

- (c) that proposed change in Control is treated as a proposed assignment of this agreement to an incoming developer;
- (d) the person or entity proposed to acquire Control is treated as an incoming developer; and
- (e) clause 5.1 ("Developer may alienate") applies.

### **5.3 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 5.3(a) if:
  - (i) the Tenant has given the Landlord and Developer 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 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 20 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 5.3(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 5.3(b):
  - (i) the Tenant need not satisfy the condition in clause 5.3(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 5.3(b)(iii) is not satisfied, such assignment shall not release or diminish the obligations of the Tenant or the Guarantor under this agreement.
- (d) The parties agree that if the Tenant:
  - (i) elects to satisfy clause 5.3(b)(iii) in relation to a proposed assignment to a Related Body Corporate of the Tenant (including in relation to a solvent reconstruction); and
  - (ii) satisfies clause 5.3(b)(iii) in respect of such assignment,then clause 5.3(c) does not apply in respect of such assignment.
- (e) The Landlord and Developer must execute the deed referred to in clause 5.3(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.

#### **5.4 Change in Control - Tenant**

If there is a proposed change in Control of the Tenant and the Tenant is not:

- (a) a company; or
- (b) a trustee, responsible entity or custodian of a unit trust,

that is listed on the Australian Stock Exchange or any other recognised stock exchange, then:

- (c) that proposed change in Control is treated as a proposed assignment of this agreement to an incoming tenant;

- (d) the person or entity proposed to acquire Control is treated as an incoming tenant; and
- (e) clause 5.3 ("Tenant may alienate") applies.

## **5.5 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 5.5(a)(i).
- (b) Clause 5.5(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 5.5(d)(i).
- (e) The deed referred to in clause 5.5(b) 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).

## 5.6 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 5.6(b) above will generally be consistent with the principles contained in Schedule 5 ("Financier side deed principles") 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 ("Financier side deed principles") (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.
- (e) The Tenant or the Developer (as applicable) must pay the Landlord's reasonable legal costs in relation to the Multi-Party Side Deed.

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## 6 Termination

### 6.1 Termination Event

A Termination Event occurs if:

- (a) the Upfront Land Payment has not been paid by the Tenant by the Payment Sunset Date (as extended under this agreement); or
- (b)
  - (i) Substantial Commencement of Construction has not occurred by the Payment Sunset Date (as extended under this agreement); 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 or COVID-19 Event.

## 6.2 Termination

- (a) If a Termination Event occurs, the Developer or Landlord (as applicable) may terminate this agreement by 30 days' 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 this agreement and the termination of this agreement except in respect of any antecedent breach.

## 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.

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## 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) except as provided for in clause 21, it does not hold its interest under this agreement as trustee.

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## **8 Construction Bank Guarantee**

### **8.1 Developer must deliver bank guarantee**

Subject to clause 3.1(b), the Developer must deliver the Construction Bank Guarantee to the Landlord by the CC Date.

### **8.2 Calling on bank guarantee**

- (a) If the Developer does not comply with any of its obligations under this agreement, then the Landlord must notify the Developer of such non-compliance and requesting the Developer to remedy that non-compliance.
- (b) If the Developer fails to remedy the non-compliance referred to in clause 8.2(a) within a reasonable time after the Landlord's notice under clause 8.2(a), then the Landlord may call on the Construction Bank Guarantee to cover the cost of and compensation in relation to the default and to pay any money payable under this agreement including, without limitation, money payable as compensation or payable under an indemnity under this agreement.

### **8.3 Return of bank guarantee**

The Landlord must return the Construction Bank Guarantee (or balance then remaining in accordance with clause 8.2(b)) to the Developer within 10 Business Days after the date of Practical Completion or earlier determination of this agreement.

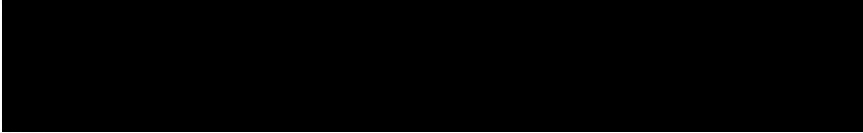
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## **9 Costs, charges, expenses and GST**

### **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) 

## 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.

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## 10 Insurances

The Developer must (or procure that a contractor does):

- (a) in connection with the Works maintain with insurers:
  - (i) in the name of the Developer and Landlord, public liability insurance for at least the amount in item 7 of Schedule 1;
  - (ii) in the name of the Developer and Landlord, contract works insurance;
  - (iii) in the name of the Developer, professional indemnity insurance; and
  - (iv) in the name of the Developer, 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.

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## 11 Foreign Investment Approval

### 11.1 FIRB Clearance

- (a) The Developer warrants to the Landlord that as at the date of this agreement, FIRB Clearance is not required for the Tenant to enter into



this agreement or the Ground Lease or that if it is required the Tenant will have obtained such FIRB Clearance prior to the Commencement Date.

- (b) If FIRB Clearance is required for the Tenant's entry into this agreement or the Ground Lease, and if requested by the Landlord, the Developer will provide evidence satisfactory to the Landlord of the FIRB Clearance.

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## **12 Interim Occupation Licence**

### **12.1 Grant and acceptance of Interim Occupation Licence**

- (a) If the Date of Part Practical Completion occurs before the date of registration of the Subdivision Plan at New South Wales Land Registry Services, then the Landlord must grant to the Tenant and the Tenant accepts the Interim Occupation Licence which Interim Occupation Licence commences on the day after the Date of Part Practical Completion and terminates on the date that is either:
  - (i) on the earlier of:
    - (A) subject to clause 12.3, 11.59pm on the date that is 2 years after the "commencement date" of the Interim Occupation Licence; and
    - (B) the Date of Practical Completion; or
  - (ii) on any later date otherwise agreed between the Landlord and Tenant (both acting reasonably).
- (b) If clause 12.1(a) applies, the Owner consents to the Tenant granting a sublicence under the Interim Occupation Licence to the end occupier(s) of the Premises, provided that:
  - (i) the Tenant provides notice in writing of its intention to sublicence to the Owner including details of the sublicence;
  - (ii) the sublicence expires prior to the expiry of the Interim Occupation Licence;
  - (iii) the sub-licence is for the Permitted Use; and
  - (iv) no sub-licence under this clause 12.1(b) will relieve the Developer from its obligations to the Owner under this agreement.

### **12.2 Developer to register Subdivision Plan**

The Developer must use reasonable endeavours to ensure that the Subdivision Plan is registered at New South Wales Land Registry Services as soon as possible after the date of this agreement.

### **12.3 Extension of Interim Occupation Licence**

If the Subdivision Plan is not registered at New South Wales Land Registry Services by the date that is two years less one day after the commencement date of the Interim Occupation Licence, then provided the Developer has been using reasonable endeavours to procure registration of the Subdivision Plan the Landlord agrees that the Interim Occupation Licence will be automatically extended annually until the day that is immediately prior to the commencement date of the Ground Lease (up to a maximum term of 60 months from the commencement date of the Interim Occupation Licence).

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## 13 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.

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## 14 Miscellaneous

### 14.1 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.

### 14.2 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.

### 14.3 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.

#### **14.4 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.

#### **14.5 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.

#### **14.6 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.

#### **14.7 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.

#### **14.8 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.

#### **14.9 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.

#### **14.10 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.

#### **14.11 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.

#### **14.12 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.

#### **14.13 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.

#### **14.14 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.

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### **15 Governing law, jurisdiction and service of process**

#### **15.1 Governing law**

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

#### **15.2 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.

#### **15.3 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.

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## 16 Counterparts

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

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## 17 Disputes

### 17.1 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 17.1 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.

### 17.2 The reply

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

### 17.3 The dispute

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

### 17.4 Compulsory CEO conference

Upon a dispute being deemed to exist under clause 17.3, 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 17.5.

### 17.5 Expert

- (a) If the parties fail to resolve the dispute in accordance with clause 17.4, 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 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 17.5(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 17.

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## **18 Environmental monitoring**

### **18.1 Developer accepts Land**

- (a) The Developer:
  - (i) accepts any Contamination existing in or on the Land as at the commencement date of the Construction Licence; and
  - (ii) releases the Landlord from any liability in respect of any Contamination existing in or on the Land after the commencement date of the Construction Licence.
- (b) Subject to the Landlord complying with its obligations under this clause 18, if any activity carried out by or on behalf of the 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 and risk.
- (c) Without limiting clauses 18.1(a) and (b), the Developer is responsible for the remediation and management of any Contamination existing in or on the Land to the extent such Contamination:
  - (i) renders the Land unsuitable for commercial and industrial use; and
  - (ii) is not caused by the Landlord or the Landlord's Employees and Agents after the DMA Date.
- (d) The Developer must as soon as reasonably practicable remediate and manage any Contamination for which the Developer is responsible to the extent such Contamination renders the Land unsuitable for commercial and industrial use.

### **18.2 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.

### **18.3 Landlord gives no warranties**

Except as provided in this clause 18:

- (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.

---

## 19 Easements

- (a) Subject to clause 19(b) and clause 19(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 LHBH 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; or
  - (iv) where reasonably considered necessary by the Landlord for the provision of Services within the LHBH.

The Landlord must use reasonable endeavours to ensure that the easements and covenants have minimal impact on 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), including in relation to the "Drainage Basins", (as those terms are defined in the Development Management Agreement) and batters on adjoining land.
- (c) The Tenant must not object to the establishment of any rights referred to in clause 19(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 19(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.

---

## **20 Guarantor's obligations**

### **20.1 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.

### **20.2 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.

### **20.3 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.

### **20.4 Purpose**

The Guarantor is a party to this agreement solely for the purpose of this clause 20.



**20.5 Survival**

The obligations of the Guarantor under this clause 20 survive the expiry or earlier termination of this agreement.

**20.6 Guarantor may not transfer**

The Guarantor may not transfer or otherwise dispose of its obligations under this clause 20.

---

**21 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

<b>Item 1</b> (definition of "Project Manager" in clause 1.1)	[#To be completed]	
<b>Item 2</b> (definition of "Council" in clause 1.1)	Fairfield City Council	
<b>Item 3</b> There is no item 3		
<b>Item 4</b> (definition of "Land" in clause 1.1)	Proposed Lot [ ## ] in Plan of Subdivision [ ## ]	
<b>Item 5</b> (definitions of "Ground Rent" and "Upfront Land Payment" in clause 1.1)	[#To be completed], subject to clauses 2.11 and 3.8.  Upfront Land Payment \$  Ground Rent \$	
<b>Item 6</b> (definition of "Access Date", "Approval Date", "Subdivision Date", "CC Date", "Payment Sunset Date" and "Remediation Date" in clause 1.1)	Access Date	The date which is 14 days after the Developer notifies the Landlord that it requires interim access under clause 3.1(a)(iii)
	Approval Date	The date which is 12 months from the date of this agreement (as extended under this agreement)
	Subdivision Date	The date which is 12 months from the date of this agreement (as extended under this agreement)
	CC Date	The date which is 12 months from the date of this agreement (as extended under this agreement)
	Payment Sunset Date	The date which is 12 months from the date of this agreement (as extended under this agreement)
<b>Item 7</b> (amount of public liability insurance under clause 10(a)(iii))	\$50 million	

<p><b>Item 8</b> (Clause 13(a)(iii))</p>	<p>Address for service:</p> <p><b>Developer</b></p> <p>Address: Level 20, 1 Martin Place, Sydney NSW 2000</p> <p>Facsimile No: +61 2 8295 8659</p> <p>Email: <a href="mailto:chcosecandlegal@charterhall.com.au">chcosecandlegal@charterhall.com.au</a></p> <p>Attention: Company Secretary for [insert]</p> <p><b>Landlord</b></p> <p>Address: Level 7, 10 Valentine Avenue, Parramatta NSW 2150</p> <p>Facsimile No: 02 9895 7580</p> <p>Email: Kerry.Jahangir@wspt.nsw.gov.com.au</p> <p>Attention: Kerry Jahangir</p> <p><b>Tenant</b></p> <p>Address: Level 20, 1 Martin Place, Sydney NSW 2000</p> <p>Facsimile No: +61 2 8295 8659</p> <p>Email: <a href="mailto:chcosecandlegal@charterhall.com.au">chcosecandlegal@charterhall.com.au</a></p> <p>Attention: Company Secretary for [insert]</p>
<p><b>Item 9</b> Not used</p>	<p>Not used</p>
<p><b>Item 10</b></p>	<p><b>Guarantor</b></p> <p>[#insert]</p>

# Agreement for Ground Lease

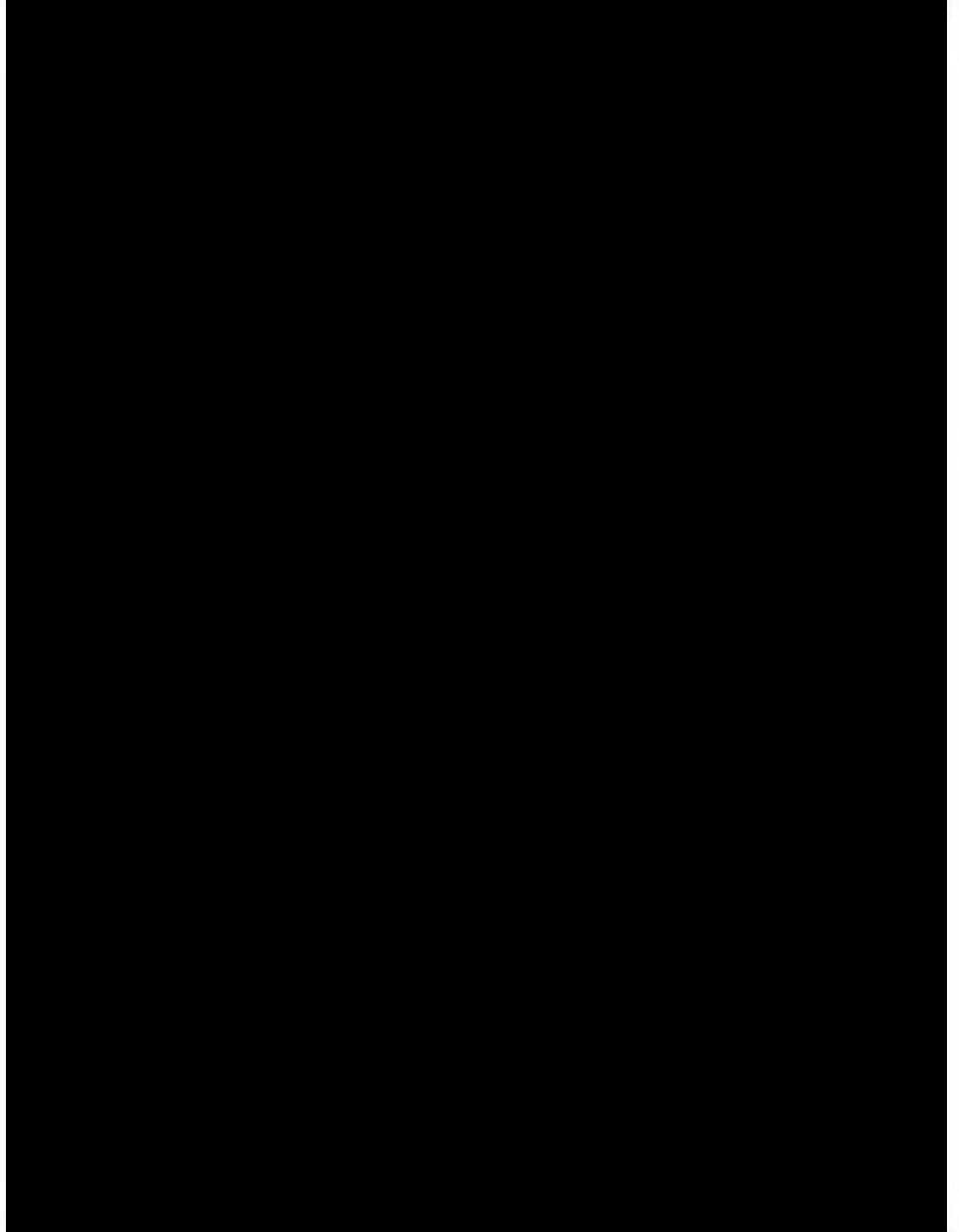
## Schedule 2 Plans and Specifications

# Agreement for Ground Lease

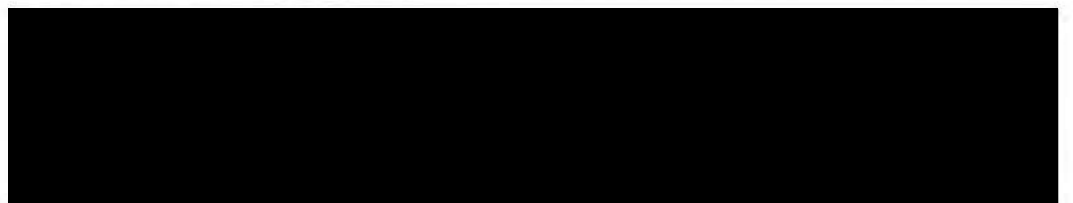
## Schedule 3 Subdivision Plan

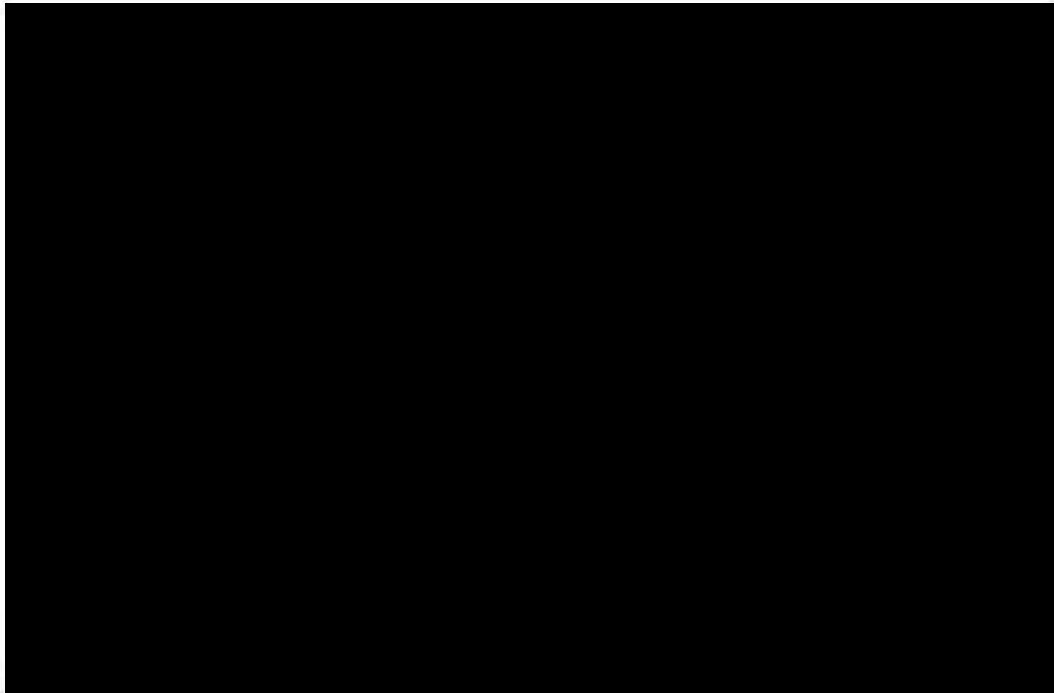
## Schedule 4 Unusual conditions

**1 Landlord's Unusual Conditions:**

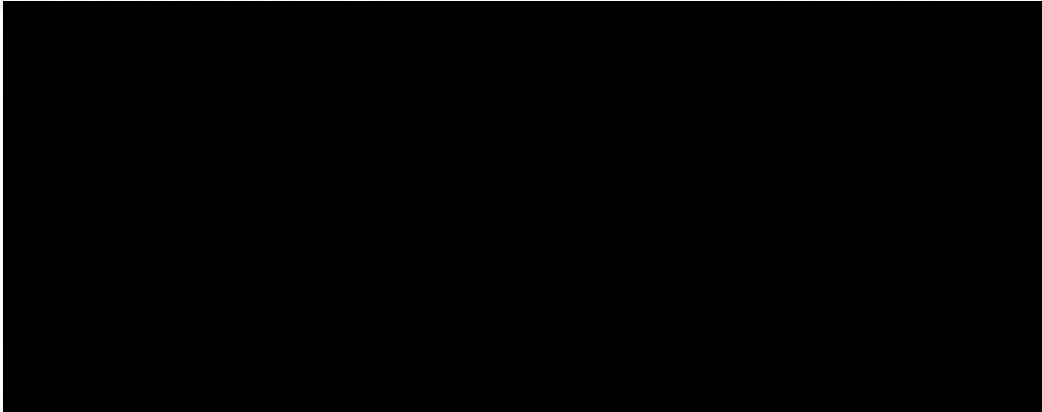


**2 Developer's Unusual Conditions:**





**3 Tenant's 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(a) ("**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:
  - (a) 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;
  - (b) 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
  - (c) 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 within the Cure Period.
- 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 other than for the Period between the issue of the Step-in Notice and the issue of the Step-Out Notice). 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
- (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 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.
- (d) "**Security Agreement**" means an agreement for the grant of the Security between the Developer or Tenant and Financier.
- (e) "**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: \_\_\_\_\_

Execution by Landlord:

**Executed** on and behalf of the body )  
named below by its Chief Executive )  
whose signature appears 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

.....  
Name of witness (print)

.....  
Occupation of witness (print)

.....  
Signature of Chief Executive

Suellen Fitzgerald  
Name of Chief Executive

.....  
Position: Chief Executive

Execution by Developer: [# **Execution block for Developer to be inserted**]

Execution by Guarantor: [# **Execution block for Guarantor to be inserted**]

Execution by Tenant: [# **Execution block for Tenant to be inserted**]

# Agreement for Ground Lease

## Annexure A - Form of Ground Lease

Annexure "A" to Lease

# Ground Lease

Dated

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

[#To be inserted] ("Tenant")

[#To be inserted] ("Guarantor")



**Item 8 - Guarantor(s) address for notices**

**[#To be inserted]**

**Item 9 – Premises**

The whole of the Land

**Item 10 - Permitted Use**

Industrial, light industrial and ancillary office uses, but excludes container parks and storage areas, other than those that are ancillary to the approved use.

**Item 11 – Term**

90 years from the Commencement Date

**Item 12 - Commencement Date**

**[#To be inserted]**

**Item 13 - Termination Date**

**[#To be inserted]**

**Item 14 – Rent**

**[#To be inserted]** per annum, subject to variation in accordance with this Lease. It is expressed as a GST exclusive amount.

**Item 15 – Not used**

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## 1. DEFINITIONS

Terms in this Lease which are defined in this section or elsewhere in this Lease start with capital letters.

If a meaning is given to a term in the reference schedule then the term has that meaning in this Lease unless:

- the context requires otherwise; or
- the word is further or differently defined in this clause 1.

In this Lease:

- a reference to an item means the corresponding item in the reference schedule; and
- the words and phrases below have the meanings given to them below unless the context requires otherwise:

<b>Approval</b>	all consents, permits, licences, approvals, authorisations and exemptions from, by or with an Authority
<b>Assignment Tests</b>	means that a person: <ul style="list-style-type: none"><li>(a) is not Insolvent;</li><li>(b) (combined with any proposed guarantor) is of sufficient financial standing to perform its relevant obligations under this Lease;</li><li>(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 or equal to or more than 12 months in prison;</li><li>(d) has not been the subject to 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; and</li><li>(e) is otherwise ready, willing and able to carry out the obligations of the Tenant under this Lease</li></ul>
<b>Authority</b>	any government or any governmental, municipal, statutory or public department, agency or body or any similar entity which has legal authority in relation to the use or occupation of or a service provided to the Premises
<b>Batter Cost</b>	has the meaning given in clause 5.3(a)
<b>Batters</b>	means the batters in the area hatched on the plan attached at Schedule 2
<b>Business Day</b>	a day which is not a Saturday, Sunday or public holiday in Sydney
<b>Commencement Date</b>	the date mentioned in <b>item 12</b>

<b>Contamination</b>	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 <b>Contaminant</b> has a corresponding meaning
<b>Control</b>	means: <ul style="list-style-type: none"> <li>(a) if the Tenant is not acting in its capacity as trustee, responsible entity or custodian of a unit trust, the holding of more than 49% of the issued shares of the Tenant; or</li> <li>(b) if the Tenant is acting in its capacity as trustee, responsible entity or custodian of a unit trust, the holding of more than 49% of the units in the unit trust</li> </ul>
<b>Developer</b>	<b>[#To be completed]</b>
<b>Drainage Basins</b>	means the drainage basins servicing the Land or Premises as shown on the plans in Schedule 2
<b>Drainage Basin Cost</b>	has the meaning given in clause 5.2(a)
<b>Environment</b>	includes: <ul style="list-style-type: none"> <li>(a) ecosystems and their constitute parts, including people and communities, natural and physical resources;</li> <li>(b) the qualities and characteristics of locations, places and areas; and</li> <li>(c) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a) or (b).</li> </ul>
<b>Environmental Law</b>	includes any Law relating to any aspect of the Environment.
<b>FATA</b>	means the <i>Foreign Acquisitions and Takeovers Act 2015 (Cth)</i> .
<b>FIRB</b>	means the Australian Foreign Investment Review Board
<b>FIRB Clearance</b>	<u>means:</u> <ul style="list-style-type: none"> <li>(a) receipt of a No Objection Notification in respect of the Tenant's entry into this Lease;</li> <li>(b) receipt of an exemption certificate under the FATA that covers the Tenant's entry into this Lease; or</li> <li>(c) by reason of lapse of time, the Australian Commonwealth Treasurer is no longer empowered to make an order prohibiting the Tenant's entry into this Lease under the FATA.</li> </ul>

**Fixed Percentage Increase**



**GST**

GST within the meaning of the GST Act

**GST Act**

the *A New Tax System (Goods and Services Tax) Act 1999* (Cth)

**Guarantor**

each person specified in **item 7** and any other person who becomes liable to the Landlord as guarantor (for example, as a result of an assignment of this Lease)

**Insolvent**

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**

the whole of the land comprised in Lot **[#To be inserted]** and DP **[#To be inserted]**

**Landlord**

each mean the party described in **item 2** and its successors and assigns

**Landlord's Agents**

any employee of the Landlord and any consultant or contractor authorised to act on behalf of the Landlord

<b>Law</b>	any statute, ordinance, code, regulation, by-Law, local Law, common law or equity, 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
<b>LHBH</b>	Light Horse Business Hub at the intersection of the M4 and M7 Motorways in Eastern Creek, being the land comprised in the following Certificates of Title as at the Commencement Date:  <b><i>[# insert current title particulars of all land within the LHBH].</i></b>
<b>LRS</b>	NSW Land Registry Services or any replacement department or authority.
<b>Outgoings</b>	means all reasonable costs (not including capital costs and costs for structural work, other than in relation to the costs referred to in paragraphs (b), (c) and (d)) payable by the Landlord (or for which the Landlord may become liable) in connection with the Land and the Premises for the following: <ul style="list-style-type: none"> <li>(a) rates, taxes and levies (other than income or capital gains tax) being water and sewerage rates, charges and costs for all emergency services levies, council rates and planning levies in respect of the Premises;</li> <li>(b) the Drainage Basins Cost;</li> <li>(c) the Batter Cost; and</li> <li>(d) land tax imposed in respect of the Premises</li> </ul>
<b>Outgoings Year</b>	means each period of 365 days ending on 30 June
<b>Permitted Use</b>	the use specified in item 10
<b>Premises</b>	the premises described in item 9 and includes any buildings or other structures on the Premises
<b>Redecorate</b>	to replace carpets, curtains, light fittings and other fixtures and fittings in or on the Premises that are no longer functional
<b>Related Body Corporate</b>	has the meaning given to that term under the <i>Corporation Act 2001</i> (Cth)
<b>Rent</b>	the rent set out in item 14 and payable under clause 3 as varied from time to time
<b>Repaint</b>	to repaint the internal and exterior surfaces of the Premises
<b>Rent Day</b>	has the meaning given to that term in clause 3.1

<b>Security Interest</b>	includes: <ul style="list-style-type: none"> <li>(a) a mortgage, charge, lien or pledge or any other right by way of security; and</li> <li>(b) a security interest within the meaning of section 12(1) of the <i>Personal Properties Securities Act 2009</i> (Cth)</li> </ul>
<b>Services</b>	all services and utilities to or of the Premises or the Land provided by authorities, being power, water, gas, telecommunications, fire services, sewerage, trade waste removal and like utility services
<b>Tax Invoice</b>	a tax invoice that complies with the GST Act.
<b>Tenant</b>	means the party described in item 4 and its successors and permitted assigns
<b>Tenant's Associates</b>	any employee, agent, visitor, sub-lessee or contractor of the Tenant
<b>Tenant's Fittings</b>	all equipment, machinery and other items including all furniture, furnishings, wall coverings and equipment of a similar nature, but excluding Tenant's Fixtures .
<b>Tenant's Fixtures</b>	all improvements, buildings, fixtures, fixed plant and equipment, fittings and partitions existing on or constructed on or under the Premises from time to time.
<b>Tenant's Property</b>	the Tenant's Fittings and the Tenant's Fixtures
<b>Term</b>	the term specified in item 11
<b>Termination Date</b>	the date specified in item 13, or any earlier date of expiration or determination of this Lease, or the date of termination of any extension or renewal of this Lease, including without limitation the expiration of any period during which the Tenant holds over or remains in occupation of the Premises
<b>Termination Event – Not Rent</b>	has the meaning given to that term in clause 16.1(b)
<b>Termination Event - Rent</b>	has the meaning given to that term in clause 16.1(a)
<b>This Lease</b>	means this Lease
<b>WHS Law</b>	any occupational, health and safety law, regulation or by-law that applies to work being (or to be) carried out on the Premises. This definition includes the provisions under the <i>Work Health and Safety Act 2011</i> (NSW) and <i>Work Health and Safety Regulations 2011</i> (NSW)

**WSPT Act**

*Western Sydney Parklands Act 2006 (NSW)*

**WSPT Area**

means the area of land containing any of the Drainage Basins or Batters for which the Council or any other Authority other than the Landlord does not have responsibility for repair and maintenance from time to time

**2. GRANT OF LEASE AND TERM****2.1 Grant**

The Landlord grants to the Tenant for the Term and the Tenant accepts a lease of the Premises on the terms and subject to the reservations set out in this Lease.

**2.2 Landlord warranties**

- (a) The Landlord warrants and covenants to the Tenant that:
- (i) it has been duly constituted under the WSPT Act;
  - (ii) it has power to enter into and observe its obligations under this Lease and all documents and transactions contemplated by this Lease; and
  - (iii) it has in full force and effect the authorisations necessary under the WSPT Act to make the grant described in clause 2.1, and observe obligations under this Lease, and allow this Lease to be enforced against it;
  - (iv) its obligations under this Lease are valid and binding and are enforceable against it in accordance with its terms; and
  - (v) this Lease and the transactions contemplated under it 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 Lease as a trustee.
- (b) The Landlord represents and warrants to the Tenant that, the Landlord has obtained all necessary consents to enter into this Lease (including all consents required under the WSPT Act, any finance, security or other documents).
- (c) The Landlord must keep the Tenant indemnified against all liability or loss of any kind which the Tenant suffers or incurs as a result of a breach of the warranties and covenants set out in paragraph (a) or paragraph (b) and the Landlord acknowledges that the Tenant will suffer loss and be subject to claims and liabilities to its sublessees (if any).

**2.3 Holding over**

If the Tenant continues to occupy the Premises after the Termination Date without the Landlord objecting, the Tenant does so as a monthly tenant. The terms of the monthly tenancy are the same as the terms of this Lease applying at the Termination Date, except that the Landlord or the Tenant may terminate the tenancy by giving 1 month's notice at any time and the Rent will be reviewed in accordance with clause 4.1.

**3. TENANT'S FINANCIAL OBLIGATIONS****3.1 Rent**



The Tenant must pay the Rent by equal monthly instalments in advance on or before the first day of each month for the period commencing on the Commencement Date and ending on the Termination Date ("**Rent Day**"). The Tenant must pay the Rent in a manner reasonably agreed between the parties. The parties acknowledge that the Landlord need not make a demand or raise an invoice for the Rent.

### 3.2 **First and Final Rent Payments**

- (a) The first payment of Rent must be made on the Commencement Date.
- (b) The first and final payments of Rent must be apportioned on a daily basis for a 365 day year.

### 3.3 **Goods and Services Tax**

- (a) If GST has application to any taxable supply made under this Lease, the Landlord may, in addition to any amount or consideration expressed as payable elsewhere in this Lease, recover from the Tenant an additional amount on account of any GST otherwise payable by the Landlord such amount to be calculated by multiplying the amount or consideration payable by the Tenant for the relevant supply by the prevailing GST rate. Any additional amount on account of GST recoverable from the Tenant under this clause shall be calculated without any deduction or set off of any other amount and is payable by the Tenant upon delivery by the Landlord of a Tax Invoice.
- (b) Expressions used in this clause 3.3 and in the GST Act have the same meaning as when used in the GST Act.

## 4. **ADJUSTMENT AND REVIEW OF RENT**

### 4.1 **Fixed Percent Increase**

On each anniversary of the Commencement Date, the Rent is to be increased by the Fixed Percentage Increase. The adjusted Rent applies from each anniversary of the Commencement Date during the Term.

## 5. **OUTGOINGS AND UTILITIES**

### 5.1 **Outgoings**

- (a) The Tenant must pay all Outgoings for each Outgoings Year in accordance with clause 5.4.
- (b) The Tenant must pay the cost of all Services used on the Premises on or before their due date for payment.
- (c) The Landlord must forward to the Tenant any notice or correspondence (including but not limited to any invoice for payment) in relation to any Outgoings received from the relevant Authority by the Landlord within 5 Business Days of the date the Landlord receives such notice or correspondence.

### 5.2 **Drainage Basins**

- (a) The parties agree that the Landlord is responsible for maintaining and repairing the Drainage Basins within the WSPT Area in accordance with clause 14.3 and the Tenant must contribute to the reasonable cost of maintaining and repairing the Drainage Basins within the WSPT Area (**Drainage Basins Cost**) as part of reasonable Outgoings in the proportion that the area of the Land bears to the area of all land within the LHBH and any other improved land receiving the benefit of, or using, the Drainage Basins as determined by the Landlord (acting reasonably) from time to time.
- (b) Without limiting clause 5.2(b), where the Tenant and the Tenant's Associates (or either of them) damage the Drainage Basins within the WSPT Area (other than as a result of fair

wear and tear from use which is consistent with the specification for which the Drainage Basins were designed), the Tenant is liable for all reasonable costs of repair works attributable to the rectification of that damage. The Landlord will provide the Tenant with such information and documentary evidence as the Tenant may reasonably require to evidence the actual expenditure by the Landlord pursuant to this clause.

- (c) The Landlord must use its reasonable endeavours to minimise the costs referred to in clause 5.2(b) 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 Tenant.

### 5.3 **Batters**

- (a) The parties agree that the Landlord is responsible for maintaining and repairing the Batters within the WSPT Area in accordance with clause 14.3 and the Tenant must contribute to the cost of maintaining and repairing the Batters within the WSPT Area (**Batter Cost**) as part of reasonable Outgoings in the proportion that the area of the Land bears to the area all land within the LHBH receiving the benefit of, or using, the Batters as determined by the Landlord (acting reasonably) from time to time.
- (b) Without limiting the obligation of the Tenant to reimburse general maintenance and repair costs under clause 5.3(a), if the Tenant and the Tenant's Associates (or either of them) damage the Batters within the WSPT Area, the Tenant is liable for all reasonable costs of repair works attributable to the rectification of that damage. The Landlord will provide the Tenant with such information and documentary evidence as the Tenant may reasonably require to evidence the actual expenditure by the Landlord pursuant to this clause.
- (c) The Landlord must use its reasonable endeavours to minimise the costs referred to in clause 5.3(b) to ensure that the amount of those costs is fair and reasonable having regard to the condition of the Batters prior to the damage caused by the Tenant.
- (d) The parties agree that if the Landlord has complied with its obligations under clause 5.3(a), that it is not responsible to the Tenant for any loss arising out of the performance or failure of the Batters.

### 5.4 **Outgoings Budget**

- (a) The Landlord must use its reasonable endeavours to minimise the Outgoings to ensure that the amount of those costs is fair and reasonable.
- (b) Each Outgoings Year, the Landlord must give the Tenant the Landlord's reasonable estimate of the Outgoings and reasonable details of how the estimate is arrived at.
- (c) The Tenant must pay instalments in advance on each Rent Day on account of Outgoings. Each instalment is the Landlord's estimate of the Outgoings for that Outgoings Year divided by the number of Rent Days in that Outgoings Year.
- (d) The Tenant need not pay for instalments for the first Outgoings Year until the Landlord gives it a notice stating its estimate of the Outgoings for that Outgoings Year.
- (e) In each Outgoings Year after the first, until the Landlord gives the Tenant a notice of the Landlord's estimate for that Outgoings Year, the Tenant must pay on each Rent Day, on account of the Outgoings, an instalment equal to that payable on the previous Rent Day.
- (f) As soon as possible after the end of an Outgoings Year, but no later than 1 month after the end of an Outgoings Year, the Landlord must give the Tenant a notice giving details of the actual Outgoings.

- (g) Within 30 days after the Landlord gives the Tenant a notice of actual Outgoings under clause 5.4(f), the Tenant must pay the Landlord (or the Landlord must credit the Tenant with) the difference between what the Tenant has paid on account of the Outgoings for the Outgoings Year to which the notice applies and what the notice says is payable.

## 5.5 Apportionment

Outgoings which relate partly to a period before the Commencement Date or after the Termination Date must be apportioned between the Landlord and the Tenant on a daily basis for a 365 day year.

## 5.6 Minimisation of Outgoings

- (a) The Landlord must use its reasonable endeavours to:
  - (i) ensure that any Outgoings payable by the Tenant under this Lease in respect of the Premises are not more than the amounts payable in relation to comparable land in the LHBH; and
  - (ii) minimise the Outgoings to ensure the amount of the Outgoings is fair and reasonable.
- (b) The Landlord must provide all information reasonably requested by the Tenant in relation to Outgoings.
- (c) The Landlord must:
  - (i) if requested by the Tenant, prepare and submit an application(s); or
  - (ii) permit the Tenant to be involved in any application the Landlord may make; or
  - (iii) support, join in and provide all assistance reasonably required by the Tenant in any applications the Tenant may make,

to any public, municipal or government bodies, authorities or departments in relation to the nature or extent of the rates, charges, levies, assessments, duties, impositions or fees charged by that body, authority or department in relation to the Premises.

## 5.7 Land Tax

Despite any other provision of this Lease, the parties agree that the Tenant is not responsible for, and is not required to pay Outgoings in relation to, any land tax (including any back dated charges, penalties or fees) charged or payable on the Land in respect of a period prior to the Commencement Date.

## 6. OTHER CHARGES PAYABLE BY THE TENANT

### 6.1 Landlord's Costs

To the extent permitted by Law, the Tenant must pay or reimburse:

- (a) the Landlord's reasonable legal costs relating to any dealings connected with this Lease or the Tenant's occupation of the Premises (such as a guarantee, an assignment, or any consent to a mortgage of the Tenant's interest in this Lease);
- (b) the Landlord's costs relating to a breach of this Lease by the Tenant; and
- (c) all registration fees.

## 6.2 Stamp Duty

The Tenant must pay all stamp duty on this Lease and any documents connected with this Lease or the Tenant's occupation of the Premises or any transaction effected by this Lease.

## 6.3 Tenant to Complete Registration

- (a) The Landlord must, if a mortgagee's consent is required, promptly obtain the consent of all mortgagees of the Landlord's interest in this Lease.
- (b) The Tenant must:
  - (i) stamp this Lease; and
  - (ii) register this Lease.
- (c) The Landlord must do all things reasonably required by the Tenant to assist the Tenant to stamp and register this Lease.

## 6.4 Interest

- (a) The Tenant must pay interest on any money owing to the Landlord which is not paid on the due date. The interest payable:
  - (i) is to be calculated on daily balances at a rate 2% per annum above the National Australia Bank Limited ABN 12 004 044 937 Business Lending Indicator Base Rate on the date on which the default occurs;
  - (ii) applies from the day after the money should have been paid to the day that the money is actually paid; and
  - (iii) is capitalised on the last day of each month.
- (b) If the basis for calculation of interest payable under clause 6.4(a) does not apply at the relevant time, then the interest payable must be calculated on a similar basis on a rate quoted by a similar or equivalent trading bank.

## 7. TENANT'S REPAIR AND MAINTENANCE OBLIGATIONS

The Tenant must during the Term:

- (a) repair and maintain the Premises, the Services, any improvements and all plant and equipment in the Premises to keep them in good order, repair and condition (including any structural and capital repairs and maintenance) having regard to their condition as at the Commencement Date (fair wear and tear excepted);
- (b) repair and maintain the landscaping and other outdoor areas in the Premises to keep them in good order, repair and condition having regard to their condition as at the Commencement Date (fair wear and tear excepted);
- (c) repair and maintain the Tenant's Property in good order, repair (including painting) and condition having regard to their condition as at the Commencement Date (fair wear and tear excepted); and
- (d) without limiting subclause (c) above, Repaint and Redecorate the buildings and other structures on the Premises not less than once every 10 years during the Term. This clause 7(d) will not apply:
  - (i) if agreed by the Landlord (acting reasonably); or

- (ii) if unnecessary in terms of Repainting because a particular surface was not designed to be painted.

**8. CLEANING**

The Tenant must keep the Premises clean and tidy.

**9. TENANT'S WORKS AND ACTS**

**9.1 Authority Approvals**

The Tenant must obtain any Approvals which are required from Authorities with respect to all works undertaken in the Premises.

**9.2 Manner of Performance**

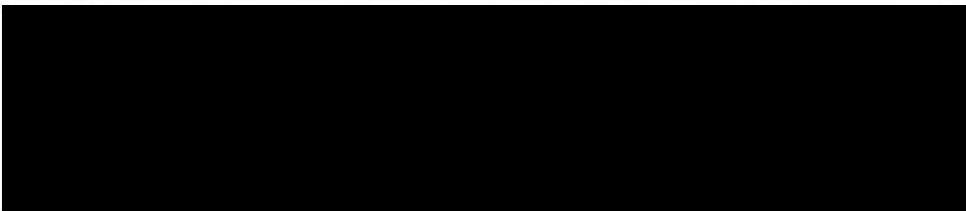
The Tenant must carry out the works:

- (a) at its cost;
- (b) in compliance with all Laws and Approvals including its responsibilities as a person conducting a business or undertaking under the WHS Law; and
- (c) in accordance with conditions imposed by any Authority.

**9.3 Acts etc of Tenant**

- (a) The parties agree that during the Term the Tenant may do anything on, in or in respect of the Premises or the Land that a registered proprietor of the Land is able to do, provided that the Tenant does not do anything that is inconsistent with an express provision in this Lease or any Law.
- (b) The Landlord must execute any consent, application or other such document in relation to the Premises that the Tenant requests, where such consent, application or other such document is required from the Landlord as owner to enable the Tenant to deal with the Premises. Despite the previous sentence, the parties agree that the Landlord is not required to execute any consent, application or other document that is inconsistent with any express provision of this Lease. The Tenant must pay the Landlord's reasonable legal and other costs of complying with this clause 9.3(b) and must keep the Landlord indemnified against all liability or loss of any kind which the Landlord may suffer or incur in connection with any such consent, application or other document.
- (c) During the Term, the Tenant may undertake any alterations, additions or redevelopment works to the Premises or the Land from time to time, provided:
  - (i) the Tenant complies with all relevant Laws and requirements of relevant Authorities; and

(ii)



## **10. TENANT'S OBLIGATIONS AT THE END OF THE TERM**

### **10.1 Reinstatement and reversion**

- (a) At the expiration of the Term or within 7 days after the sooner determination of this Lease, the Tenant must surrender and yield up the Premises and the Tenant's Fixtures in a clean, tidy and in a state of repair and condition as at the Commencement Date having regard to fair wear and tear and the age of the improvements.
- (b) The parties agree that ownership of the Tenant's Fixtures will revert to the Landlord at expiration or sooner determination of the Term.
- (c) Despite clause 10.1(a), the parties agree that the Tenant is not required to repair any Services or carry out any structural or capital works on the expiration or sooner determination of the Term. However, the Tenant must leave the Premises in a safe condition.
- (d) Despite clause 10.1(a), in the event underground fuel tanks have been installed on the Premises during the Term (whether by the Tenant or its predecessor in title under this Lease) and unless otherwise agreed by the Landlord, the Tenant must remove the underground fuel tanks and make good any damage caused by the installation or removal of the underground fuel tanks.

### **10.2 Removal of Tenant's Fittings**

Unless otherwise agreed between the parties, on or before the expiration of the Term or within 7 days of the sooner determination of this Lease, the Tenant must take, remove and carry away from the Premises the Tenant's Fittings and immediately make good any damage caused to the Premises in so doing.

### **10.3 Tenant's Fittings**

If the Tenant does not remove part or all of the Tenant's Fittings as required by this clause 10, any items which are not removed become the property of the Landlord. The Landlord may retain those items or may remove them and charge the Tenant the cost of removal and of repairing damage done to the Premises.

### **10.4 Ownership**

Other than as required by Law, the parties acknowledge that all improvements and works which are Tenant's Fixtures:

- (a) are owned by the Tenant until the expiration of the Term or sooner determination of this Lease; and
- (b) will transfer to, and be owned by, the owner for the time being of the Land on and from the earlier of the date of expiration of the Term or sooner determination of this Lease.

### **10.5 Inspection at End of Term**

The Landlord may by notice in writing require the Tenant to participate in a joint inspection of the Premises within 14 days after the Tenant vacates the Premises in order to ensure the removal of the Tenant's Fittings and reinstatement of the Premises and the Tenant's Fixtures are in accordance with this Lease. The Tenant must participate in and co-operate with any joint inspection.

## 10.6 Contamination

At the expiration of the Term or within 7 days after the sooner determination of this Lease, the Tenant must ensure it has complied with its obligations under clause 11.6(f)(ii).

## 11. TENANT'S ADDITIONAL OBLIGATIONS

### 11.1 Use of Premises

The Tenant must:

- (a) not use the Premises other than for the Permitted Use;
- (b) comply with all applicable Laws to the extent that such requirements relate to the Premises or the Land or the use or occupation of the Premises or the Land including:
  - (i) the State Environmental Planning Policy (Western Sydney Parklands) 2009;
  - (ii) the plan of management for the Land or the Premises that the Landlord has prepared and established for the LHBH, a copy of which is attached at Exhibit 1 (to the extent that plan is still in place);
  - (iii) the relevant development approval in respect of the Land and improvements on the Land; and
  - (iv) the WSPT Act.

### 11.2 Security

The Tenant must secure the Land and the Premises, and must keep the Land and the Premises secured during the Term.

### 11.3 Acknowledgments

The Tenant acknowledges that:

- (a) it has made its own investigations as to the suitability of the Premises for the Tenant's business;
- (b) it is aware of all prohibitions and restrictions applying to the Premises under the requirements and orders of all Authorities and all Laws;
- (c) the Landlord does not warrant that the Premises is or will during the Term be structurally or otherwise suitable for the business of the Tenant or the Tenant's Associates; and
- (d) the Landlord will have no responsibility or liability whatsoever to the Tenant in relation to any buildings or other improvements or Tenant's Fixtures forming part of the Premises from time to time.

### 11.4 Statutory Requirements

- (a) The Tenant must:
  - (i) comply with any Law which affects the Premises and any notice or order of an Authority whether the Law, notice or order imposes requirements on the Landlord or on the Tenant;
  - (ii) obtain and keep current all permits and licences required for the Tenant's business at the Premises;

- (iii) comply with the terms of any positive covenant or restriction on use relevant to an on-site water detention system installed on or under the Premises.
- (b) Notwithstanding any other provision of this Lease, the Landlord must exercise its power under the WSPT Act and the relevant regulations insofar as they relate to this Lease or the Tenant's rights under this Lease independently and objectively and without regard to the Landlord's interests and rights as landlord under this Lease.
- (c) If there is any inconsistency between any term, condition or covenant in this Lease and the WSPT Act and relevant regulations, then the WSPT Act and relevant regulations prevail to the extent of the inconsistency.

#### 11.5 Insurance

- (a) The Tenant must have current insurance for all of the following:
  - (i) public liability for \$20 million per claim or such other amount as the Landlord requires acting reasonably; and
  - (ii) building insurance in respect of the Premises, including the Tenant's Property for the usual risks and for its full replacement value.
- (b) The policies must cover claims in connection with this Lease. The Tenant must provide the Landlord with evidence of currency of the relevant insurances when requested by the Landlord and must notify the Landlord if the policies are varied.
- (c) The Tenant must not at any time during the Term do or omit to do or permit to be done or be omitted anything whereby any policy of the Tenant may be cancelled, vitiated, rendered void or voidable, adversely affected or limited in any respect.
- (d) The requirements of clauses 11.5(a) and 11.5(b) will be deemed to be fully satisfied by the Tenant where the Tenant self-insures. The Tenant will only be permitted to self-insure if the following conditions are satisfied:
  - (ii) The Tenant must provide a certificate from a registered company auditor, prepared in accordance with generally accepted accounting principles, by 30 September in each year which confirms that the requirements of clause 11.5(d)(i) are satisfied.
  - (iii) The Tenant must provide the Landlord when requested by the Landlord a certificate from a registered company auditor to the effect that the Tenant's contingent liabilities for self-insurable risks have been properly provided for in the accounts of the Tenant in accordance with current accounting standards applicable to self-insured liabilities.
- (e) If any of the conditions provided for in clauses 11.5(d), (ii) or (iii) are at any time not satisfied, the Tenant must immediately take out the insurance provided for in this clause 11.5 with an external insurer, in which case the Tenant must provide the Landlord with evidence of such insurance cover when requested by the Landlord.
- (f) The provisions of clauses 11.5(a) and 11.5(b) will be deemed fully complied with by the Tenant where:
  - (i) the Tenant's global insurance policy includes the insurances required under clauses 11.5(a) and 11.5(b); and



- (ii) a certificate of currency to that effect is provided to the Landlord once in every year in the Term if the Landlord asks for it.

#### 11.6 Environmental Requirements

- (a) Subject to clause 11.6(b), the Tenant accepts the Premises in its existing state and condition as at the Commencement Date.
- (b) The Tenant:
  - (i) accepts any Contamination existing in or on the Land as at the Commencement Date;
  - (ii) agrees that, to the extent that any activity by the Tenant on the Land requires remediation of any existing contamination, such remediation works will be carried out only with the consent of the Landlord (not to be unreasonably withheld or delayed) and at the cost and risk of the Tenant; and
  - (iii) releases the Landlord from any liability in respect of any Contamination existing in or on the Land or Premises after the Commencement Date except to the extent that such Contamination is caused or contributed to by Landlord or the Landlord's Agents after the Commencement Date.
- (c) The Tenant is responsible for the remediation and management of Contamination existing in or on the Premises after the Commencement Date, except to the extent such Contamination:
  - (i) is caused or contributed to by Landlord or the Landlord's Agents after the Commencement Date; or
  - (ii) emanates from adjoining land and is not caused by the Tenant.Any remediation works carried out by the Tenant will be:
  - (iii) subject to the consent of the Landlord (which must not be unreasonably withheld or delayed); and
  - (iv) at the Tenant's cost.
- (d) Clauses 11.6(b) and 11.6(c) 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 Tenant or the Tenant's Associates.
- (e) During the Term, the Tenant must use reasonable endeavours not to cause or perform or allow any activity which may result in or cause or contribute to:
  - (i) any Contamination on, in or emanating from the Premises; or
  - (ii) exacerbate or add to any pre-existing Contamination on, in or emanating from the Premises.
- (f) At the expiration of the Term or within a reasonable time after the sooner determination of this Lease, the Tenant must remediate any Contamination existing in or on the Land to a standard suitable for commercial and industrial use except to the extent such Contamination:
  - (i) is caused or contributed to by Landlord or the Landlord's Agents after the Commencement Date; or
  - (ii) emanates from adjoining land and is not caused by the Tenant.

- (g) At the expiration of the Term or after the sooner determination of this Lease, the Landlord may require the Tenant to provide evidence of compliance with its obligations under clause 11.6(f) in the form of a certification of a type approved by the Landlord (acting reasonably) and addressed to the Landlord from a suitably qualified environmental consultant approved by the Landlord (acting reasonably) certifying that the Land is suitable for commercial and industrial use without the need for any further remediation or management works (unless the certification cannot be obtained due to any Contamination referred to in clauses 11.6(f)(i) or 11.6(f)(ii)).

#### 11.7 Tenant's additional obligations

The Tenant must:

- (a) comply on time with all Laws and the requirements of Authorities in connection with the Premises, the Tenant's business, the Tenant's Property and the use or occupation of the Premises, including works or costs of a structural or capital nature;
- (b) comply with all Australian standards in connection with the Tenant's business;
- (c) comply with the Landlord's obligations to obtain a statement in relation to each essential fire or other safety measure implemented in the Premises as required by the *Local Government Act 1993 (NSW)* ("**Act**") and the regulations thereunder within a reasonable time (having regard to the requirements of the Act and of the Authority administering the Act) and the Tenant, on being required by the Landlord to do so, must at the cost of the Tenant carry out such works and do such things as are necessary to enable the Landlord to obtain the statement and to comply with the Landlord's obligations under the Act; and
- (d) promptly forward to the Landlord copies of all notices received from any Authority which require the carrying out of any works on the Premises or which relate to non-compliance with any Law in relation to the Premises.

#### 11.8 Not used

#### 11.9 Other works

The Tenant must not make any objection or take any action, and the Landlord is not liable, in respect of the carrying out of any works (including any infrastructure works) by the Developer on the land known as the LHBH (as at the date of this Lease) during the initial development of that land by the Developer.

#### 11.10 Tenant warranties

- (a) The Tenant warrants and covenants to the Landlord that:
  - (i) it has power to enter into and observe its obligations under this Lease and all documents and transactions contemplated by this Lease;
  - (ii) it has in full force and effect any authorisation necessary under its constituent documents to accept this Lease and observe obligations under this Lease and allow this Lease to be enforced against it;
  - (iii) its obligations under this Lease are valid and binding and are enforceable against it in accordance with their terms;
  - (iv) this Lease and the transactions contemplated under it do not contravene its constituent documents or any Law, regulation or official directive or any of its

obligations or undertakings by which it or any of its assets are bound to cause a limitation on its powers; and

- (v) except as provided in clause 19, it does not hold its interest under this Lease as a trustee.
- (b) The Tenant must keep the Landlord indemnified against all liability or loss of any kind which the Landlord suffers or incurs as a result of a breach of the warranties and covenants set out in paragraph (a) and the Tenant acknowledges that the Landlord will suffer loss.

## **12. RELEASE AND INDEMNITY BY THE TENANT**

### **12.1 Release**

- (a) The Tenant occupies and uses the Premises at the Tenant's own risk.
- (b) To the fullest extent permitted by Law, the Tenant releases the Landlord from all claims in relation to loss, damage or injury suffered by the Tenant or the Tenant's Associates arising from their use or occupation of the Premises except to the extent contributed to by the act, omission or negligence of the Landlord or the Landlord's Agents.

### **12.2 Indemnity**

Without limiting clause 12.1, the Tenant must keep the Landlord and the Landlord's Agents indemnified against all liability or loss of any kind (whether relating to death or injury to any person, any damage to any property or any other loss, expense or damage) which the Landlord or the Landlord's Agents may suffer or incur to the extent caused by a breach of this Lease by the Tenant, or by the occupation or use of, or access to, the Premises by the Tenant or the Tenant's Associates, except to the extent contributed to by the act, omission or negligence of the Landlord or the Landlord's Agents.

## **13. DEALINGS WITH THE PREMISES**

### **13.1 Prohibited dealings**

- (a) The Tenant must not assign or dispose of any right, interest, duty or obligation under this Lease to any person, firm or corporation.
- (b) Despite clause 13.1(a), the Tenant may sublet or sublicense, provided that:
  - (i) the Tenant provides notice in writing of its intention to sublet or sublicense to the Landlord including details of the sublease or sublicense;
  - (ii) the sublease or sublicense expires prior to the expiry date of this Lease; and
  - (iii) the Tenant does not grant subleases to more than a total of three subtenants at any one time, unless the Tenant first obtains the Landlord's consent to the additional subleases and licenses. The Landlord must not unreasonably withhold its consent under this clause 13.1(b)(iii) and must take into consideration the relevant market use requirements at the time of the Tenant's request for consent.
- (c)
  - (i) If any sublease contains a provision requiring the sublessee to pay to the Tenant or an affiliate of the Tenant a premium in lieu of annual rent or rent in advance, the sublease must require the sublessee to pay annual rent, in addition to any premium or rent in advance, of not less than the amount calculated in accordance with clause 13.1(iii)(ii).

- (ii) For the purpose of clause 13.1(iii)(i), the amount will be calculated using the following formula:

$$\text{Sublease rent} = R \times \frac{A}{B}$$

Where:

- R = the rent payable in the year of this Lease in which the sublease is entered into;
- A = the gross floor area subleased pursuant to the sublease; and
- B = the total gross floor area leased pursuant to this Lease.

- (iii) In this clause 13.1(iii), references to sublease include licence and references to rent include licence fees.
- (d) The Tenant must provide the Landlord with a list of subtenants and licensees in respect of the Premises on each anniversary of the Commencement Date.
- (e) For the purpose of this clause 13.1, the following will not be considered to be subletting but will be considered to be an assignment prohibited under clause 13.1(a) - If the Tenant sublets the whole of the Premises for the balance of the Term.

### 13.2 Transfer conditions

- (a) An assignment of the Tenant's interest under this Lease shall be deemed not to be a breach of clause 13.1(a) if:
- (i) the Tenant has given the Landlord 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 Tenant is not in default under this Lease (of which it has notice), unless the default is waived by the Landlord; and
- (iii) the Tenant establishes to the Landlord's reasonable satisfaction that any proposed assignee meets each of the Assignment Tests; and
- (iv) the Landlord, Tenant, assignee and any guarantor of the proposed assignee (if applicable) enter into a deed in the form reasonably required by the Landlord and Tenant under which (amongst other things):
- (A) the assignee agrees to perform all of the Tenant's express and implied obligations under this Lease from the date of assignment, and (if applicable) the proposed guarantor agrees to guarantee the proposed assignee's obligations from the date of assignment in accordance with clause 18 of this Lease;
- (B) the Tenant and any Guarantor releases the Landlord from all obligations under this Lease from the date of assignment except in respect of any claim(s) that have arisen before the date of assignment;
- (C) the Landlord releases the Tenant and any Guarantor from all of the Tenant's obligations under this Lease or such guarantee from the date of 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 Lease to a Related Body Corporate of the Tenant and the Tenant does not satisfy the condition in clause 13.2(a)(iii), the Tenant and any Guarantor acknowledge that they are not released from their obligations under this Lease 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 Lease and in the Premises will be assets of the relevant trust and that the assignee and its 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 Lease (but subject to the usual exclusions).
- (b) Despite the provisions of clause 13.2(a):
- (i) the Tenant need not satisfy the condition in clause 13.2(a)(iii) in relation to an assignment of the Tenant's rights or obligations under this Lease to a Related Body Corporate of the Tenant (including in relation to a solvent reconstruction); and
  - (ii) if the condition in clause 13.2(a)(iii) is not satisfied, such assignment shall not release or diminish the obligations of the Tenant or any Guarantor under this Lease.
- (c) The parties agree that if the Tenant:
- (i) elects to satisfy clause 13.2(a)(iii) in relation to a proposed assignment to a Related Body Corporate of the Tenant (including in relation to a solvent reconstruction); and
  - (ii) satisfies clause 13.2(a)(iii) in respect of such assignment,
- then clause 13.2(b) does not apply in respect of such assignment.
- (d) The Landlord must execute the deed referred to in clause 13.2(a)(iv) in a timely manner.
- (e) If clause 13.2(b)(ii) does not apply, the Landlord releases the Tenant and any Guarantor from all obligations under this Lease from the date of the assignment except in respect of any claim(s) that have arisen before the date of assignment.

### 13.3 Change in Control - Tenant

If there is a proposed change in Control of the Tenant and the Tenant is not:

- (a) a company; or
- (b) a trustee, responsible entity or custodian of a unit trust,

that is listed on the Australian Stock Exchange or any other recognised stock exchange, then:

- (c) that proposed change in Control is treated as a proposed assignment of this Lease to an incoming tenant;

- (d) the person or entity proposed to acquire Control is treated as an incoming tenant; and
- (e) clause 13.2 applies.

#### 13.4 Landlord may not alienate

- (a) The Landlord must not:
  - (i) sell, assign, concurrently lease or transfer its interest in the Land or this Lease; or
  - (ii) do anything which is analogous or in substitution of a sale, assignment or transfer referred to in clause 13.4(a)(i).
- (b) Clause 13.4(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 Tenant assuming the Landlord's obligations under this Lease and covenanting to comply with the Landlord's obligations under this Lease from the date of transfer. Any such deed will include covenants by the Tenant to perform the Tenant's obligations under this Lease and covenants by any Guarantor to perform the Guarantor's obligations in relation to this Lease for the benefit of the transferee, from the date of transfer, and a release of the Landlord's obligations under this Lease, and the Tenant must enter into any such deed, and must procure that any Guarantor enters into any such deed when requested to do so.
- (c) The Landlord 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 Land or this Lease; or
  - (ii) do anything which is analogous or in substitution of the items described in clause 13.4(c)(i).
- (d) The deed in clause 13.4(b) must also include the Tenant and Guarantor's (if applicable) limitation of liability clause, provided that the limitation of liability includes warranties by the Tenant and Guarantor (if applicable) in their capacity as trustee, responsible entity or custodian of the Tenant and 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 this Lease and in the Premises will be assets of the relevant trust and that the Tenant and the Guarantor 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 Lease (but subject to the usual exclusions).

#### 13.5 Multi-party side deed

- (a) The parties acknowledge that the Tenant may (and is entitled to) grant a security interest (including a Security Interest) over its rights under this Lease to its financier or financiers.
- (b) If requested by the Tenant, the parties must enter into a deed or deeds with the Tenant and the Tenant's financier in a form reasonably required by the Tenant's financier ("**Multi-party Side Deed**").
- (c) The Multi-Party Side Deed referred to in clause 13.5(b) above will generally be consistent with the principles contained in Schedule 1 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 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 financier may have requirements that are different to the principles contained in Schedule 1 (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.
- (e) The Tenant must pay the Landlord's reasonable legal costs in relation to the Multi-Party Side Deed.

## **14. LANDLORD'S OBLIGATIONS**

### **14.1 Quiet Enjoyment**

The Tenant may use and occupy the Premises without being interrupted by the Landlord except where this Lease permits the interruption.

### **14.2 Services**

- (a) The Landlord must use reasonable endeavours to ensure that any Services which are directly controlled by the Landlord and which are normally supplied to the Premises are not interrupted, except for routine repairs and maintenance, or matters beyond the reasonable control of the Landlord.
- (b) The Tenant cannot terminate this Lease and does not have any right of abatement of Rent or of any other amount payable under this Lease by reason of any non-supply or interruption of Services.

### **14.3 Drainage Basins and Batters**

The Landlord must, during the Term, repair, maintain, replace or reinstate the Drainage Basins and Batters within the WSPT Area in order to keep the Drainage Basins and Batters within the WSPT Area in good order, repair and condition having regard to their condition as at the Commencement Date subject to fair wear and tear.

### **14.4 Landlord not to act**

During the Term, the Landlord must not do anything on, in or in respect of the Premises or the Land unless such act or omission is the subject of an express provision in this Lease or is required by Law.

### **14.5 Change in law**

If there is a change in any Law during the Term which affects the rights or obligations of the Landlord or the Tenant under this Lease, the Landlord and Tenant agree to co-operate and act in good faith in order to reach a solution in respect of the rights or obligations affected.

## **15. LANDLORD'S RIGHTS**

### **15.1 Landlord's Proprietary Reservations**

The Landlord reserves the right to appoint agents to exercise some or all of its rights and perform some or all of its duties under this Lease.

### **15.2 Landlord's Right to Enter**

- (a) The Landlord may enter the Premises at any time after giving reasonable prior written notice (being at least 24 hours' notice) to:

- (i) inspect the Premises;
  - (ii) perform any obligation of the Tenant which the Tenant has failed to perform, and in so doing must minimise interference to the Tenant and must comply with the Tenant's reasonable directions.
- (b) In an emergency the Landlord may enter the Premises at any time without giving notice.

### 15.3 Landlord May Perform Tenant's Obligations

The Landlord may perform an obligation of the Tenant which the Tenant has failed to perform. If the Landlord does so the Tenant must reimburse the Landlord for the costs incurred by the Landlord. The Landlord must generally give the Tenant reasonable notice before acting under this provision, but where the Landlord reasonably believes immediate action is required no notice need be given.

### 15.4 Easements

- (a) Where reasonably requested by the Tenant, the Landlord must grant easements and covenants on terms reasonably required by the Tenant:
- (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), including in relation to the Drainage Basins and Batters.
- (b) The Landlord must use reasonable endeavours to procure registration of the easements and covenants referred to in clause 15.4(a) as soon as reasonably practicable after the Tenant's request. The Tenant and the Landlord must 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. The Tenant must pay the Landlord's legal costs and expenses of negotiating, finalising and registering any additional easements and covenants requested by the Tenant and granted pursuant to this clause.

## 16. DEFAULT

### 16.1 Termination Events

- (a) A Termination Event - Rent occurs if:
- (i) the Tenant fails to pay Rent under clause 3.1 and/or Outgoings in accordance with clause 5.1 of this Lease;
  - (ii) the Landlord gives written notice to the Tenant in respect of such breach and demanding the Tenant to pay the Rent and/or Outgoings;
  - (iii) the Tenant fails to pay the Rent or Outgoings within 30 days of the date of the Landlord's notice under clause 16.1(a)(ii);
  - (iv) the Landlord gives further written notice to the Tenant in respect of such breach and giving notice of its intention to terminate if the Tenant fails to pay the Rent and/or Outgoings; and
  - (v) the Tenant fails to pay the Rent and/or Outgoings within 30 days of the Landlord's notice under clause 16.1(a)(iv).



- (b) A Termination Event - Not Rent occurs if
  - (i) the Tenant fails to comply with clause 11.5 in relation to insurance; or
  - (ii) the Tenant fails to comply with clause 13.1(c)(i) in relation to prohibited dealings; and
  - (iii) the Landlord gives written notice to the Tenant in respect of such breach and demanding that the Tenant rectify such breach; and
  - (iv) the Tenant fails to rectify such breach within 60 days of the date of the Landlord's notice under this clause 16.1(b).

#### 16.2 Landlord's Rights for a Termination Event

- (a) If:
  - (i) there is a Termination Event - Rent; and
  - (ii) the Landlord gives written notice to the Tenant of its intention to terminate and demands payment of the Rent referred to in clause 16.1(a); and
  - (iii) the Tenant fails to pay the Rent within 30 days of the date of the Landlord's notice under clause 16.2(a)(ii),

then the Landlord may re-enter and terminate this Lease with written notice to the Tenant.

- (b) If:
  - (i) there is a Termination Event – Not Rent; and
  - (ii) the Landlord gives written notice to the Tenant of its intention to terminate and demands rectification of the breach referred to in clause 16.1(b) (or if the breach cannot be remedied, payment of an amount of compensation determined by the Landlord (acting reasonably) for such breach); and
  - (iii) the Tenant fails to remedy the breach (or if the breach cannot be remedied fails to pay the compensation demanded by the Landlord in respect of that breach) within 60 days of the date of the Landlord's notice under clause 16.2(b)(ii),

then the Landlord may re-enter and terminate this Lease with written notice to the Tenant.

#### 16.3 Dispute

Despite clauses 16.1 and 16.2, the Landlord may not re-enter and terminate the Lease if a matter relevant to the termination is in dispute, and the dispute is one to which clause 20 applies and the dispute has not been determined under clause 20.

#### 16.4 No other right to terminate

Despite any Law to the contrary, no party may terminate this Lease other than in accordance with this clause 16 or clause 17.

#### 16.5 No limitation on other claims

This clause 16 does not limit or otherwise affect any other claim that the Landlord may have against the Tenant for breach of this Lease.

## 16.6 Landlords entitlement to damages

If the Tenant breaches an essential term of this Lease or any other provision of this Lease, the Tenant must compensate the Landlord for the loss or damage suffered by the Landlord as a consequence of such breach. The compensation payable by the Tenant under this clause 16.6 extends to the loss or damage suffered by the Landlord before and after termination of this Lease.

## 17. DAMAGE OR DESTRUCTION

### 17.1 No Reduction in Moneys Payable

For the avoidance of doubt, subject to clause 17.3, if the whole or a substantial part of the Premises is damaged or destroyed so that the Tenant's access to or ability to use the Premises is lost or restricted, Rent and other amounts payable by the Tenant under this Lease do not abate and the Tenant cannot terminate this Lease.

### 17.2 Tenants obligation

- (a) Subject to clause 17.3, if the whole or any substantial part of the Premises is damaged or destroyed:
- (i) the Tenant must remove debris and rubble on the Land and do all things reasonably required by Law to make the Land safe;
  - (ii) if the sub-tenant or sub-tenants at the time of the damage or the destruction is no longer the sub-tenant or sub-tenants, the Tenant must use reasonable endeavours to source a pre-commitment from a sub-tenant or sub-tenants and must have regard to then prevailing market conditions relating to such tenancies; and
  - (iii) if a pre-commitment from a sub-tenant or sub-tenants is secured, the Tenant must use reasonable endeavours to build a new building or other premises which are investment grade on the Land as agreed with a sub-tenant or sub-tenants, subject to clause 9.3(c)(ii).
- (b) If the Tenant has not commenced works to rebuild the new premises in accordance with clauses 17.2(a)(ii) and 17.2(a)(iii) within a reasonable period after the date of the damage or destruction, the Tenant must landscape the Land and maintain it in a reasonably presentable condition for re-letting.

### 17.3 Damage or destruction – last 27 years

- (a) If the whole or any substantial part of the Premises is damaged or destroyed during the last 27 years of the Term, the Tenant:
- (i) is not obliged to comply with the provisions of clause 17.2;
  - (ii) must remove debris and rubble on the Land and do all things reasonably required by Law to make the Land safe;
  - (iii) must within a reasonable period after the date of the damage or destruction, landscape the Land and maintain it in a reasonably presentable condition at the Tenant's cost; and
  - (iv) may rebuild or reinstate the whole or a substantial part of the Premises.
- (b) If the whole or any part of the Premises is damaged or destroyed during the last 27 years of the Term, the Tenant must within 12 months from the date of the damage notify the Landlord if the Tenant elects not to rebuild or reinstate the whole or a

substantial part of the Premises. Despite any other provision of this Lease, this Lease will be terminated upon the later of:

- (i) the date of the Tenant's notice to the Landlord in accordance with this clause 17.3(b); and
- (ii) the date the Tenant reasonably notifies the Landlord that it has satisfied clauses 17.3(a)(ii) and 17.3(a)(iii).

No liability attaches to any party as a result of termination under this clause, but the termination does not prejudice the Landlord's and the Tenant's rights in respect of any prior breach or matter.

For the avoidance of doubt, Rent and other amounts payable by the Tenant under this Lease do not abate.

## **18. GUARANTOR'S OBLIGATIONS**

### **18.1 Liability of Guarantor**

In consideration of the Landlord entering this Lease 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 Lease;
- (b) must keep the Landlord indemnified against all loss or damage incurred by the Landlord as a result of the Tenant breaching this Lease; 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 Lease or from this Lease 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 Tenant or any Guarantor;
- (c) this Lease is varied, assigned or extended;
- (d) this Lease is not or cannot be registered at the LPI;
- (e) the Tenant grants a sub-lease, a licence or any other right to occupation;
- (f) the Land is sold by the Landlord; or
- (g) the Landlord releases the Tenant or any Guarantor.

### **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 Lease 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 Lease.

#### 18.6 Guarantor may not transfer

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

### 19. TRUST PROVISIONS

**[#Insert relevant trustee limitation of liability and warranty provisions for Tenant.]**

### 20. DISPUTE RESOLUTION

#### 20.1 Notification

If a dispute arises out of or in connection with this Lease (other than arising out of a notice served by the Landlord under clause 16.1(a) or the breach by the Tenant of an essential term of the Lease), 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 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) The Expert shall be appointed under such form of expert determination agreement as may be customarily recommended or used by the Australian Institute of Arbitrators and Mediators for that purposes, 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 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 and in accordance with the law of New South Wales.
- (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 parties.
- (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. FOREIGN INVESTMENT APPROVAL**

### **21.1 FIRB Clearance**

- (a) The Tenant warrants to the Landlord that if FIRB Clearance is required for the Tenant to enter into this Lease by FIRB or any other Authority, then the Tenant has obtained FIRB Clearance prior to the Commencement Date.
- (b) The Tenant must, at its own cost, ensure that any required FIRB Clearance is obtained before the Commencement Date or any other time required by FIRB or any other Authority, within timeframes required by FIRB or any other Authority. If requested by the Landlord, the Tenant will provide evidence satisfactory to the Landlord of the FIRB Clearance.

## **22. MISCELLANEOUS**

### **22.1 Waiver and Variation**

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

### **22.2 Remedies Cumulative**

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

### **22.3 Further Assurances**

Each party must at its own expense:

- (a) execute and cause its successors to execute documents and do everything else necessary or appropriate to bind the parties and their respective successors under this Lease; and
- (b) use reasonable endeavours to cause relevant third parties to do likewise to bind every person intended to be bound under this Lease,

provided that by complying with any request the rights and obligations of either party under this Lease shall not be prejudiced.

#### **22.4 Execution of applications, etc**

The Landlord must reasonably co-operate with and assist the Tenant in obtaining all Approvals at the Tenant's cost (including reasonable costs for time spent assisting the Tenant) for any thing which the Tenant is permitted to do under this Lease (including any thing which the Tenant is permitted to do with the Landlord's consent, provided that consent has been given by the Landlord), including promptly executing each application for an Approval upon request by the Tenant.

#### **22.5 Where Approval is Sought**

Whenever this Lease requires the Tenant to seek the consent or approval of the Landlord then unless this Lease expressly provides to the contrary, the Landlord may:

- (a) withhold the consent or approval; or
- (b) impose conditions on the consent or approval,

entirely at its discretion.

Unless otherwise expressed to the contrary in this Lease, the Tenant must pay all reasonable costs incurred by the Landlord and their respective consultants in considering all applications for approval.

#### **22.6 Form of Notices and Approvals**

Notices and approvals required by this Lease must be:

- (a) in writing; and
- (b) signed by an authorised representative of the party giving the notice or approval.

#### **22.7 Address for Notices**

- (a) Notices must be left at or posted to the address or sent to the facsimile number or sent to the email address of the parties set out in the reference schedule.
- (b) A party may change its address or number for service or email address by giving notice to the other parties.
- (c) Notices to the Tenant may also be posted to or left at the Premises.

#### **22.8 Time of Service of Notices**

A notice is deemed to be given:

- (a) if sent by post, on the second Business Day after posting;
- (b) if sent by facsimile, at the time it is transmitted so long as the sending party's transmission confirmation report is available and confirms the transmission; and
- (c) if sent by 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.

## 22.9 Exclusion of Warranties

This lease contains the entire agreement between the parties relating to its subject matter. The parties agree that no other promise, undertaking, representation or warranty has been given by a party to any other party.

## 22.10 Time of the Essence for Tenant's Obligations

Wherever a time is specified in this Lease for the Tenant to perform any act, time is of the essence and remains so notwithstanding any delay or inactivity on the part of the Landlord.

## 22.11 Obligations of Tenant's Associates

- (a) The Tenant must ensure that:
  - (i) the Tenant's Associates (not including subtenants) do or do not do the acts or things the Tenant is obliged by this Lease to do or not do; and
  - (ii) the Tenant's sublessees do or do not do the acts or things the Tenant is obliged by this Lease to do or not do.
- (b) The Landlord must ensure that Landlord's Agents do or do not do the acts or things the Landlord is obliged by this Lease to do or not do.

## 22.12 Exclusion of statutory provisions

In this Lease:

- (a) the covenants, powers and provisions implied in leases by virtue of sections 84, 84A, 85, 86, 133B of the *Conveyancing Act 1919* (NSW) do not apply; and
- (b) words used in any of the forms of words in the first column of part 2 of schedule 4 of the *Conveyancing Act 1919* (NSW) do not imply a covenant under section 86 of the Act.

## 22.13 Notice of breach

The Tenant must not take action against the Landlord for breach by the Landlord of any obligation under this Lease unless:

- (a) the Tenant notifies the Landlord of the breach; and
- (b) the Landlord fails to remedy the breach within a reasonable time after the date of the Tenant's notice.

## 23. INTERPRETATION

### 23.1 General

In this Lease:

- (a) headings must be ignored for interpretation purposes;
- (b) an obligation of two or more persons binds them jointly and severally;
- (c) a reference to:
  - (i) a body whose functions have become exercisable by another body is a reference to the latter body;
  - (ii) an Act of Parliament includes that Act as amended or replaced and all regulations made under it;

- (iii) a person includes the person's legal personal representatives and successors at Law;
  - (iv) a month is a reference to a calendar month;
  - (v) a clause is a reference to a clause of this Lease;
  - (vi) an item is a reference to an item of the reference schedule;
  - (vii) any thing is a reference to the whole or any part of it;
  - (viii) a group of people or things is a reference to any one or more of them; and
  - (ix) the "end of the Term" is to the time the Term finishes for any reason including because it expires or is surrendered or determined;
- (d) unless the context otherwise requires:
- (i) a gender includes the other genders;
  - (ii) where any form of the word "include" appears, it is to be read as if followed by the words "without limitation";
- (e) examples are descriptive only and not exhaustive;
- (f) each obligation imposed on the Tenant or the Guarantor is a separate covenant in favour of the Landlord;
- (g) sums of money are expressed in Australian currency; and
- (h) if:
- (i) this Lease specifies the date or a period by which something must be done which ends; or
  - (ii) a financial obligation falls due
- on a day which is not a Business Day, the date, period or financial obligation is extended to the next Business Day.

### 23.2 Severance

If any provision of this Lease offends any Law and so is illegal, invalid or unenforceable it must be read down to the extent necessary to make it valid and enforceable, but if that is not possible it is severed from this Lease.

### 23.3 Applicable Laws

This lease is governed by the Laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales in respect of all matters arising under or relating to this Lease.



## Schedule 1 – Financier consent deed principles

- 1 The Landlord consents to the grant of the Security by the Tenant to the Financier, and consents to the Security Agreement.
- 2 The Financier consents to the execution of this Lease by the Tenant.
- 3 The Landlord agrees that a grant under paragraph 1 does not constitute a breach or default event under this Lease and does not entitle the Landlord to terminate or suspend performance of any of its obligations under this Lease.
- 4 If the Tenant breaches or defaults under this Lease, which breach or default gives rise to a right of termination or rescission of any this Lease to the Landlord, the Landlord will:
  - (a) give the Financier a copy of any breach or default notice it sends to the Tenant in respect of such breach or default on the same day it is given to the Tenant;
  - (b) if requested, give the Financier any update as to the Tenant's progress in remedying such breach or default;
  - (c) give the Financier written notice that the Tenant's breach or default may give the Landlord a right to terminate or rescind this Lease; and
  - (d) not exercise its right to terminate or rescind or suspend performance of any of its obligations for a period of 90 days after the notice in paragraph 4(a) ("**Cure Period**").
- 5 The Financier may at any time and from time to time assume the rights and obligations of the Tenant under this Lease 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:
  - (a) must perform all obligations of the Approved Tenant under this Lease arising on and from the Enforcement Date;
  - (b) must remedy any default or breach of this Lease by the Tenant 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 Tenant under this Lease.
- 8 If a Step-in Notice has been issued, the Landlord will only be entitled to terminate this Lease if the Financier does not cure the breach or default the subject of the notice under paragraph 4 within the Cure Period.
- 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 this Lease other than for the period between the issue of the Step-in Notice and the issue of the Step-Out Notice. Such release will not affect or prejudice the continuation of the Tenant's obligations to the Landlord under this Lease.