BY DATE: [Blank]
 DS REF: F719-0-000 nos
 JOB REF: F113
 DATE OF PLAN: 07/06/2010



Lot No	Owner	Address	City
1	Blacktown City Council	Blacktown City Council	Blacktown
2	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
3	The Council of the City of Blacktown	The Council of the City of Blacktown	Blacktown
4	The Presbyterian Church (New South Wales) Property Trust	The Presbyterian Church (New South Wales) Property Trust	Blacktown
5	Blacktown City Council	Blacktown City Council	Blacktown
6	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
7	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
8	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
9	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
10	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
11	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
12	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
13	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
14	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
15	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
16	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
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23	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
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38	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
39	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
40	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
41	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown
42	Western Sydney Parklands Trust	Western Sydney Parklands Trust	Blacktown

Eastern Creek Retail Centre - Development Management Agreement

Schedule 10 - Multi-Party Side Deed Principles

- 1 The Owner consents to the grant of the Security by the Developer to the Financier, and consents to the Security Agreement.
- 2 The Financier consents to the execution of the Development Management Agreement, Agreements for Ground Lease, Ground Leases and Construction Licences (each being a "**Transaction Document**" and together the "**Transaction Documents**") by the Developer.
- 3 The Owner agrees that a grant under paragraph 1 does not constitute a breach or default event under the Transaction Documents and does not entitle the Owner to terminate or suspend performance of any of its obligations under the Transaction Documents.
- 4 If the Developer breaches or defaults under the Transaction Documents, which breach or default gives rise to a right of termination or rescission of all or any of the Transaction Documents to the Owner, the Owner will:
 - (a) give the Financier a copy of any breach or default notice it sends to the Developer in respect of such breach or default on the same day it is given to the Developer;
 - (b) if requested, give the Financier any update as to the Developer's progress in remedying such breach or default;
 - (c) give the Financier written notice that the Developer's breach or default may give the Owner a right to terminate or rescind any or all of the Transaction Documents if not remedied; and
 - (d) not exercise its right to terminate or rescind or suspend performance of any of its obligations under the relevant Transaction Documents for a period of 90 days after the notice in paragraph 4 ("**Cure Period**").
- 5 The Financier may at any time and from time to time assume the rights and obligations of the Developer under any or all of the Transaction Documents by notice to the Owner during the Cure Period ("**Step-in Notice**").
- 6 A Step-in Notice will be effective on and from the date that the notice is received by the Owner ("**Enforcement Date**").
- 7 If the Financier issues a Step-in Notice, the Financier:
 - (a) must perform all obligations of the Developer under the relevant Transaction Documents arising on and from the Enforcement Date;
 - (b) must remedy any default or breach of the relevant Transaction Documents by the Developer which is the subject of the notice under paragraph 4; and
 - (c) is entitled to exercise all rights, powers and to perform all obligations of the Developer under the relevant Transaction Documents.

- 8 If a Step-in Notice has been issued, the Owner will only be entitled to terminate the Transaction Document if the Financier does not cure the breach or default the subject of the notice under paragraph 4.
- 9 If a Step-In Notice has been issued, the Financier may at any time, with prior notice to the Owner, terminate the Step In from the date specified in that notice being a date after that notice is given to the Owner ("**Step-Out Notice**").
- 10 If the Financier issues a Step-Out Notice, with effect from the date nominated under the Step-Out Notice, the Financier will be released from any and all obligations to the Owner under the relevant Transaction Documents. Such release will not affect or prejudice the continuation of the Developer's obligations to the Owner under the relevant Transaction Documents.
- 11 Exercise of any rights or powers under the Security Agreement by the Financier will not of itself constitute a default or breach of the Transaction Documents and will not of itself entitle the Owner to exercise any right of termination of the Transaction Documents.
- 12 The Owner and Developer must not amend or vary or agree to amend or vary the Transaction Documents without the prior written consent of the Financier.
- 13 Definitions
- (a) "**Financier**" means the recipient of the Security.
- (b) "**Encumbrance**" means an interest or power:
- (i) reserved in or over an interest in any asset including any retention of title; or
- (ii) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,
- by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any obligation, and includes any agreement to grant or create any of the above.
- (c) "**Security**" means an Encumbrance granted by the Developer in favour of the Financier from time to time in respect of the Developer's interest in the Transaction Documents.
- (d) "**Security Agreement**" means an agreement for the grant of the Security between the Developer and Financier.
- (e) "**Step In**" means the assumption of rights and obligations of the Developer under the Transaction Documents by the Financier in accordance with the Step-In Notice.

**Eastern Creek Retail Centre - Development
Management Agreement**
Schedule 11 – Not used



Eastern Creek Retail Centre - Development Management Agreement

Schedule 12 – Form of Ministerial Consent

Eastern Creek Retail Centre - Development Management Agreement

RECOMMENDATION

It is recommended that the Minister pursuant to sections 16(3) and 16(5) of the *Western Sydney Parklands Act 2006* (NSW) consent to:

1. The Development Management Agreement dated [#insert date] 2016 between Western Sydney Parklands Trust (" Owner "), Frasers Property Industrial Constructions Pty Limited (" Developer ") and Frasers Property Limited (" Guarantor ") (" Development Management Agreement "), a copy of which is attached.	Approved / not approved
2. All of the transactions contemplated under the Development Management Agreement.	Approved / not approved
3. The class of dealings with the Trust's land constituted by the grant of any and all agreements for ground lease and/or ground leases by the Owner to an "Approved Tenant" (as that term is defined in the Development Management Agreement) in accordance with the terms and conditions of the Development Management Agreement in respect of the development and occupation of the whole or parts of the Property.	Approved / not approved
4. The grant of any construction licences over the whole or any part of the Property by the Owner to the Developer or a "Nominee" or an "Approved Tenant" (as those terms are defined in the Development Management Agreement) in accordance with the terms and conditions of the Development Management Agreement.	Approved / not approved

Approvals

Approved: Suellen Fitzgerald, Executive Director	[#insert date]
Approved: Terry Bailey, Chief Executive	[#insert date]
Contact: Suellen Fitzgerald, Executive Director	[#insert contact phone number]
_____ Mark Speakman, Minister	_____ Date

**Eastern Creek Retail Centre - Development
Management Agreement**
Schedule 13 – Developer's Site Works Brief



Eastern Creek Retail Centre



DEVELOPER'S SITE WORKS BRIEF

DATE: 26 August 2016
REVISION-B

DISCLAIMER

THE SUBJECT DOCUMENT IS A REPRESENTATION OF DESIGN AND APPROVAL WORKS AS AT THE DATE REFERENCED. THIS BRIEF IS NOT FINAL AND IS SUBJECT TO FURTHER DESIGN REVISIONS AS REQUIRED.

The Developer's Site Works Brief is to be read in conjunction with the Development Management Agreement (DMA).

The Developer's Site Works (DSW) consist of the following:

Bulk Earthworks and reticulation of water, sewer, electrical, gas & telco services to facilitate pads.

Scope of works for each stage / pad will be generally as per Developer's Site Works Package 1. Staging will be generally in accordance with the DMA, however can be modified to suit the development program.

Developer's Site Works are to be completed in accordance with authority requirements and the State Significant Development (SSD-517S) documentation and consents.

1. DEVELOPER'S SITE WORKS

Developer's Site Works means all design, development and construction of the infrastructure works required for each Development Site (but not including the Internal Infrastructure Works and the External Infrastructure Works), including the works specified in the Developer's Site Works Brief, as varied by the Developer from time to time. The works are to be in accordance with the Planning Documentation unless amended by modification to the Initial Development Consent.

a) Works:

i) Bulk Earthworks

- a) Dilapidation Report prior to commencement of works.
- b) Site establishment including site sheds, haul road(s), cattle grid(s), temporary access and temporary services as required.
- c) Clearing and removal of vegetation and trees.
- d) Excavate, compact and prepare subgrade to proposed Bulk Earthworks Levels (BEL) with batters to all edges.
- e) Strip topsoil.
- f) Cut and Fill as required by engineers design. Any imported fill will require a certificate and approval from the geotechnical engineer.
- g) Includes excavation haulage, stockpiling, compaction, water for moisture control and dust suppression, and final trimming to achieve the lines and levels shown on the drawings.
- h) Final trim and proof roll prior to the sub-base being installed for the building pads. Subgrade surface should be smooth and free from any ruts or other irregularities that do not comply.
- i) Match existing levels at boundary interface typical to all pad edges.
- j) All earthworks shall be carried out in accordance with the Geotechnical Reports and Specifications provided. Miscellaneous fencing and structures to be removed or adjusted as required.

ii) Reticulation of Water Services

- (1) Internal reticulation of mains water will be the responsibility of the Developer. Connection will be taken from the agreed incoming mains connections points and locations provided by WSPT. Construction is to be in accordance with future design and subject to the Developer's final design requirements and approval by the relevant authorities.

iii) Reticulation of Waste Water Services

- (1) Internal reticulation of waste water services will be the responsibility of the Developer. Connection will be taken from the agreed incoming mains connections and locations provided by WSPT. Construction is to be in accordance with future design and subject to the Developer's final design requirements.
- (2) Construction is to be in accordance with Sydney Water Approvals & Sydney Water approved design prepared by the Water Services Coordinator (Rose Atkins Rimmer Infrastructure).

iv) Reticulation of Electrical Services

- (1) Internal reticulation of electrical services and provision of a substation will be the responsibility of the developer. Connection will be taken from the agreed incoming mains connections points and locations provided by WSPT (refer Appendix C: External Servicing Plan - Hansen Yuncken). Construction is to be in accordance with future design and subject to the developer's final design requirements and approval by the relevant authorities.
- (2) Easements will be created in favour of energy authority where pads are required by UEA within the site boundary.
- (3) Easement of 1m wide will be created over the site for underground cables. Cables/Ducts installed within the 1m wide easement are to be protected by means of a minimum 50mm layer of 15MPa concrete cover.
- (4) Construction is to be in accordance with Energy Authority approvals and design prepared by the Accredited Service Provider (UEA).

v) Reticulation of Telecommunication Services

- (1) Internal reticulation of telecommunications will be the responsibility of the developer. Connection will be taken from the existing service in Rooty Hill Road South. Construction is to be in accordance with future design and subject to the developer's final design requirements and approval by the relevant authorities.
- (2) Telecommunication and data services will be designed by an accredited telecommunications consultant to meet authority requirements. The design should include ductwork and cabling, however only ductwork to be installed initially. Cable will be installed by the developer/ authority as each facility comes on line.

vi) Reticulation of Gas Services

- (1) Internal reticulation of gas services will be the responsibility of the developer. Construction is to be in accordance with future design and subject to the developer's final design requirements and approval by the relevant authorities.

All construction is to be in accordance with Authority Approvals and approved design prepared by the civil consultant. Scour protection to all temporary and permanent basins, headwalls and pipe outlets. Permanent basins will also require a concrete cut-off wall. Conservation areas are to be protected and maintained at all times as per the requirements in the VMP and OEMP by Eco Logical Australia.

The Developer's Site Works are to be completed as per the authority approvals with consideration to the specifications set out in the Civil Design plans by Henry & Hymas, Costin Roe and Pells Sullivan Meynink geotechnical reports. All relevant guidelines and standards are to be met as required.

Final design for Bulk Earthworks and Internal Services reticulation to be submitted to the certifying authority prior to the commencement of works.

Annexure A – Pro Forma Agreement for Ground Lease



[#This Pro-Forma Agreement for Ground Lease has been prepared for a Take Out Transaction.]

Agreement for Ground Lease

Premises: Eastern Creek Retail Centre

Dated

[#insert name of Developer entity] ("Developer")

Western Sydney Parklands Trust ABN 85 202 544 800 ("Landlord")

[#insert name of tenant] ("Tenant")

[#insert name of Guarantor] ("Guarantor")

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
www.kwm.com

Agreement for Ground Lease

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Agreement for Ground Lease

Details

Parties	Developer, Landlord, Tenant and Guarantor	
Developer	Name	[#To be inserted]
	ABN	[#To be inserted]
	Address	[#To be inserted]
	Telephone	[#To be inserted]
	Fax	[#To be inserted]
	Attention	[#To be inserted]
Landlord	Name	Western Sydney Parklands Trust
	ABN	85 202 544 800
	Address	Level 7, 10 Valentine Avenue, Parramatta, NSW 2150
	Telephone	+61 2 9895 7500
	Fax	+61 2 9895 7580
	Attention	Kerry Jahangir
Tenant	Name	[#To be inserted]
	ABN/ACN/ARBN	[#To be inserted]
	Address	[#To be inserted]
	Telephone	[#To be inserted]
	Fax	[#To be inserted]
	Attention	[#To be inserted]
Guarantor	Name	The person or persons identified in item 10 of Schedule 1.
Recitals	A	The Landlord has agreed to grant and the Tenant has agreed to take a lease of the Premises.
	B	The Developer has agreed to construct or procure the construction of the Works and otherwise comply with the terms of this agreement.

C The Guarantor has agreed to guarantee the obligations of the Tenant under this agreement.

Date of agreement See Signing page



Agreement for Ground Lease

General terms

1 Interpretation

1.1 Definitions

The following words have these meanings in this agreement unless the contrary intention appears:

Access Date means the date set out in item 6 of Schedule 1.

Amended Certification has the meaning given to that term in clause 16.2(d).

[#replace the definition of "Amended Certification" with the following definition where the Developer under this agreement is not the Developer under the Development Management Agreement: "**Amended Certification** has the meaning given to that term in the Development Management Agreement."]

Approval Date means the date set out in item 6 of Schedule 1.

Architect means the person referred to in item 1 of Schedule 1 or any other architect appointed by the Developer for the purpose of this agreement.

Assignment Tests means that a person:

- (a) is not Insolvent;
- (b) (combined with any proposed guarantor) is of sufficient financial standing to perform its relevant obligations under this agreement and the Construction Licence (if applicable);
- (c) has not been convicted of a criminal offence which carries a maximum sentence of equal to or more than 12 months in prison or multiple sentences that add up to equal to or more than 12 months in prison;
- (d) has not been the subject of a formal adverse finding by the Independent Commission against Corruption for conduct which, if prosecuted, carries a maximum sentence of equal to or more than 12 months in prison; and
- (e) is otherwise ready, willing and able to carry out the obligations of the relevant party under this agreement.

Authorised Officer means:

- (a) in the case of the Developer, Tenant and Guarantor, a director, secretary or an officer whose title contains the word "manager" or a person performing the functions of any of them; and
- (b) in the case of the Landlord and any other party to this agreement, a person appointed by that party to act as an Authorised Officer for the purpose of this agreement.

Authority means:

- (a) any government department or Minister;
- (b) the Council or any other local government;

- (c) any government or statutory Authority; or
- (d) any other person under a Law who or which has a right to impose a requirement, or whose consent is required, with respect to the Land or the Works.

Bank Guarantee means an unconditional undertaking by an Australian trading bank.

Building means the building contemplated by the Works.

Business Day means a day on which trading banks are opened for general banking business in Sydney.

CC Date means the date set out in item 6 of Schedule 1.

Commencement Date means the first to occur of:

- (a) the date the Tenant commences to use the Premises for the Permitted Use; and
- (b) the later of:
 - (i) the day after the date of Practical Completion;
 - (ii) the day after completion of the Landlord's Site Works (or such of those works as are required to be completed to facilitate the construction of the Works and the use of the Premises). However, this paragraph (ii) does not apply to the extent that the Landlord's Site Works are varied pursuant to clause 6.2(a) of the Development Management Agreement; and
- (c) any alternative date as agreed in writing by the parties.

Construction Bank Guarantee means a Bank Guarantee in favour of the Landlord for the Construction Bank Guarantee Amount.

Construction Certificate has the meaning given to that term under the *Environmental Planning and Assessment Act 1979* (NSW).

Construction Licence means a licence between the Landlord and Developer in respect of the Land, entered into on or about the date of this agreement.

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

Contamination means the presence in, on or under land, air or water of a substance (whether a soil, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment and **Contaminant** has a corresponding meaning;

Contamination Works means the works to be carried out by the Landlord to carry out remediation and management of Contamination in accordance with clause 16.

Council means the local government authority set out in item 2 of Schedule 1 or other relevant development consent authority.

Developer's Additional Infrastructure Works has the meaning given to the term "Additional Infrastructure Works" in the Development Management Agreement, in so far as those works are within, or for the benefit of, the Land.

Developer's Infrastructure Works has the meaning given to the term "Internal Infrastructure Works" in the Development Management Agreement, in so far as those works are within, or for the benefit of, the Land.

Developer's Period means the period during which the Developer is carrying out physical works for the Developer's Infrastructure Works and the Developer's Site Works and any Developer's Additional Infrastructure Works on the Land before the grant of the Construction Licence.

[#replace the definition of "Developer's Period" with the following definition where the Developer under this agreement is not the Developer under the Development Management Agreement: "**Developer's Period** means the period during which the Original Developer is carrying out the physical works for the Developer's Infrastructure Works and the Developer's Site Works and any Developer's Additional Infrastructure Works on the Land before the grant of the Construction Licence."]

Developer's Site Works has the meaning given to that term in the Development Management Agreement, in so far as the works are within, or for the benefit of, the Land.

Development means the design, development, construction and completion of buildings and works on the Land, in accordance with this agreement.

Development Agreement means an agreement to be entered into between the Tenant and the Developer (and other parties) relating to the construction and completion of the Works.

Development Application means an application for Development Consent and includes all documentation required in respect of any such application.

Development Consent means development/planning consent from the Council for the construction and use of the Works, including by way of modification to the Initial Development Consent.

Development Management Agreement means the development management agreement between the Landlord and the Developer (and other parties) dated [#insert].

Effective Date means [#insert the Effective Date under the Development Management Agreement].

Employees and Agents means the employees, agents or contractors of any party and includes, for the purposes of clause 16, authorised representatives, consultants and invitees of that party.

Environment includes:

- (a) eco systems and their constitute parts, including people and communities, natural and physical resources;
- (a) the qualities and characteristics of locations, places and areas; and

- (b) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a) or (b).

Environmental Law includes any Law relating to any aspect of the Environment.

Expiry Date means the expiry date of the Ground Lease.

FIRB Act means the *Foreign Acquisitions and Takeovers Act 2015* (Cth).

Foreign Investment Policy means the policy of the Commonwealth of Australia in respect of investment in Australia by foreign persons.

Force Majeure Event means any of the following event:

- (a) earthquake, civil commotion, riot, act of God or the public enemy, sabotage, war, threat of war, demonstrations, insurrections, riots, acts of terrorism or damage caused by articles dropped from an aircraft;
- (b) inclement weather, storm or lightning;
- (c) fire, smoke, flood, water damage, explosion, ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste not caused by the Developer;
- (d) industrial disputes or industrial actions in relation to the Land or the Works;
- (e) latent conditions, including without limitation, contamination of the Land or its surroundings and/or physical conditions on the Land or its surroundings;
- (f) the provisions of any Law or the direction of any Authority with respect to the Land or the Works, except those arising due to any non-compliance by the Developer with its obligations under this agreement;
- (g) any delay by any government, public, statutory, governmental, semi-governmental, local government or judicial body, entity or Authority (including a Minister of the Crown (in any right)) in connection with the Land or the Works;
- (h) failure of:
 - (i) utilities; and/or
 - (ii) other plant and equipment;
- (i) damage to goods, plant or equipment relating to the Land or the Works in transportation;
- (j) any blockade, embargo or confiscation by any government, public, statutory, governmental, semi-governmental, local government or judicial body, entity or Authority;
- (k) emergency situation which requires evacuation of the Land; and
- (l) actions of neighbours adjoining the Land or community groups which prevent the Developer from carrying out the Works in accordance with this agreement.

Form of Ground Lease means a lease in the form of annexure "A".

Ground Lease means the ground lease of the Premises in the form of the Form of Ground Lease as completed under clause 2.6.

Ground Rent means the initial ground rent payable under the Ground Lease, being the rent set out in item 5 of schedule 1.

GST has the same meaning as given to that term under the GST Act.

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

Initial Certification has the meaning given to that term in clause 16.2(a).

[#replace the definition of "Initial Certification" with the following definition where the Developer under this agreement is not the Developer under the Development Management Agreement: "**Initial Certification** has the meaning given to that term in the Development Management Agreement."]

Initial Development Consent means the development consent issued by the Minister for Planning for the development of the Land and other surrounding land known as "SSD 5175 Eastern Creek Business Hub", as modified by the modification known as "Modification 1 to SSD 5175 Eastern Creek Business Hub".

Insolvent means in relation to a body corporate:

- (a) a "controller" (as defined in the Corporations Act 2001 (Cth)), Manager, Trustee, Receiver, Receiver and Manager, Administrator or similar officer is appointed in respect of the body corporate or any asset of the body corporate;
- (b) a liquidator or provisional liquidator is appointed in respect of the body corporate;
- (c) an application is made to the court for an order, a court makes an order, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b);
 - (ii) winding up or deregistering the body corporate; or
 - (iii) proposing or implementing a scheme of arrangement (other than a scheme of arrangement relating to a reconstruction or amalgamation while solvent),

other than an application which is withdrawn, dismissed or set aside within 21 days after it is made; and
- (d) the body corporate enters into, resolves to enter into or proposes a reorganisation, moratorium or other form of administration involving an arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally or any class of them, other than for the purposes of a reconstruction or amalgamation while solvent.

Land means the land referred to in item 4 of Schedule 1.

Landlord's Period means the period from the Effective Date until the commencement date of the Construction Licence, but excluding the Developer's Period.

Landlord's Site Works has the meaning given to the term "External Infrastructure Works" in the Development Management Agreement, in so far as those works are within, or for the benefit of, the Land.

Law means:

- (a) Commonwealth and State legislation, including regulations, by-laws and other subordinate legislation;
- (b) common law and equity; and
- (c) Authority requirements.

Net Land Payment has the meaning given to that term in the Development Management Agreement.

Occupancy Permit means such certificate, permit, document or letter issued by the appropriate Authority which is required by Law before the Premises may be lawfully occupied.

[#insert where the Developer under this agreement is not the Developer under the Development Management Agreement: "**Original Developer** means Frasers Property Industrial Constructions Pty Limited and its successors and assigns under the Development Management Agreement."]

[#insert where the Developer under this agreement is not the Developer under the Development Management Agreement: "**Original Developer's Employees and Agents** means the Original Developer's authorised representatives, consultants, employees, agents, contractors or invitees."]

Plans and Specifications means the plans, specifications and schedules of finishes set out in Schedule 2, as may be varied under clause 4.2.

Practical Completion means the stage of completion of the Works described in clause 4.4(c).

Premises means the whole of the Land, including the Building and any other improvements on the Land.

Project Consents means all necessary permits, consents and approvals from Council and any Authority for the construction of the Works, including development and building approvals.

Provision of Interim Access has the meaning given to it in clause 3.1(a)(iii).

Related Body Corporate means has the meaning given to that term under the *Corporations Act 2001* (Cth).

Remediation Date means the date set out in item 6 of Schedule 1.

Retail Centre means the land located on the corner of Rooty Hill Road South and Great Western Highway, Eastern Creek NSW, including all land within stages 1, 2, 3 and 4 of the development known, as at the date of this agreement, as the Eastern Creek Retail Centre

Security Interest includes:

- (a) a mortgage, charge, lien or pledge or any other right by way of security; and
- (a) a security interest within the meaning of section 12(1) of the *Personal Properties Securities Act 2009* (Cth).

Services means all services and utilities to or of the Premises or the Land provided by Authorities, the Landlord or the Developer, including (but not limited to) power, water, gas, telecommunications, fire services, sewerage, trade waste removal and similar utility services.

Site Audit Statement means a site audit statement under the *Contaminated Land Management Act 1997* (NSW).

Site Development Proposal has the meaning given to that term in the Development Management Agreement.

Subdivision Application means an application for the Subdivision Approval and includes all documentation required in respect of any such application.

Subdivision Approval means all necessary approvals for registration of the Subdivision Plan.

Subdivision Date means the date set out in item 6 of Schedule 1.

Subdivision Plan means the plan in Schedule 3.

Substantial Commencement of Construction means the stage of physical works whereby the footings for construction have been placed on the Land by the Developer (or a relevant appointed subcontractor).

Tax Invoice means a tax invoice that complies with the GST Act.

Termination Event has the meaning given to it in clause 6.1.

Transaction Document means this agreement, the Ground Lease and the Construction Licence.

Unusual Conditions means each of the condition or conditions of a Development Consent that are not acceptable to the Developer and/or the Landlord and/or the Tenant as set out in Schedule 4.

Works means the works set out in the Plans and Specifications, as may be varied under clause 4.2.

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

1.2 Interpretation

- (a) Words which begin with a capital letter and are not defined in this agreement but are defined in the Ground Lease have the same meaning in this agreement as in the Ground Lease.
- (b) In this agreement unless the contrary intention appears:
 - (i) a reference to this agreement or another instrument includes any variation or replacement of any of them; and

- (ii) a reference to 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; and
- (iii) the singular includes the plural and vice versa; and
- (iv) the word "person" includes a firm, a body corporate, an unincorporated association or an Authority; and
- (v) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including, without limitation, persons taking by novation) and assigns; and
- (vi) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and severally; and
- (vii) any body (other than a party to this Agreement) which ceases to exist, is reconstituted, renamed or replaced or has its powers transferred, refers to the body established in its place or which serves substantially the same objects as or succeeds to its powers; and
- (viii) an agreement, representation or warranty on the part of two or more persons binds them jointly and severally; and
- (ix) a reference to any thing (including, without limitation, any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually.

1.2 Headings

Headings are inserted for convenience and do not affect the interpretation of this agreement.

2 Agreement to grant Ground Lease

2.1 Grant

The Landlord agrees to grant and the Tenant agrees to accept the grant of the Ground Lease from and including the Commencement Date.

2.2 Delivery of Form of Ground Lease to the Developer

The Landlord must deliver to the Developer with this agreement, the Form of Ground Lease in triplicate executed by the Landlord to be executed by the Tenant and then held in escrow by the Developer.

2.3 Delivery of Form of Ground Lease to the Tenant

Within 10 Business Days from the date of this agreement, the Developer must deliver to the Tenant the Form of Ground Lease received from the Landlord under clause 2.2.

2.4 Delivery of Form of Ground Lease

Within 10 Business Days of receipt of the Form of Ground Lease under clause 2.3, the Tenant must deliver to the Developer the Form of Ground Lease in triplicate executed by the Tenant and the Guarantor to be held in escrow by the Developer.

2.5 Not used

2.6 Completion of Form of Ground Lease

The Developer or its solicitors may:

- (a) complete the Form of Ground Lease by filling in its blank spaces including, without limitation, those for:
 - (i) the Commencement Date;
 - (ii) the Expiry Date;
 - (iii) the Ground Rent;
 - (iv) the current title particulars of the Land;
 - (v) the Tenant's guarantor (if any);
 - (vi) the date of this agreement in the definition of "Agreement for Ground Lease";
 - (vii) the relevant date in the definition of "Certification Date";
 - (viii) the relevant dates in the definition of "Developer's Period";
 - (ix) the relevant dates in the definition of "Owner's Period";
 - (x) the "Effective Date" (as that term is defined in the Development Management Agreement) in Schedule 7; and
 - (xi) the commencement date of the Construction Licence in Schedule 7;
- (b) include the Tenant and/or the Guarantor's limitation of liability, provided that the Ground Lease includes warranties by the Tenant and/or Guarantor (as applicable) in their capacity as trustee, responsible entity or custodian of the Tenant and/or Guarantor (if applicable) that it is the holder of the assets of the relevant trust, that (in the case of the Tenant) its interest in the Land will be an asset of the relevant trust and that the Tenant and/or Guarantor (as applicable) is and will be entitled to be indemnified out of the assets of the relevant trust in relation to its obligations under the Ground Lease (but subject to the usual exclusions); and
- (c) do anything else to the Form of Ground Lease necessary to complete the Form of Ground Lease as the Ground Lease.

2.7 Stamping

- (a) The Tenant must stamp this agreement and the Ground Lease as soon as reasonably practicable after the date of this agreement.
- (b) The Tenant must register the Ground Lease.
- (c) The Landlord must do all things required by the Tenant to assist the Tenant to stamp and register the Ground Lease.

2.8 Parties bound

The Landlord and the Tenant are bound by the Ground Lease from and including the Commencement Date, even though a party may not have executed the Ground Lease.

2.9 Consents

The Landlord must obtain any necessary mortgagee's consents to this agreement and the Ground Lease promptly after the date of this agreement.

2.10 Caveats

The Tenant may lodge a caveat on title to the Land in respect of its interest under this agreement. The Tenant must, when requested to do so by the Landlord or the Developer, promptly provide written consent in the form required by Land and Property Information - New South Wales to the lodgement of any dealing or plan which will not materially adversely affect the Tenant's rights under this agreement or the Ground Lease.

3 Conditions subsequent

3.1 Agreement for lease is conditional

- (a) This agreement is subject to and conditional on the following:
- (i) the Developer obtaining the Development Consent (including environmental conditions) by the Approval Date on conditions acceptable to the Developer, Landlord and Tenant (all acting reasonably) in accordance with clause 3.3;
 - (ii) the Developer obtaining the Subdivision Approval by the Subdivision Date on conditions acceptable to the Developer, Landlord and Tenant (all acting reasonably) in accordance with clause 3.3;
 - (iii) the Landlord providing the Developer with interim access to the Premises sufficient for the purpose of the Developer undertaking the Works, the Developer's Site Works and the Developer's Infrastructure Works ("**Provision of Interim Access**") by the Access Date;
 - (iv) the Landlord providing an Initial Certification or Amended Certification acceptable to the Developer in accordance with clause 16 by the Remediation Date;

[#replace (iv) with the following (iv) where the Developer under this agreement is not the Developer under the Development Management Agreement:

- (iv) the Landlord providing the Initial Certification or Amended Certification acceptable to the Original Developer in accordance with the Development Management Agreement by the Remediation Date;"]
- (v) the Developer providing the Landlord with evidence of the insurances in accordance with clause 10(b) by the CC Date;
- (vi) the Developer obtaining the Construction Certificate to commence the Works by the CC Date by the CC Date; and

- (c) Clauses 2, 4, 6, 8, 9 and 10 will have no effect and the parties will have no obligations under such clauses until the conditions subsequent in clause 3.1(a) are satisfied.

3.2 Development Application and Subdivision Application

- (a) As soon as reasonably practicable after the date of this agreement, the Developer must prepare and submit the Development Application and Subdivision Application to the Council for approval.
- (b) The Development Application and Subdivision Application must be prepared in a manner generally consistent with the Plans and Specifications (including any concept plans).
- (c) The Developer is responsible for the cost of preparing the Development Application and Subdivision Application.
- (d) The Landlord, as landowner, must not unreasonably withhold or delay its consent to the Development Application and Subdivision Application if the Development Application or Subdivision Approval (as relevant) is consistent with the "Approved Development Proposal" and "Development Masterplan" (as those terms are defined in the Development Management Agreement) and does not contain elements which, in the Landlord's reasonable opinion, could result in an Unusual Condition.
- (e) The Developer must use reasonable endeavours to obtain:
 - (i) the Development Consent by the Approval Date; and
 - (ii) the Subdivision Approval by the Subdivision Date.

3.3 Development Consent and Subdivision Approval

- (a) after receiving a Development Consent or Subdivision Approval from the Council the Developer must provide a copy of that consent or approval to the Landlord and Tenant.
- (b) after receiving a copy of the Development Consent or Subdivision Approval under clause 3.3(a), the Landlord must notify the Developer and Tenant whether or not that consent or approval is on conditions acceptable to the Landlord.

- (c) after receiving a copy of the Development Consent or Subdivision Approval under clause 3.3(a), the Tenant must notify the Developer and Landlord whether or not that consent or approval is on conditions acceptable to the Tenant.
- (d) after the date the Developer receives a Development Consent or Subdivision Approval from the Council, the Developer must notify the Landlord and Tenant whether or not the relevant consent or approval is on conditions acceptable to the Developer.
- (e) The Developer, Landlord and Tenant must not reject the Development Consent or Subdivision Approval unless the Development Consent or Subdivision Approval are on conditions that are the relevant party's Unusual Conditions.
- (f) Despite clause 3.3(e) and despite anything else in this agreement, the parties agree that the Developer is entitled to reject a Development Consent or Subdivision Approval if the Tenant has notified the Developer that the Development Consent or Subdivision Approval is not on conditions acceptable to the Tenant.

3.4 Construction Certificate

- (a) The Developer must use reasonable endeavours to obtain the Construction Certificate by the CC Date.
- (b) after receiving the Construction Certificate from the Council or relevant accredited private certifier, the Developer must provide a copy of that certificate to the Landlord and the Tenant.

3.5 Landlord's works

- (a) The Landlord must use reasonable endeavours to ensure Provision of Interim Access by the Access Date.
- (b) The Landlord must use reasonable endeavours to complete the Contamination Works by the Remediation Date in accordance with clause 16 of the Development Management Agreement.

3.6 Extensions of dates

- (a) The Approval Date is automatically extended by each day of delay by the Council in failing to comply with the Council's statutory time limits in relation to processing the Development Consent, and the CC Date will also be automatically extended for the same number of days.
- (b) The Subdivision Date is automatically extended by each day of delay by the Council in failing to comply with the Council's statutory time limits in relation to processing the Subdivision Approval, and the CC Date will also be automatically extended for the same number of days.
- (c) If the Approval Date or the Subdivision Date is extended under paragraph (a) or (b), the Developer must notify each other party to this agreement in writing of the relevant delay as soon as practicable after commencement of the relevant delay, and must notify each other party to this agreement in writing as soon as reasonably practicable after the expiry of the relevant period of delay of such expiry and of the total number of days by which the relevant date has been extended.

- (d) The CC Date is automatically extended by each day of delay by the Council in failing to process and issue the Construction Certificate within a reasonable time
- (e) If the CC Date is extended under paragraph (d), the Developer must notify each other party to this agreement in writing of the relevant delay as soon as practicable after commencement of the relevant delay, and must notify each other party to this agreement in writing as soon as reasonably practicable after the expiry of the relevant period of delay of such expiry and of the total number of days by which the CC Date has been extended.
- (f) Despite the provisions of clauses 3.6(a) to 3.6(e) and despite any other provision of this agreement:
- (i) if a party is unable to perform or is delayed in performing an obligation under this agreement by reason of a Force Majeure Event ("**Affected Party**"); and
 - (ii) the Affected Party gives notice of such delay to each other party to this agreement,
- then:
- (iii) that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event; and
 - (iv) the Affected Party will not be responsible for any loss or expense suffered or incurred by any other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations because of the Force Majeure Event.
- (g) If the Development Consent is taken to be refused by the Council under section 82 of the *Environmental Planning and Assessment Act 1979* (NSW), ("**Act**") then if the Developer:
- (i) lodges an application for review of the deemed refusal of the relevant consent under section 82A(1) of the Act; or
 - (ii) appeals the deemed refusal of the consent under section 97 of the Act,
- the Approval Date will be extended by the number of days from the date on which the relevant consent was deemed to be refused until the date on which:
- (iii) the Council makes a decision under section 82A(4) of the Act (if applicable); or
 - (iv) the Land and Environment Court determines whether to confirm or refuse the deemed refusal of the relevant consent (if applicable).
- (h) If the Approval Date is extended under paragraph (g):
- (i) the CC Date will also be automatically extended for the same number of days; and

- (ii) the Developer must notify each other party to this agreement in writing as soon as practicable after the date on which the relevant consent was deemed to be refused and must further notify each other party to this agreement in writing as soon as practicable after the date of the decision or determination under paragraph (g)(iii) or (iv), and of the number of days by which the Approval Date has been extended.

3.7 Termination

- (a) Subject to clause 3.7(b), if a condition in clause 3.1(a) is not satisfied by the relevant date (as extended under this agreement), the Developer or Landlord or Tenant may terminate this agreement by notice to each other party to this agreement, after the relevant date but before that relevant condition is satisfied.
- (b) If:
 - (i) the Landlord or Tenant reject the Development Consent or Subdivision Approval in accordance with clause 3.3(e); and
 - (ii) the Developer does not procure the Council to amend the Development Consent or Subdivision Approval to address the reason for the Landlord or Tenant's rejection of the Development Consent or Subdivision Approval within 60 days of the giving of the Landlord's or Tenant's notice of rejection of Development Consent or Subdivision Approval in accordance with clause 3.3,then the Landlord or Tenant may terminate this agreement by notice to each other party to this agreement.
- (c) If this agreement is terminated under this clause 3.7, then each party releases each other party from liability or loss arising in connection with the termination of this agreement.

3.9 Construction Licence

The parties acknowledge that the Landlord and Developer have entered into the Construction Licence on or about the date of this agreement.

4 Works

4.1 Manner of works

- (a) The Developer must procure that the Works:
 - (i) are done in a proper and workmanlike manner;
 - (ii) are executed using new materials unless otherwise specified in the Works; and
 - (iii) are constructed generally in accordance with the Plans and Specifications and Project Consents.
- (b) In carrying out the Works, the Developer must:
 - (i) use reasonable endeavours to obtain all Project Consents; and
 - (ii) comply with all Project Consents and all Laws.

4.2 Changes to Plans and Specifications and Works

- (a) The Developer may make any changes to the Plans and Specifications or the Works that:
 - (i) it considers necessary or desirable; or
 - (ii) are required by the Council or any other Authority.
- (b) Despite clause 4.2(a), the Developer must obtain the prior written consent of the Landlord (not to be unreasonably withheld) before making any changes that materially affects the Plans and Specifications or the Works.

4.3 Inspection of Works

- (a) Upon giving reasonable notice to the Developer, the Landlord may at reasonable times inspect the Works.
- (b) In exercising its rights under this clause 4.3, the Landlord:
 - (i) must not (and must ensure its Employees and Agents do not) hinder or delay the Works; and
 - (ii) must (and must ensure its Employees and Agents) comply with the Developer's reasonable directions.

4.4 Practical Completion

- (a) The Developer must use reasonable endeavours to achieve Practical Completion as soon as reasonably practicable following satisfaction of all of the conditions subsequent in clause 3.1.
- (b) The Developer must notify the Landlord and the Tenant of the Developer's estimated date of Practical Completion
- (c) Practical Completion is achieved when:
 - (i) the Subdivision Plan is registered at the New South Wales Land and Property Information, and a separate Certificate of Title for the Land is issued; and
 - (ii) the Architect certifies that the Works are substantially complete except for minor omissions and defects which do not prevent the Premises from being reasonably capable of being used for their intended purpose without reasonable interruption or interference by the Developer; and
 - (iii) practical completion is achieved under the Development Agreement; and
 - (iv) the Landlord and Tenant are provided with a copy of the Occupancy Permit.
- (d) The Developer must cause the Architect to make his or her determination under clause 4.4(c) as an independent certifier.
- (e) The Developer must keep the Landlord informed in writing of progress with the Works and must promptly notify the Landlord in writing when Practical Completion has been achieved and the date of Practical Completion.

4.5 Appointment of Architect

The Developer must appoint or engage the Architect as soon as reasonably practicable after the date of this agreement.

4.6 Ownership of fixtures

- (a) The Landlord acknowledges that:
 - (i) the Developer will undertake and complete the Works in accordance with this agreement; and
 - (ii) the Tenant will pay certain amounts to the Developer for the construction and completion of the Works.
- (b) Other than as required by Law, and subject to clause 6.3, it is the express intention of the parties that all improvements forming part of the Works that are constructed on the Land vest in the Tenant until expiry or earlier determination of the Ground Lease, and each party must execute such further document as may be required to effect that vesting.

5 Encumbrance and assignment

5.1 Developer may alienate

- (a) The Developer must not assign or dispose of any right, interest, duty or obligation under this agreement to any person, firm or corporation.
- (b) An assignment of the Developer's interest under this agreement shall be deemed not to be a breach of clause 5.1(a) if:
 - (i) the Developer has given the Landlord and Tenant notice in writing of the proposed assignment together with details of the parties and a copy of all proposed documentation and all other relevant information; and
 - (ii) the Developer is not in default (of which it has notice) under this agreement, unless the default is waived by the Landlord or Tenant; and
 - (iii) the Developer establishes to the Landlord's satisfaction that any proposed assignee meets each of the Assignment Tests; and
 - (iv) the Developer, Tenant, assignee, any guarantor of the proposed assignee (if applicable) and Guarantor enter into a deed in the form reasonably required by the Landlord, Tenant and Developer under which (amongst other things):
 - (A) the assignee agrees to perform all of the Developer's express and implied obligations under this agreement, and (if applicable) the proposed guarantor agrees to guarantee the proposed assignee's obligations under this agreement;
 - (B) the Developer releases the Landlord, Tenant and Guarantor from all obligations under this agreement from the date of assignment except in respect of any claim(s) that have arisen before the date of assignment;
 - (C) the Landlord, Tenant and Guarantor release the Developer from all obligations under this agreement from the date of assignment;
 - (D) despite paragraph (C), if there is an assignment of the Developer's rights or obligations under this agreement to a Related Body Corporate of the Developer and the Developer does not satisfy the condition in clause 5.1(b)(iii), the Developer acknowledges that it is not released from its obligations under this agreement;
 - (E) the Tenant acknowledges that its obligations under this agreement continue to apply;
 - (F) the Guarantor acknowledges that the guarantee previously given by it of the obligations of the Tenant under this agreement continues to apply; and
 - (G) the assignee's and its guarantor's (if applicable) limitation of liability is included, provided that the limitation of liability includes warranties by the assignee and guarantor (if applicable) in their capacity as trustee, responsible entity or custodian of the assignee and

guarantor (if applicable) that it is the holder of the assets of the relevant trust, that (in the case of the assignee) its interest in this agreement and in the Premises will be assets of the relevant trust and that the assignee and guarantor (if applicable) is and will be entitled to be indemnified out of the assets of the relevant trust in relation to its obligations under or in relation to this agreement and the Construction Licence (but subject to the usual exclusions).

- (c) Despite the provisions of clause 5.1(b):
 - (i) the Developer need not satisfy the condition in clause 5.1(b)(iii) in relation to an assignment of the Developer's rights or obligations under this agreement to a Related Body Corporate of the Developer (including in relation to a solvent reconstruction); and
 - (ii) if the condition in clause 5.1(b)(iii) is not satisfied, such assignment shall not release or diminish the obligations of the Developer under this agreement.

- (e) The Landlord, Tenant and Guarantor must execute the deed referred to in clause 5.1(b)(iv) in a timely manner.
- (f) The Developer will pay to the Landlord all reasonable costs of and incidental to enquiries concerning the proposed dealing or persons concerned in such dealing and of the perusal, negotiation and preparation of all documents and obtaining mortgagee's consent to such documents reasonably required by the Landlord and all mortgagee consent fees.
- (g) If the Developer assigns its interest under this agreement to an assignee in accordance with clause 5.1, the Developer is deemed to have also assigned its interest under the Construction Licence to the relevant assignee.

5.2 Tenant may alienate

- (a) The Tenant must not assign or dispose of any right, interest, duty or obligation under this agreement to any person, firm or corporation.
- (b) An assignment of the Tenant's interest under this agreement shall be deemed not to be a breach of clause 5.2(a) if:
 - (i) the Tenant has given the Landlord and Developer notice in writing of the proposed assignment together with details of the parties and a copy of all proposed documentation and all other relevant information; and

- (ii) the Tenant is not in default (of which it has notice) under this agreement, unless the default is waived by the Landlord or Developer; and
 - (iii) the Tenant establishes to the Landlord's and Developer's satisfaction that any proposed assignee meets each of the Assignment Tests; and
 - (iv) the Tenant, assignee, Guarantor and any guarantor of the proposed assignee (if applicable) enter into a deed in the form reasonably required by the Landlord, Tenant and Developer under which (amongst other things):
 - (A) the assignee agrees to perform all of the Tenant's express and implied obligations under this agreement, and (if applicable) the proposed guarantor of the assignee agrees to guarantee the proposed assignee's obligations in accordance with clause 18 of this agreement;
 - (B) the Tenant and Guarantor release the Landlord and Developer from all obligations under this agreement from the date of assignment except in respect of any claim(s) that have arisen before the date of assignment;
 - (C) the Landlord and Developer release the Tenant and Guarantor from all obligations under this agreement from the date of the assignment except in respect of any claim(s) that have arisen before the date of assignment;
 - (D) despite paragraph (C), if there is an assignment of the Tenant's rights or obligations under this agreement to a Related Body Corporate of the Tenant and the Tenant does not satisfy the condition in clause 5.2(b)(iii), the Tenant and Guarantor acknowledge that they are not released from their obligations under this agreement or such guarantee as a result of such assignment; and
 - (E) the assignee's and its guarantor's (if applicable) limitation of liability clause is included, provided that the limitation of liability includes warranties by the assignee and guarantor (if applicable) in their capacity as trustee, responsible entity or custodian of the assignee and guarantor (if applicable) that it is the holder of the assets of the relevant trust, that (in the case of the assignee) its interest in this agreement and in the Premises will be assets of the relevant trust and that the assignee and guarantor (if applicable) is and will be entitled to be indemnified out of the assets of the relevant trust in relation to its obligations under or in relation to this agreement (but subject to the usual exclusions); and
 - (v) the Landlord has given its written consent to the proposed assignment, which consent is not to be unreasonably withheld.
- (c) Despite the provisions of clause 5.2(b):
- (i) the Tenant need not satisfy the condition in clause 5.2(b)(iii) in relation to an assignment of the Tenant's rights or obligations under this agreement to a Related Body Corporate of the Tenant (including in relation to a solvent reconstruction); and

- (ii) if the condition in clause 5.2(b)(iii) is not satisfied, such assignment shall not release or diminish the obligations of the Tenant or the Guarantor under this agreement.

- (e) The Landlord and Developer must execute the deed referred to in clause 5.2(b)(iv) in a timely manner.

- (f) The Tenant will pay to the Landlord and Developer all reasonable costs of and incidental to enquiries concerning the proposed dealing or persons concerned in such dealing and of the perusal, negotiation, preparation and stamping of all documents and obtaining mortgagee's consent to such documents reasonably required by the Landlord and Developer and all stamp duty and mortgagee consent fees.

5.3 Landlord may not alienate

- (a) The Landlord must not:

- (i) sell, assign, concurrently lease or transfer its interest in the Land or this agreement; or
- (ii) do anything which is analogous or in substitution of a sale, assignment or transfer referred to in clause 5.3(a)(i).

- (b) Clause 5.3(a) will not apply in relation to any transfer to any government or statutory authority, or any transfer effected by any statute, provided that in the case of a transfer to any government or statutory authority which is not effected by statute, the Landlord procures the proposed new registered proprietor to enter into a deed with the Developer and Tenant and all other parties to this agreement assuming the Landlord's obligations under this agreement, Ground Lease and Construction Licence and covenanting to comply with the Landlord's obligations under this agreement, Ground Lease and Construction Licence from the date of transfer.

- (c) Any such deed will include covenants by the Developer and the Tenant to perform the Developer's and Tenant's respective obligations under this agreement, Ground Lease and Construction Licence from the date of transfer, and covenants by any guarantor of such obligations to guarantee such obligations from the date of transfer, and a release of the Landlord's obligations under this agreement, Ground Lease and Construction Licence and the Developer and Tenant must enter into any such deed, and must procure that all other parties to the Ground Lease and Construction Licence and any guarantor enter into such deed, when requested to do so.

- (d) The Landlord must not:

- (i) create or allow to exist a mortgage, security agreement, bill of sale, charge, lien, pledge or Security Interest over any or all of the Land or this agreement; or

- (ii) do anything which is analogous or in substitution of the items described in clause 5.3(d)(i).
- (e) The deed referred to in clause 5.3(a) must also include the Developer's, Tenant's or the Guarantor's (or any assignee's or any guarantor of the assignee's (if applicable)) limitation of liability clause, provided that the limitation of liability includes warranties by the Developer, Tenant, Guarantor, assignee or the guarantor of the assignee (if applicable) in their capacity as trustee, responsible entity or custodian of the Developer, Tenant, Guarantor, assignee or the guarantor of the assignee (if applicable) that it is the holder of the assets of the relevant trust, that its interest in this agreement will be assets of the relevant trust and that the Developer, Tenant, Guarantor, assignee or the guarantor of the assignee is and will be entitled to be indemnified out of the assets of the relevant trust in relation to its obligations under or in relation to this agreement (but subject to the usual exclusions).

5.4 Multi-party side deed

- (a) The parties acknowledge:
 - (i) that the Developer may (and is entitled to) grant a security interest (including a Security Interest) over its rights under this agreement, Ground Lease and the Construction Licence to its financier or financiers; and
 - (ii) that the Tenant may (and is entitled to) grant a security interest (including a Security Interest) over its rights under this agreement and Ground Lease to its financier or financiers.
- (b) If requested by the Developer and/or Tenant, the parties must enter into a deed or deeds with the Developer, the Tenant and the Developer's and/or Tenant's financier in a form reasonably required by the Tenant's and/or the Developer's financier ("**Multi-party Side Deed**").
- (c) The Multi-Party Side Deed referred to in clause 5.4(b) above will generally be consistent with the principles contained in Schedule 5 or must otherwise be on terms reasonably acceptable to the parties.
- (d) The parties agree to act reasonably and in good faith in relation to things requested by the Developer or Tenant or their respective financier or financiers, including the negotiation and execution of a Multi-Party Side Deed. Without limiting the previous sentence, the Landlord accepts that the Tenant's and/or the Developer's financier may have requirements that are different to the principles contained in Schedule 5 (including the financier's form of Multi-Party Side Deed), and the Landlord must act reasonably and in good faith in relation to the financier's requirements.

6 Termination

6.1 Termination Event

A Termination Event occurs if:

- (a)
 - (ii) either the Developer or the Landlord gives written notice to the Tenant (with a copy to other party to this agreement) in respect

of such breach and requests the Tenant to remedy that breach;
and;

- (iii) the Tenant fails to remedy the breach under clause 6.1(a)(i)
or

(b)

- (i) Substantial Commencement of Construction has not occurred by
or
- (ii) the Developer Abandons the Works; and
- (iii) the Landlord gives written notice to the Developer in respect of the events in clauses 6.1(b)(i) or 6.1(b)(ii) and demands that the event be rectified; and
- (iv) the Developer fails to rectify the event within 30 days after the giving of the notice referred to in clause 6.1(b)(iii).

(c) For the purpose of this clause 6.1, the following definition applies:

- (i) **"Abandons"** means a failure by the Developer to undertake any works in respect of or in connection with any part of the Works for an uninterrupted period of 90 days, which failure or delay is not caused by a Force Majeure Event.

6.2 Termination

- (a) If a Termination Event occurs, the Developer or Landlord (as applicable) may terminate this agreement by written notice to each other party to this agreement.
- (b) If this agreement is terminated under clause 6.2(a), then each party releases each other from liability or loss arising in connection with the termination of this agreement.

6.3 Obligations on termination

- (a) If this agreement is terminated under clause 3.7 or this clause 6:
 - (i) the Developer must remove the Developer's property from the Premises; and
 - (ii) the Developer must return the Premises to the condition they were in at the date the Developer was given access to them; and
 - (iii) the Developer must vacate the Premises; and
 - (iv) the Developer must give the Landlord the keys, access cards and similar devices in respect of the Building and the Premises held by the Developer, the Developer's employees and agents and any person who has been given them by the Developer or the Developer's employees and agents; and
 - (v) if the Tenant or anyone claiming through the Tenant has lodged a caveat on the title to the Land, the Tenant must withdraw that caveat or do everything necessary to ensure that that caveat is withdrawn immediately.

- (b) The Landlord may treat the Developer's property as abandoned and deal with it in any way it sees fit at the Developer's expense if the Developer does not remove its property in accordance with this clause 6.3 or a notice given under it.
- (c) Despite any other provision of this agreement, the Developer must not remove property which:
 - (i) the Landlord has stated (as a condition of giving approval to works) may not be removed; or
 - (ii) is part of structural work done by the Developer to the Premises unless the Landlord gives the Developer a notice requiring the Developer to remove that property.

6.4 No other right to terminate

Despite any Law to the contrary, no party may terminate this deed other than in accordance with clauses 3.7 and 6.2.

7 Representations and warranties

- (a) The Developer represents and warrants that:
 - (i) it has power to enter into and observe its obligations under this agreement and all documents and transactions contemplated by this agreement; and
 - (ii) it has in full force and effect the authorisations necessary to enter into this agreement and all documents and transactions contemplated by this agreement, observe obligations under them, and allow them to be enforced; and
 - (iii) its obligations under this agreement are valid and binding and are enforceable against it in accordance with its terms; and
 - (iv) the Transaction Documents and the transactions under them do not contravene its constituent documents or any Law, regulation or official directive or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or, when the Developer is a company, the powers of its directors, to be exceeded.
- (b) The Landlord represents and warrants that:
 - (i) It has been duly constituted under the WSPT Act;
 - (ii) it has power to enter into and observe its obligations under this agreement and all documents and transactions contemplated by this agreement, including without limitation, the Ground Lease and Construction Licence; and
 - (iii) it has in full force and effect the authorisations necessary under the WSPT Act to enter into each Transaction Document, observe obligations under them, and allow it to be enforced; and
 - (iv) its obligations under this agreement and each Transaction Document are valid and binding and are enforceable against it in accordance with its terms; and

- (v) the Transaction Documents and the transactions under them do not contravene its constituent documents or any Law, regulation or official directive or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or, the powers of its directors, to be exceeded; and
 - (vi) except as provided in the WSPT Act, it does not hold its interest under this agreement as trustee; and
 - (vii) it has obtained all necessary consents to enter into this agreement (including all consents required under the WSPT Act, any finance, security or other documents).
- (c) The Tenant represents and warrants that:
- (i) it has power to enter into and observe its obligations under this agreement; and
 - (ii) it has in full force and effect the authorisations necessary to enter into this agreement, observe obligations under it, and allow it to be enforced; and
 - (iii) its obligations under this agreement are valid and binding and are enforceable against it in accordance with its terms; and
 - (iv) the Transaction Documents to which it is a party and the transactions under them do not contravene its constituent documents (when the Tenant is a company) or any Law, regulation or official directive or any of its obligations or undertakings by which it or any of its assets are bound or cause a limitation on its powers or, when the Tenant is a company, the powers of its directors, to be exceeded; and
 - (v) it does not hold its interest under this agreement as trustee.
-

9 Costs, charges, expenses and GST

9.1 Costs, charges and expenses

- (a) The Tenant must pay or reimburse the Developer and Landlord on demand for:
 - (i) the reasonable costs, charges and expenses of the Developer and Landlord in connection with any consent, approval, exercise of rights (including without limitation, in connection with the enforcement or preservation of any rights under any Transaction Document), variation, release or discharge in connection with any Transaction Document; and
 - (ii) taxes and fees (including, without limitation, registration fees) and fines and penalties in respect of fees (not incurred due to negligence of the Developer or the Landlord) which may be payable or determined to be payable in connection with any Transaction Document or a payment or receipt or any other transaction contemplated by any Transaction Document, including in each case, without limitation, legal costs and expenses on a full indemnity basis.
- (b) Subject to clause 9.1(d), the Developer, the Landlord and Tenant must each pay their own costs, charges and expenses in connection with the negotiation, preparation, execution and completion of this agreement.
- (c) The Tenant must pay all costs in connection with stamping and registration of this agreement (if relevant).
- (d) In accordance with clause 24.1 of the Development Management Agreement, the Developer must pay the Landlord's reasonable legal costs in relation to the negotiation, preparation and execution of this agreement to a maximum of \$5,000.

9.2 GST

If GST has application to any taxable supply made under this agreement, the party making the supply ("Supplier") may, in addition to any amount or consideration expressed as payable elsewhere in this agreement, recover from the other party ("Recipient") an additional amount on account of any GST otherwise payable by the Supplier such amount to be calculated by multiplying the amount or consideration payable by the Recipient for the relevant supply by the prevailing GST rate. Any additional amount on account of GST recoverable from the Recipient under this clause shall be calculated without any deduction or set off of any other amount and is payable by the Recipient upon delivery by the Supplier of a Tax Invoice.

9.3 Stamp duty

The Tenant shall, as between the parties, be liable for and duly pay all stamp duty (including any fine or penalty except where it arises from default by the other party) on or relating to this agreement and any document executed under it.

10 Insurances

The Developer must:

- (a) in connection with the Works maintain with insurers in the name of the Developer and the Landlord:
 - (i) public liability insurance for at least the amount in item 7 of Schedule 1;
 - (ii) contract works insurance;
 - (iii) professional indemnity insurance; and
 - (iv) workers' compensation insurance as required by Law; and
- (b) give the Landlord evidence that it has complied with clause 10(a) when requested to do so.

11 Notices

- (a) A notice, approval, consent or other communication in connection with this agreement:
 - (i) may be given by an Authorised Officer of the relevant party; and
 - (ii) must be in writing unless expressly specified otherwise in this agreement; and
 - (iii) must be left at the address of the addressee or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee or sent by email to the email address of the addressee which is set out in item 8 of Schedule 1 or if the addressee notifies another address or facsimile number or email address then to that address or facsimile number or email address.
- (b) Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.
- (c) A letter or facsimile or email is taken to be received:
 - (i) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting;
 - (ii) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause; and
 - (iii) in the case of an email, when the sender's email system confirms that it has been successfully sent and provided an undeliverable message is not subsequently received by the sender.

12 Miscellaneous

12.1 Exercise of rights

The Developer or the Landlord may exercise a right, power or remedy at its discretion, and separately or concurrently with another right, power or remedy. A single or partial exercise of a right, power or remedy by the Developer or the Landlord does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by the Developer or the Landlord to exercise or delay in exercising a right, power or remedy does not prevent its exercise. The Developer and the Landlord are not liable for any loss caused by the exercise, attempted exercise, failure to exercise or delay in exercising a right, power or remedy whether by reason of that party's negligence or otherwise.

12.2 Waiver and variation

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

12.3 Supervening legislation

Any present or future legislation which operates to vary the obligations of the Tenant in connection with this agreement with the result that the Developer's or the Landlord's rights, powers or remedies are adversely affected (including, without limitation, by way of delay or postponement) is excluded except to the extent that its exclusion is prohibited or rendered ineffective by Law.

12.4 Remedies cumulative

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

12.5 Indemnities

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

12.6 Further assurances

At the Developer's or the Landlord's request the Tenant must:

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

12.7 Payments

- (a) All parties must make payments under this agreement without set-off or counterclaim and free and clear of any withholding or deduction. All payments due by the Tenant under this agreement must be paid to the relevant party or to a person nominated by that party in a notice given to the Tenant.
- (b) If the Tenant pays an amount and it is found later that the amount payable should have been higher, then the relevant party may demand payment of the difference even though that party has given the Tenant a receipt for payment of the lower amount.

- (c) A party need not make demand for any amount required to be paid by the Tenant under this agreement unless this agreement expressly specifies that demand must be made.

12.8 Antecedent breaches

The termination of this agreement does not affect the Landlord's, Developer's or the Tenant's rights in respect of a breach of this agreement by the other party before termination.

12.9 Antecedent obligations

- (a) The termination of this agreement does not affect the Tenant's obligations to make payments under this agreement in respect of periods before the termination of this agreement.
- (b) The Developer or the Landlord may do anything which should have been done by the Tenant under this agreement but which has not been done or which the Developer or the Landlord considers has not been done properly.

12.10 Severability

If the whole or any part of a provision of this agreement is void, unenforceable or illegal in a jurisdiction it is severed for that jurisdiction. The remainder of this agreement has full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected. This clause has no effect if the severance alters the basic nature of this agreement or is contrary to public policy.

12.11 Entire agreement

- (a) This agreement constitutes the entire agreement of the parties about its subject matter and supersedes all previous agreements, understandings and negotiations on that subject matter.
- (b) The Tenant acknowledges that in entering into this agreement it has not relied on any representations or warranties about its subject matter except as expressly provided by the written terms of this agreement.

12.12 Landlord must execute

The Landlord must execute all documentation and do all things:

- (a) reasonably required by the Developer in respect of the Development Application, Subdivision Application, Development Consent or the Works; and
- (b) reasonably required for compliance with any agreement, Law or approval in respect of the Works,

including, without limitation, executing any consents, forms, reports, applications or plans.

12.13 Approvals and consents

Subject to any express provisions in this agreement to the contrary, if a party is required to give its approval or consent under this agreement, that party must not unreasonably withhold or delay its approval or consent.

12.14 Exercise of power

Notwithstanding any other provision of this agreement, the Landlord must exercise its power under the WSPT Act and the relevant regulations insofar as they relate to this agreement or the Developer's or the Tenant's rights under this

agreement independently and objectively and without regard to the Landlord's interests and rights under this agreement.

13 Governing law, jurisdiction and service of process

13.1 Governing law

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

13.2 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, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

13.3 Service of process

Without preventing any other mode of service, any document in an action (including, without limitation, any writ of summons or other originating process or any third or other party notice) may be served on any party by being delivered to or left for that party at its address for service of notices under clause 11.

14 Counterparts

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

15 Disputes

15.1 Notification

If a dispute arises out of or in connection with this agreement, each party must (except in any proceedings for equitable relief, in which case this clause 15.1 does not apply) furnish in writing to the other party detailed particulars of that party's claim, or, where the other party is not the claimant, the reasons for rejecting the claimant's claim.

15.2 The reply

The party against whom the claim is made must reply w

15.3 The dispute

If the claim is not accepted then a dispute is deemed to exist.

15.4 Compulsory CEO conference

Upon a dispute being deemed to exist under clause 15.3, the parties must cause their respective chief executives to meet to attempt to resolve the dispute acting reasonably, and if they cannot resolve the dispute to attempt to agree to a process to resolve the dispute between the parties before appointing an expert under clause 15.5.

15.5 Expert

- (a) If the parties fail to resolve the dispute in accordance with clause 15.4, the parties must appoint a person ("**Expert**") to resolve the dispute. If the parties cannot agree on the appointment of the Expert then the Expert must be appointed by the President of the Australian Institute of Arbitrators and Mediators, New South Wales Chapter. Either

party may approach the President of the Australian Institute of Arbitrators and Mediators, New South Wales Chapter to appoint the Expert.

- (b) Upon the Expert being appointed under clause 15.5(a) and accepting the appointment, the parties must direct the Expert to make a determination in relation to the dispute 14 days of the appointment.
- (c) The parties may make submission to the Expert.
- (d) The Expert must act and make a decision acting as an expert and not as an arbitrator and in accordance with the law of New South Wales.
- (e) The parties agree that the decision of the Expert will be final and binding upon them.
- (f) The costs of the Expert must be borne equally by the parties.
- (g) The parties must sign all documents and do all things reasonably necessary to effect the appointment of the Expert and to give effect to the intention of this clause 15.

16 Environmental monitoring

16.1 Landlord responsible for Contamination

- (a) The Landlord is responsible for:
 - (i) the remediation and management of any Contamination existing in, on or emanating from the Land or the Premises identified in the Planning Documentation; and
 - (ii) the remediation and management of any Contamination existing in, on or emanating from the Land to the extent that such Contamination renders the Land unsuitable for commercial and industrial use [#insert for Stage including Childcare use: "and, with respect to that part of the Land identified for childcare on the Development Masterplan (**Childcare Area**), unsuitable for childcare use"]; and
 - (iii) the remediation and management of any Contamination in the Land or the Premises to the extent such Contamination:
 - (A) renders the Land unsuitable for commercial and industrial use [#insert for Stage including Childcare use: "and, with respect to the Childcare Area, unsuitable for childcare use"]; and
 - (B) is caused or contributed to by:
 - (aa) the Landlord or the Landlord's Employees and Agents at any time after the date of the Initial Certification or Amended Certification (as relevant); or
 - (ab) any person (other than the Developer or the Developer's Employees and Agents [#insert where the Developer under this agreement is not the Developer under the Development Management Agreement: "or the Original Developer or the Original Developer's Employees or Agents"]) during that part of the

Landlord's Period after the date of the Initial Certification or Amended Certification (as relevant).

- (b) The parties agree that:
- (i) clauses 16.1(a)(i) and 16.1(a)(ii) are deemed to be satisfied on the date of the Initial Certification or Amended Certification (as required); and
 - (ii) clause 16.1(a) does not apply to any Contamination existing in, on or emanating from the Land or the Premises to the extent such Contamination was caused by the Developer or the Developer's Employees and Agents [#insert where the Developer under this agreement is not the Developer under the Development Management Agreement; "or the Original Developer or the Original Developer's Employees or Agents."].
- (c) The Landlord must as soon as reasonably practicable remediate and manage any Contamination existing in, on or emanating from the Land for which the Landlord is responsible pursuant to clause 16.1(a)(iii). For the avoidance of doubt this clause does not apply to any Contamination:
- (i) existing in, on or emanating from the Land as at the date of the Initial Certification or Amended Certification (as relevant) but not identified as at the date of the Initial Certification or Amended Certification (as relevant); or
 - (ii) caused or contributed to by any person during the Developer's Period unless that Contamination is caused or contributed to by the Landlord or the Landlord's Employees and Agents.

16.2 Landlord's responsibility for certification

- (a) By the Remediation Date, the Landlord must (at its cost) procure and deliver:
- (i) a Site Audit Statement from the Consultant addressed to the Landlord and the Developer certifying that the Land is suitable for commercial and industrial use without the need for any further remediation or management works ("**Initial Commercial Certification**"); [#insert for Stage including Childcare use: "and
 - (ii) a Site Audit Statement from the Consultant addressed to the Landlord and the Developer certifying that the Childcare Area is suitable for residential with gardens and accessible soil use without the need for any further remediation or management works ("**Initial Childcare Certification**")."]
- (collectively "**Initial Certification**").
- (b) For the avoidance of doubt, the Landlord is responsible for the remediation and management of all Contamination as is required to obtain the Initial Certification, even if that Contamination is not identified in the Planning Documentation.
- (c) after the Developer receives:
- (i) the Initial Commercial Certification, the Developer must give written notice as to whether or not the Initial Certification is acceptable to the Developer (acting reasonably). If the

Developer's written notice states that it is not satisfied with the Initial Commercial Certification, the Developer must give reasons for its decisions; [#insert for Stage including Childcare use: "and

(ii) the Initial Childcare Certification, the Developer must give written notice as to whether or not the Initial Childcare Certification is acceptable to the Developer (acting reasonably). If the Developer's written notice states that it is not satisfied with the Initial Childcare Certification, the Developer must give reasons for its decisions"].

(d) If:

(i) the Initial Commercial Certification is rejected by the Developer under clause 16.2(c), the Landlord must procure the Consultant to amend the Initial Commercial Certification or otherwise address the reason(s) for rejection, and deliver the amended certification to the Developer ("**Amended Commercial Certification**"). The provisions of this clause 16.2 will apply again to the Amended Certification; [#insert for Stage including Childcare use: "and

(ii) the Initial Childcare Certification is rejected by the Developer under clause 16.2(c), the Landlord must procure the Consultant to amend the Initial Childcare Certification or otherwise address the reason(s) for rejection, and deliver the amended certification to the Developer ("**Amended Childcare Certification**"). The provisions of this clause 16.2 will apply again to the Amended Childcare Certification."]

Amended Certification means the Amended Commercial Certification [#insert for Stage including Childcare use: "and the Amended Childcare Certification"].

(e) If the Landlord (acting reasonably) does not agree with the Developer's reason(s) for rejecting the Initial Certification or Amended Certification, then the parties must refer the matter for determination under clause 20 of the Development Management Agreement.

(f) In this clause 16.2:

(i) "**Consultant**" means a suitably qualified and accredited environmental consultant nominated by the Landlord and approved by the Developer, such approval not to be unreasonably withheld; and

- (g) **"Planning Documentation"** has the meaning given to that term in the Development Management Agreement.
- (h) [#insert where the Developer under this agreement is not the Developer under the Development Management Agreement: "Clause 16.2 does not apply where the Owner has provided the Initial Certification or Amended Certification to the Original Developer in accordance with the Development Management Agreement."]

16.3 Extension of time

- (a) If:
 - (i) the Landlord gives to the Developer a written claim for an extension of the Remediation Date stating:
 - (A) the fact or likelihood of delay in the Landlord providing the Initial Certification or Amended Certification (as relevant);
 - (B) the cause of the delay;
 - (C) the date on which the cause of the delay first arose and the date on which the delay ceased; and
 - (D) the number of days of extension claimed; and
 - (ii) there is a delay and the cause of the delay is due to:
 - (A) additional remediation or management works being required to be undertaken by the Landlord in respect of Contamination existing in, on or emanating from the Land that was not identified in the Planning Documentation;
 - (B) any delay to the extent that such delay is caused or contributed to by the Developer (other than by the Developer acting in accordance with this agreement or the Development Management Agreement);
 - (C) delay of an Authority in connection with the Contamination Works not caused by the Landlord, including any delay by Council in issuing relevant approvals;
 - (D) latent conditions causing delay to the Contamination Works;
 - (E) any proceedings, whether taken or threatened, of neighbouring owners or occupiers of land adjoining the Land in respect of the Land; or
 - (F) any delay to the extent that such delay is caused by a "Force Majeure Event" (as that term is defined in the Development Management Agreement) in respect of the Contamination Works,

then the Landlord is entitled to an extension to the Remediation Date, and the Developer must,

give:

- (iii) written notice to the Landlord of any extension of the Remediation Date granted; or
- (iv) if the claimed extension is not granted, written notice of and the reasons for that decision.

(b) If the Developer:

- (i) gives a notice under clause 16.3(a) stating it does not agree with the Landlord's notice under clause 16.3(a)(i); or
- (ii) does not give a notice within the relevant time period under clause 16.3(a),

the Developer is deemed to dispute the Landlord's notice under clause 16.3(a)(i), and the parties must resolve the dispute in accordance with clause 20 of the Development Management Agreement.

(a) The Landlord is only entitled to an extension of the Remediation Date under clause 16.3(a) if:

- (i) the Landlord gives notice under clause 16.3(a)(i) ;
- (ii) the Landlord has used reasonable endeavours to minimise the delay; and
- (iii) the Landlord is continuing to use reasonable endeavours to provide the Initial Certification or the Amended Certification (as relevant).

(b) The extension of the Remediation Date will be either:

- (i) if the Developer agrees with the Landlord's notice under clause 16.3(a)(i), as set out in the Developer's notice under clause 16.3(a); or
- (ii) if clause 16.3(b) applies, as determined under clause 20 of the Development Management Agreement.

(c) [#insert where the Developer under this agreement is not the Developer under the Development Management Agreement: "Clause 16.3 does not apply where the Owner has provided the Initial Certification or Amended Certification to the Original Developer in accordance with the Development Management Agreement."]

16.4 Developer accepts Land

(a) Subject to clause 16.1(a)(iii) and the Landlord complying with its obligations under this clause 16, the Developer:

- (i) subject to clause 16.4(b), accepts:
 - (A) any Contamination existing in or on the Land during the Developer's Period; and
 - (B) any Contamination existing in or on the Land as at the commencement date of the Construction Licence; and
- (ii) subject to clause 16.4(b), releases the Landlord from any liability in respect of any Contamination existing in or on:

- (A) the Land during the Developer's Period; and
 - (B) the Land after the commencement date of the Construction Licence.
- (b) Despite any other provision of this agreement, clauses 16.4(a)(i), 16.4(a)(ii) and 16.4(d) also apply to any Contamination leaching from the Land onto adjoining land but only to the extent the leaching is caused or contributed to by the Developer or the Developer's Employees and Agents. [#insert where the Developer under this agreement is not the Developer under the Development Management Agreement: "or the Original Developer or the Original Developer's Employees and Agents."]
- (c) Subject to the Landlord complying with its obligations under this clause 16, if any activity carried out by or on behalf of the Developer [#insert where the Developer under this agreement is not the Developer under the Development Management Agreement: "or the Original Developer"] on the Land necessitates remediation of any Contamination, then any remediation works be carried out by the Developer will be:
- (i) subject to the consent of the Landlord (which must not be unreasonably withheld or delayed); and
 - (ii) at the Developer's cost.
- (d) Subject to clause 16.4(b), the Developer is responsible for:
- (i) the remediation and management of any Contamination existing in or on the Land to the extent such Contamination:
 - (A) renders the Land unsuitable for commercial and industrial use; and
 - (B) is caused or contributed to by:
 - (aa) the Developer or the Developer's Employees and Agents [#insert where the Developer under this agreement is not the Developer under the Development Management Agreement: "or the Original Developer or the Original Developer's Employees or Agents"]; or
 - (ab) any person other than the Landlord or the Landlord's Employees and Agents during the Developer's Period.
- (e) The Developer must as soon as reasonably practicable remediate and manage any Contamination for which the Developer is responsible pursuant to clause 16.4(d) to the extent such Contamination renders the Land unsuitable for commercial and industrial use.

16.6 Notice of Contamination

Prior to the Commencement Date:

- (a) the Landlord must promptly notify the Developer if it becomes aware of the existence of Contamination in, on or emanating from the Land to the extent the existence of that Contamination is not already known by the Developer; and
- (b) the Developer must promptly notify the Landlord if it becomes aware of the existence of Contamination in, on or emanating from the Land to the extent the existence of that Contamination is not already known by the Landlord.

16.7 Landlord gives no warranties

Except as provided in this clause 16:

- (a) the Landlord gives no warranties and makes no representations as to the physical condition of the Land (including latent conditions and Contamination) or other conditions or existing services or structures on the Land; and
- (b) the Developer and Tenant will accept the Land subject to any physical conditions, services or structures, including any changes to such physical conditions, services or structures as at the date of this agreement.

17 Easements

- (a) Subject to clause 17(b) and clause 17(c), the Landlord may grant easements and covenants, but only:
 - (i) as required pursuant to any condition of the Subdivision Approval or the Development Consent; and
 - (ii) where any such condition has been accepted by the Developer and the Tenant in accordance with clause 3.2; or
 - (iii) where reasonably requested by a tenant under a ground lease of part of the Retail Centre for access over relevant roads or use of infrastructure necessary for Services to the premises under the relevant ground lease where that access or infrastructure is within, or benefits, the premises.
- (b) Where reasonably requested by the Developer, the Landlord must grant easements and covenants on terms reasonably required by the Developer:
 - (i) for access over relevant roads (unless the road is dedicated); and
 - (ii) for use of infrastructure necessary for Services to or in the Premises (unless subject to a reserve).
- (c) The Tenant must not object to the establishment of any rights referred to in clause 17(a) unless the establishment of that right would substantially lessen the enjoyment of rights conferred on the Tenant by this agreement or the Ground Lease.

- (d) The Landlord must use reasonable endeavours to procure registration of the easements and covenants referred to in clause 17(b) as soon as reasonably practicable after the Developer's request. The Developer, the Landlord and the Tenant must each execute all documentation and do all things reasonably required to enable the Landlord to register the easements and covenants referred to in this clause including, without limitation, promptly executing any consents, forms, applications or plans. In addition to the Developer's obligations to pay the costs of the Subdivision Application under the Development Management Agreement, the Developer must pay the Landlord's reasonable costs of registering any additional easements and covenants requested by the Developer and granted pursuant to this clause.

18 Guarantor's obligations

18.1 Liability of Guarantor

In consideration of the Landlord entering this agreement at the Guarantor's request, the Guarantor:

- (a) unconditionally guarantees to the Landlord the punctual performance by the Tenant of the Tenant's obligations under this agreement;
- (b) must keep the Landlord indemnified against all loss or damage incurred by the Landlord as a result of the Tenant breaching this agreement; and
- (c) must keep the Landlord indemnified against all loss or damage incurred by the Landlord resulting from a trustee in bankruptcy or a liquidator of the Tenant disclaiming this agreement or from this agreement being unenforceable against the Tenant for some other reason.

18.2 Liability of Guarantor Not Affected

The Guarantor is liable, even if:

- (a) one or more of the Guarantor dies;
- (b) the Landlord gives any extension of time or any other indulgence to the Developer, the Tenant or any Guarantor;
- (c) this agreement is varied, assigned or extended;
- (d) the Tenant grants a licence or any other right to occupation;
- (e) the Land is sold by the Landlord;
- (f) the Landlord releases the Developer, the Tenant or any Guarantor; or
- (g) the Developer or the Tenant assigns its rights or obligations under this agreement.

18.3 Bankruptcy or Liquidation of the Tenant

The Guarantor agrees that:

- (a) the Landlord may retain all money received including dividends from the Tenant's bankrupt estate, and may allow the Guarantor a reduction in its liability under this guarantee only to the extent of the amount received;

- (b) the Guarantor must not seek to recover money from the Tenant to reimburse the Guarantor for payments made to the Landlord until the Landlord has been paid in full;
- (c) the Guarantor must not prove in the bankruptcy or winding up of the Tenant for any amount which the Landlord has demanded from the Guarantor; and
- (d) the Guarantor must pay the Landlord all money which the Landlord refunds to the Tenant's liquidator or trustee in bankruptcy as preferential payments received from the Tenant.

18.4 Purpose

The Guarantor is a party to this agreement solely for the purpose of this clause 18.

18.5 Survival

The obligations of the Guarantor under this clause 18 survive the expiry or earlier termination of this agreement.

18.6 Guarantor may not transfer

The Guarantor may not transfer or otherwise dispose of its obligations under this clause 18.

19 Foreign investment approval

[#Insert relevant provisions for Tenant (if necessary)]

20 Tenant's Limitation of liability

[#Insert Tenant's and/or Guarantor's limitation of liability (if relevant).]

EXECUTED as an agreement

Agreement for Ground Lease

Schedule 1

Item 1 (definition of "Architect" in clause 1.1)	[#To be completed]	
Item 2 (definition of "Council" in clause 1.1)	Blacktown City Council	
Item 3 There is no item 3		
Item 4 (definition of "Land" in clause 1.1)	Proposed Lot [##] in Plan of Subdivision [##]	
Item 5 (definition of "Ground Rent" in clause 1.1)	[#To be completed], subject to clause 2.11.	
Item 6 (definition of "Access Date", "Approval Date", "Subdivision Date", "CC Date", "Payment Sunset Date" and "Remediation Date" in clause 1.1)	Access Date	
	Approval Date	
	Subdivision Date	
	CC Date	
	Payment Sunset Date	
	Remediation Date	
Item 7 (amount of public liability insurance under clause 10(a)(i))	\$20 million	

<p>Item 8 (Clause 11(a)(iii))</p>	<p>Address for service:</p> <p>Developer</p> <p>Address: Level 3, 1C Homebush Bay Drive, Rhodes NSW 2138</p> <p>Facsimile No: 02 9767 2900</p> <p>Email: Shannon.Stewart@frasersproperty.com.au</p> <p>Attention: Shannon Stewart</p> <p>Landlord</p> <p>Address: Level 7, 10 Valentine Avenue, Parramatta NSW 2150</p> <p>Facsimile No: 02 9895 7580</p> <p>Email: Kerry.Jahangir@wspt.com.au</p> <p>Attention: Kerry Jahangir</p> <p>Tenant</p> <p>Address: [#insert]</p> <p>Facsimile No: [#insert]</p> <p>Email: [#insert]</p> <p>Attention: [#insert]</p>
<p>Item 9 Not used</p>	<p>Not used</p>
<p>Item 10 ("Guarantor" in clause 1.1)</p>	<p>[#To be completed]</p>

Agreement for Ground Lease

Schedule 2 – Plans and Specifications

Agreement for Ground Lease

Schedule 3 – Subdivision Plan



Schedule 4 – Unusual conditions

Schedule 5 – Financier side deed principles

- 1 The Landlord consents to the grant of the Security by the Developer or the Tenant to the Financier, and consents to the Security Agreement.
- 2 The Financier consents to the execution of the Agreement for Ground Lease, the Ground Lease and Construction Licence (each being a "**Transaction Document**" and together the "**Transaction Documents**") by the Developer and the Tenant.
- 3 The Landlord agrees that a grant under paragraph 1 does not constitute a breach or default event under the Transaction Documents and does not entitle the Landlord to terminate or suspend performance of any of its obligations under the Transaction Documents.
- 4 If the Developer or the Tenant breaches or defaults under the Transaction Documents, which breach or default gives rise to a right of termination or rescission of any or all of the Transaction Document to the Landlord, the Landlord will:
 - (a) give the Financier a copy of any breach or default notice it sends to the Developer or the Tenant in respect of such breach or default on the same day it is given to the Developer or the Tenant;
 - (b) if requested, give the Financier any update as to the Developer or the Tenant's progress in remedying such breach or default;
 - (c) give the Financier written notice that the Developer's or Tenant's breach or default may give the Landlord a right to terminate or rescind any or all of the Transaction Documents if not remedied; and
 - (d) not exercise its right to terminate or rescind or suspend performance of any of its obligations under the relevant Transaction Documents for a period of 90 days after the notice in paragraph 4 ("**Cure Period**").
- 5 The Financier may at any time and from time to time assume the rights and obligations of the Developer or the Tenant under any or all of the Transaction Documents by notice to the Landlord during the Cure Period ("**Step-in Notice**").
- 6 A Step-in Notice will be effective on and from the date that the notice is received by the Landlord ("**Enforcement Date**").
- 7 If the Financier issues a Step-in Notice, the Financier:
 - (e) must perform all obligations of the Developer or the Tenant as the case may be under the relevant Transaction Documents arising on and from the Enforcement Date;
 - (f) must remedy any default or breach of the relevant Transaction Documents by the Developer or the Tenant which is the subject of the notice under paragraph 4; and
 - (g) is entitled to exercise all rights, powers and to perform all obligations of the Developer or the Tenant under the relevant Transaction Documents.

- 8 If a Step-in Notice has been issued, the Landlord will only be entitled to terminate the Transaction Document if the Financier does not cure the breach or default the subject of the notice under paragraph 4.
- 9 If a Step-In Notice has been issued, the Financier may at any time, with prior notice to the Landlord, terminate the Step In from the date specified in that notice being a date after that notice is given to the Landlord ("**Step-Out Notice**").
- 10 If the Financier issues a Step-Out Notice, with effect from the date nominated under the Step-Out Notice, the Financier will be released from any and all obligations to the Landlord under the relevant Transaction Documents. Such release will not affect or prejudice the continuation of the Developer's or Tenant's obligations to the Landlord under the relevant Transaction Documents.
- 11 Exercise of any rights or powers under the Security Agreement by the Financier will not of itself constitute a default or breach of the Transaction Documents and will not of itself entitle the Landlord to exercise any right of termination of the Transaction Documents.
- 12 The Landlord, Developer and Tenant must not amend or vary or agree to amend or vary the Transaction Documents without the prior written consent of the Financier.
- 13 Definitions
- (h) "**Financier**" means the recipient of the Security.
- (i) "**Encumbrance**" means an interest or power:
- (i) reserved in or over an interest in any asset including any retention of title; or
- (ii) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,
- by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any obligation, and includes any agreement to grant or create any of the above.
- (j) "**Security**" means an Encumbrance granted by the Developer or Tenant in favour of the Financier from time to time in respect of the Developer's or Tenant's interest in the Transaction Documents.
- (k) "**Security Agreement**" means an agreement for the grant of the Security between the Developer or Tenant and Financier.
- (l) "**Step In**" means the assumption of rights and obligations of the Developer or Tenant under the Transaction Documents by the Financier in accordance with the Step-In Notice.

Agreement for Ground Lease

Signing page

DATED: _____

[#insert relevant execution clauses]

Agreement for Ground Lease

Annexure A - Form of Ground Lease

