

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**")

King & Wood Mallesons

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Item 9 – Premises

[#To be inserted. To be whole of land]

Item 10 - Permitted Use

Supermarkets, speciality shops, bulky goods and large format retail

[Redacted content for Item 10 - Permitted 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:

Access Roads the roads shown in the plan attached at Schedule 3

Agreement for Ground the agreement for ground lease between the Landlord, the Tenant

Lease	and [#insert developer entity for relevant agreement for ground lease] dated [#insert]
Amended Certification	has the meaning given to that term in the Agreement for Ground Lease
API	Australian Property Institute or any body replacing it
Approval	all consents, permits, licences, approvals, authorisations and exemptions from, by or with an Authority
Assignment Tests	means that a person: <ul style="list-style-type: none">(a) is not Insolvent;(b) (combined with any proposed guarantor) is of sufficient financial standing to perform its relevant obligations under this Lease;(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;(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(e) is otherwise ready, willing and able to carry out the obligations of the Tenant under this Lease
Authority	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
Business Day	a day which is not a Saturday, Sunday or public holiday in Sydney
Certification Date	[#insert the date of the Initial Certification or Amended Certification (as relevant) provided by the Landlord under the Development Management Agreement]
Commencement Date	the date mentioned in item 12
Contamination	the presence in, on or under land, air or water of a substance (whether a soil, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment and Contaminant has a corresponding meaning
Council	Blacktown City Council, or the relevant local government authority or other relevant development consent authority.

Developer	Frasers Property Industrial Constructions Pty Limited
Developer's Period	means the period: <ul style="list-style-type: none">(a) commencing on [#insert the date the Developer commenced physical works for the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works (as those terms are defined in the Development Management Agreement) on the Land]; and(b) ending on [#insert the date of expiry of the Developer's Period for the Land as notified by the Developer to the Landlord under clause 14.6(f) of the Development Management Agreement]
Development Management Agreement	the development management agreement between the Landlord and the Developer (and other parties) dated [#insert]
Development Masterplan	means the document attached at Schedule 6. [#Note: The Development Masterplan current as at the date of the relevant Agreement for Ground Lease to be inserted at Schedule 6.]
Drainage Basins	means the drainage basins servicing the Land or Premises as shown on the plans in Schedule 2.
Environment	includes: <ul style="list-style-type: none">(a) eco systems and their constitute parts, including people and communities, natural and physical resources;(b) the qualities and characteristics of locations, places and areas; and(c) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a) or (b).
Environmental Law	includes any Law relating to any aspect of the Environment.
GST	GST within the meaning of the GST Act
GST Act	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (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)
Initial Certification	has the meaning given to that term in the Agreement for Ground Lease
Initial Use	[#insert the initial proposed use in accordance with the site development proposal submitted under the Development Management Agreement]
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
Law	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
Lease Year	each period of 365 days calculated from the Commencement Date (or 366 days in respect of a leap year)
LPI	Land and Property Information New South Wales or any replacement department or authority

Neighbourhood	means use of the Premises as a speciality and large format retail centre to service the neighbourhood of Eastern Creek
Other Use	any retail or quasi-retail use permitted by Law but not residential use
Outgoings	(a) rates, taxes, levies, assessments, impositions, duties and fees (other than income or capital gains tax) including without limitation water and sewerage rates, charges and costs for all emergency services levies, council rates and planning levies in respect of the Premises; and (b) land tax imposed in respect of the Premises
Owner's Period	means the period: (a) commencing on [#insert Effective Date under Development Management Agreement]; and (b) ending on [#insert commencement date of the Construction Licence for the Land], but excluding the Developer's Period
Permitted Use	the use specified in item 10
Premises	the premises described in item 9 and includes any buildings or other structures on the Premises
Related Body Corporate	has the meaning given to that term under the <i>Corporation Act 2001</i> (Cth)
Rent	the rent set out in item 14 and payable under clause 3 as varied from time to time
Retail Centre	means the land located on the corner of Rooty Hill Road South and Great Western Highway, Eastern Creek NSW, including all land within stages 1, 2, 3 and 4 of the development known, as at the date of this Lease, as the Eastern Creek Retail Centre
Retail Centre Tenant	means any tenant under a ground lease for part of the Retail Centre (but, for the avoidance of doubt, does not include any subtenants), including the Tenant
Retail Use	any retail or quasi-retail use permitted by Law (which may include retail, supermarket, speciality shops, large format retail, bulky goods, business premises, commercial offices, childcare, medical, entertainment and service stations) but not residential use
Rent Day	has the meaning given to that term in clause 3.1
Retail Lease Strategy	

Security Interest	includes: <ul style="list-style-type: none">(a) a mortgage, charge, lien or pledge or any other right by way of security; and(b) a security interest within the meaning of section 12(1) of the <i>Personal Properties Securities Act 2009</i> (Cth)
Services	all services and utilities to or of the Premises or the Land provided by authorities or the Landlord, including (but not limited to) power, water, gas, telecommunications, fire services, sewerage, trade waste removal and like utility services
Stage	4 step staging contemplated and described in the Development Masterplan and references to "Stage 1", "Stage 2", "Stage 3" and "Stage 4" are references to each of those stages
Tax Invoice	a tax invoice that complies with the GST Act.
Tenant	means the party described in item 4 and its successors and permitted assigns
Tenant's Associates	any employee, agent, visitor, sub-lessee or contractor of the Tenant
Tenant's Fittings	all equipment, machinery and other items including all furniture, furnishings, wall coverings and equipment of a similar nature, but

	excluding Tenant's Fixtures
Tenant's Fixtures	all improvements, buildings, fixtures, fixed plant and equipment, fittings and partitions existing on or constructed on the Premises from time to time
Tenant's Property	the Tenant's Fittings and the Tenant's Fixtures
Term	the term specified in item 11
Termination Date	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
Termination Event – Not Rent	has the meaning given to that term in clause 16.1(b)
Termination Event - Rent	has the meaning given to that term in clause 16.1(a)
Trafficable Vehicular Roadway	roadway of such engineering, structure, materials and design appropriate for the effective long term use of the traffic and vehicles which from time to time use the Access Roads
this Lease	means this Lease
Upgrade Works	has the meaning given to that term in clause 14.4(b)
Valuer	an independent valuer who must: <ul style="list-style-type: none"> (a) be a full time member of the API; (b) have at least 5 years' experience in valuing premises similar to the Premises; and (c) be active in the property market at the time of appointment
WHS Law	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	<i>Western Sydney Parklands Act 2006</i> (NSW)

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 months' 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

On each anniversary of the Commencement Date, the Rent is to be increased
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, on or before the due date for payment, provided that, in relation to any Outgoings referred to in clause 5.1(c), the Tenant must make payment by the due date for payment, or promptly after receipt of the relevant notice or correspondence, whichever is the later.
- (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.
- (d) Where the Landlord has paid any Outgoings, the Tenant must pay any amount payable by it in relation to such Outgoings to the Landlord within 10 Business Days after the Landlord has made written request for payment to the Tenant which includes reasonable details.

5.2 Drainage Basins

- (a) The parties agree that the Landlord is responsible for the costs incurred in connection with maintaining and repairing the Drainage Basins in accordance with clause 14.3 ("**Drainage Basins Cost**") and the Tenant is not required to contribute to the Drainage Basins Cost.
- (b) Despite clause 5.2(a), where the Tenant and the Tenant's Associates (or either of them) damage the Drainage Basins (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 Access Roads

- (a) The parties agree that the Tenant must contribute to the Landlord's costs in connection with maintaining, repairing and, if agreed by Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads, upgrading and replacing the Access Roads in accordance with clause 14.4 ("**Access Roads Cost**"). The parties agree that the Access Roads Costs will include the Landlord's costs in connection with capital works in respect of the repair and maintenance of the Access Roads Costs. However, the parties agree the Access Road Costs will only include capital costs in respect of Upgrade Works to the extent the Upgrade Works were agreed by the Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads in accordance with the provisions of clause 14.4.

- (b) The Tenant's contribution to the Access Roads Cost will be based on the proportion that the land area of the Premises bears to the total land area benefited by the Access Roads, as determined by the Landlord (acting reasonably) from time to time.
- (c) Despite clause 5.3(b), where the Tenant and the Tenant's Associates (or any of them) damage the Access Roads (other than as a result of fair wear and tear from use which is consistent with the specification for which the Access Roads were designed) then the Tenant is liable for all reasonable costs of repair works attributable to the rectification of that damage.
- (d) 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 5.3 and 14.4.
- (e) The Landlord must use its reasonable endeavours to minimise the Access Roads Costs and the costs referred to in clause 5.3(c) to ensure that the amount of those costs is fair and reasonable having regard to the standard, quality and condition of the Access Roads.
- (f) Each Outgoings Year, the Landlord must give the Tenant and every other Retail Centre Tenant a budget setting out:
 - (i) the Landlord's reasonable estimate of the Access Roads Cost in respect of the repair and maintenance (excluding capital costs) of the Access Roads and reasonable details of how the estimate is arrived at; and
 - (ii) the reasonable anticipated capital works required to repair or replace the Access Roads, the estimated costs of such capital works and reasonable details of how the estimate is arrived at,("Draft Budget").
- (g) Within 10 Business Days of receipt of the Draft Budget, the Tenant must notify the Landlord whether or not it approves the Draft Budget (such approval not to be unreasonably withheld). If the Tenant does not approve the Draft Budget, it must give reasons for its rejection and, subject to clause 5.3(h) and clause 5.3(i), the Landlord may re-submit a revised Draft Budget to the Tenant and every other Retail Centre Tenant addressing the reasons for the Tenant's rejection (and any other Retail Centre Tenant's rejection). The provisions of clause 5.3(g) will apply to the revised Draft Budget.
- (h) If Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads approve the Draft Budget, then the Draft Budget is deemed to be approved under this Lease ("**Approved Budget**") and the Landlord must, within 10 Business Days of receiving the last approval from the Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads, give to the Tenant a notice stating the Landlord's reasonable estimate of the Tenant's contribution to the Access Roads Cost for that Outgoings Year, which must be based on the Approved Budget.
- (i) If Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads do not approve the Draft Budget the Landlord may, instead of re-submitting a revised Draft Budget to the Tenant and every other Retail Centre Tenant, refer the dispute to an expert to resolve the dispute. If the Landlord and the Retail Centre Tenants cannot agree on the appointment of an expert , then the expert must be appointed by the President of the Australian Institute of Arbitrators and Mediations, New South Wales Chapter. Clauses 20.5(b) to 20.5(f)(inclusive) and clause 20.5(h) apply to the determination by the expert. The costs of the expert are an "Access Road Cost" for the purpose of this Lease.
- (j) The Tenant must pay instalments in advance on each Rent Day on account of the Access Roads Cost. Each instalment is the Landlord's estimate of the Access Roads Cost for that Outgoings Year divided by the number of Rent Days in that Outgoings Year.

- (k) The Tenant need not pay for instalments for the first Outgoings Year until the Landlord gives it a notice stating its estimate of the Access Roads Cost for that Outgoings Year.
- (l) 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 Access Roads Cost, an instalment equal to that payable on the previous Rent Day.
- (m) As soon as possible after the end of an Outgoings Year,
the Landlord must give the Tenant a notice giving details of the actual Access Roads Cost (including details of the costs of the capital works (if any) required to repair or replace the Access Roads) supported by copies of all accounts and receipts.
- (n) i), 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 Access Roads Cost for the Outgoings Year to which the notice applies and what the notice says is payable.
- (o) Despite clause 5.3(n), the Tenant is not required to pay the Landlord the difference between what the Tenant has paid on account of Access Roads Cost if the actual cost incurred by the Landlord for capital works exceeds the estimated cost of such works set out in the Approved Budget by more than % unless the Tenant has previously approved the additional cost in writing, such approval not to be unreasonably withheld.

5.4 Apportionment

Outgoings and Access Roads Cost 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.

5.5 Minimisation of Outgoings and Access Roads Cost

- (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 Retail Centre; and
 - (ii) minimise the Access Roads Cost to ensure the amount of the Access Roads Cost is fair and reasonable having regard to the standard and quality of the Access Roads.
- (b) 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.

5.6 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 Landlord 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)
 - (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, any improvements and all plant and equipment 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);
- (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); and

- (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).

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; and
- (c) in accordance with any reasonable directions given and reasonable 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

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 storage 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 storage tanks and make good any damage caused by the installation or removal of the underground storage 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 Vesting in Landlord

Other than as required by Law, it is the express intention of the parties that all improvements and works which are Tenant's Fixtures:

- (a) vest in the Tenant until the expiration of the Term or sooner determination of this Lease, and each party must execute further documents as may be required to effect that vesting; and
- (b) if not already vested, will vest in 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 and each party must execute further documents as may be required to effect that vesting.

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 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 the sooner determination of this Lease, the Tenant must ensure it has complied with its obligations under clause 11.7(g).

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)

- (c) 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 Retail Centre, a copy of which is attached at Schedule 5 (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 Permitted Use

- (a) Subject to clauses 11.1(b), 11.2(b) and 11.2(c), the Tenant must obtain the Landlord's prior written consent (acting reasonably) to change the Permitted Use and, if approved, the provisions of clause 11.2(d) apply to vary the Rent under this Lease with effect from the date that the Landlord approves the change of the Permitted Use (**Varied Rent Date**).
- (b)
- (c) The Landlord must promptly provide its approval to a request by the Tenant to change the Permitted Use under clause 11.2(a) if:
- (i) the proposed permitted use is a Retail Use; and
 - (ii) subject to the Tenant obtaining all Approvals required for the proposed permitted use, the proposed permitted use will 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.

If the Landlord does not provide its approval in accordance with this clause 11.2(c) within 15 Business Days of the Tenant's request under clause 11.2(a), the Landlord will be deemed to have approved the change to the Permitted Use.

- (e) The proposed new use of the Premises must comply with:

- (i) the provisions of the State Environmental Planning Policy (Western Sydney Parklands) 2009;
- (ii) the plan of management for the Land or Premises that the Landlord has prepared and established for the Retail Centre, a copy of which is attached at Schedule 5 (to the extent that plan is still in place);
- (iii) the relevant development approval in respect of the Land and improvements on the Land;
- (iv) all Laws and requirements of any Authorities; and
- (v) the WSPT Act.

11.3 Security

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

11.4 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.

11.5 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.
- (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.

11.6 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 11.6(a) and 11.6(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 11.6(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 11.6(d), (ii) or (iii) are at any time not satisfied, the Tenant must immediately take out the insurance provided for in this clause 11.6 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 11.6(a) and 11.6(b) will be deemed fully complied with by the Tenant where:
 - (i) the Tenant's global insurance policy includes the insurances required under clauses 11.6(a) and 11.6(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.

11.7 Environmental Requirements

- (a) Subject to clause 11.7(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; and
 - (ii) 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) Subject to clause 11.7(e), the Tenant is responsible for the remediation and management of Contamination existing in or on the Premises after the Commencement Date and any remediation works carried out by the Tenant will be:
 - (i) subject to the consent of the Landlord (which must not be unreasonably withheld or delayed); and
 - (ii) at the Tenant's cost.

- (d) Clauses 11.7(b) and 11.7(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) The parties agree that clause 11.7(c) does not apply to any Contamination existing in, on or emanating from, the Land or the Premises to the extent such Contamination:
 - (i) is caused by any person, other than the Tenant or the Tenant's Associates or the Developer or the Developer's authorised representatives, consultants, employees, agents, contractors or invitees after the Certification Date and during the Owner's Period before the Commencement Date; or
 - (ii) is caused by the Landlord or the Landlord's Agents after the Certification Date; or
 - (iii) emanates from adjoining land and is not caused by the Tenant.
- (f) 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.
- (g) 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 by any person, other than the Tenant or the Tenant's Associates or the Developer or the Developer's authorised representatives, consultants, employees, agents, contractors or invitees during that part of the Owner's Period after the Certification Date and before the Commencement Date; or
 - (ii) is caused or contributed to by Landlord or the Landlord's Agents after the Certification Date; or
 - (iii) emanates from adjoining land and is not caused by the Tenant.
- (h) 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 11.7(g) 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 11.7(g)(i), 11.7(g)(ii) or 11.7(g)(iii)).

11.8 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.

11.9 Not used

11.10 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) on the land known as the Eastern Creek Retail Centre (as at the date of this Lease) during the initial development of that land by the Developer.

11.11 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, sublicense or otherwise part with possession of the Premises, provided that the Tenant provides notice in writing of its intention to sublet, licence or part with possession to the Landlord including details.
- (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(c)(ii).
 - (ii) For the purpose of clause 13.1(c)(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(c), 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):
 - (i) 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 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, and (if applicable) the proposed guarantor agrees to guarantee the proposed assignee's obligations 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) 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 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 13.3(a)(i).

- (b) Clause 13.3(a) will not apply in relation to any transfer to any government or statutory authority, or any transfer effected by any statute, provided that in the case of a transfer to any government or statutory authority which is not effected by statute, the Landlord procures the proposed new registered proprietor to enter into a deed with the 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 13.3(c)(i).
- (d) The deed in clause 13.3(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).

13.4 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 13.4(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.

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

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

14.4 Access Roads

- (a) The Landlord must, during the Term, repair, maintain and, where requested by a the Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads, upgrade and replace the Access Roads in order to keep the Access Roads as a Trafficable Vehicular Roadway in accordance with this clause 14.4.
- (b) The Tenant may at any time (but not more than once in every 5 years of the Term) give the Landlord written notice requesting the Landlord undertake upgrade or replacement (or both) works to the Access Road ("**Upgrade Works**"), including reasonable detail of the Upgrade Works requested by the Tenant.
- (c) If the Tenant gives a notice under clause 14.4(b), the Landlord must use reasonable endeavours to obtain the consent of the other Retail Centre Tenants to the Upgrade Works within a reasonable time and keep the Tenant reasonably informed of the Landlord's communications with the other Retail Centre Tenants in relation to the Upgrade Works.
- (d) If the Landlord obtains the consent of the Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads the Landlord must carry out the Upgrade Works within a reasonable time after receiving the estimated cost of the Upgrade Works from the Retail Centre Tenants.
- (e) The Landlord acknowledges and agrees that the Tenant, and any subtenants, licensees and occupiers of any part of the Premises in common with the Landlord and all others having the right to use the Access Roads, may use the Access Roads at any time for the purpose of accessing the Premises.
- (f) The Tenant and the Tenant's Associates must:
 - (i) not do any act likely to jeopardise or prejudicially affect the safety or reliable working of the Access Roads and must at all times refrain from using the Access Roads in a matter likely to obstruct or unreasonably hinder access to the Access Roads by others with the like right;

- (ii) cause as little inconvenience as is practical and minimise any interference to the use of the Access Roads by others with a like right;
 - (iii) not park or stand a motor vehicle or any other item on the Access Roads, except where expressly permitted;
 - (iv) not construct any structure on the Access Roads;
 - (v) not do anything on or use the Access Roads in a manner which is unlawful on public or private roads in New South Wales; and
 - (vi) not cause any damage to the Access Roads (other than fair wear and tear).
- (g) The Landlord may make reasonable rules about the use of the Access Roads by the Tenant and the Tenant's Associates. The rules may not be inconsistent with the terms of this Lease and to the extent of any inconsistency, the terms of this Lease prevail.

14.5 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.

14.6 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

The Landlord may enter the Premises at any time after giving 24 hours' notice to:

- (a) inspect the Premises;
- (b) 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.

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) Subject to clause 15.4(b) and 15.4(c), the Landlord may grant easements and covenants for the provision of Services:
 - (i) as required pursuant to any condition of the "Subdivision Approval" or the "Development Consent" (as those terms are defined in the Agreement for Ground Lease); and

- (ii) where any such condition has been accepted by the Developer and the Tenant in accordance with clause 3.2 of the Agreement for Ground Lease; or
 - (iii) where reasonably requested by a Retail Centre Tenant for access over relevant roads or use of infrastructure necessary for Services to the premises under the relevant ground lease where that access or infrastructure is within, or benefits, the premises.
- (b) Where reasonably requested by the 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).
- (c) The Tenant must not object to the establishment of any rights referred to in clause 15.4(a) unless the establishment of that right would substantially lessen the enjoyment of rights conferred on the Tenant by this Lease.
- (d) The Landlord must use reasonable endeavours to procure registration of the easements and covenants referred to in clause 15.4(b) 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

16.2 Landlord's Rights for a Termination Event

16.3 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.

16.4 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.

16.5 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 16.5 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, 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 at the time of the damage or the destruction is no longer the sub-tenant, the Tenant must use reasonable endeavours to source a pre-commitment from a sub-tenant or sub-tenants; and
 - (iii) the Tenant must use reasonable endeavours to build a new building or other premises 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 clause 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 years

- (a) If the whole or any substantial part of the Premises is damaged or destroyed during the last 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 years of the Term, the Tenant must notify the Landlord if the Tenant elects not to rebuild or reinstate the whole or a substantial part of the Premises within 12 months of the date of the damage. 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.

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 under clause 11.2(d)(iii)), 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

20.3 **The dispute**

If the claim is not accepted 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 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, 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
- (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. MISCELLANEOUS

21.1 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.

21.2 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.

21.3 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.

21.4 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.

21.5 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.

21.6 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.

21.7 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.

21.8 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.

21.9 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.

21.10 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.

21.11 Obligations of Tenant's Associates

- (a) The Tenant must ensure that:
 - (i) the Tenant's Associates (not including sublessees) 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 not to 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.

21.12 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.

21.13 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.

22. INTERPRETATION

22.1 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.

22.2 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.

22.3 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 under this Lease for a period of 90 days after the notice in paragraph 4 ("**Cure Period**").
- 5 The Financier may at any time and from time to time assume the rights and obligations of the 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.
- 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. Such release will not affect or prejudice the continuation of the Tenant's obligations to the Landlord under this Lease.
- 11 Exercise of any rights or powers under the Security Agreement by the Financier will not of itself constitute a default or breach of this Lease and will not of itself entitle the Landlord to exercise any right of termination of this Lease.

12 The Landlord and Tenant must not amend or vary or agree to amend or vary this Lease 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 Tenant in favour of the Financier from time to time in respect of the Tenant's interest in this Lease.

(d) "**Security Agreement**" means an agreement for the grant of the Security between the Tenant and Financier.

(e) "**Step In**" means the assumption of rights and obligations of the Tenant under this Lease by the Financier in accordance with the Step-In Notice.

Schedule 2 – Drainage Basins Plan

Schedule 3 - Access Roads Plan



Schedule 4 – Not used

Schedule 5 – Plan of Management



Schedule 6 – Development Masterplan

Schedule 7 – Calculations



1. 1. 1.

1. 1. 1.



Signing page

DATED: _____

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

[#insert relevant execution clauses]

[#This Pro-Forma Agreement for Ground Lease has been prepared for an Owner/Occupier Transaction.]

Agreement for Ground Lease

Premises: Eastern Creek Retail Centre

Dated

[#insert name of Developer entity] (“Developer”)

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

[#insert name of tenant] (“Tenant”)

[#insert name of Guarantor] (“Guarantor”)

King & Wood Mallesons

Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
Australia
T +61 2 9296 2000
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Agreement for Ground Lease

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Agreement for Ground Lease

Details

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

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

Date of agreement

See Signing page

Agreement for Ground Lease

General terms

1 Interpretation

1.1 Definitions

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

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

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

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

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

Assignment Tests means that a person:

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

Authorised Officer means:

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

Authority means:

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

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

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

Building means the building contemplated by the Works.

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

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

Commencement Date means the first to occur of:

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Environment includes:

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

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

Expiry Date means the expiry date of the Ground Lease.

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

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

Force Majeure Event means any of the following event:

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

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

Funding Commitments means commitments:

- (a) from acceptable equity investors or proposed financiers or both;
- (b) to provide funds to be used in carrying out the Works totalling not less than the cost of the Works in the Site Development Proposal;

- (c) which are in writing, legally binding on the acceptable equity investors and proposed financiers, as the case may be, and enforceable by the Tenant; and
- (d) which are unconditional.

Ground Lease means the ground lease of the Premises in the form of the Form of Ground Lease as completed under clause 2.5.

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

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

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

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

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

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

Insolvent means in relation to a body corporate:

- (a) a "controller" (as defined in the Corporations Act 2001 (Cth)), Manager, Trustee, Receiver, Receiver and Manager, Administrator or similar officer is appointed in respect of the body corporate or any asset of the body corporate;
- (b) a liquidator or provisional liquidator is appointed in respect of the body corporate;
- (c) an application is made to the court for an order, a court makes an order, a meeting is convened or a resolution is passed, for the purpose of:
 - (i) appointing a person referred to in paragraph (a) or (b);
 - (ii) winding up or deregistering the body corporate; or
 - (iii) proposing or implementing a scheme of arrangement (other than a scheme of arrangement relating to a reconstruction or amalgamation while solvent),other than an application which is withdrawn, dismissed or set aside within 21 days after it is made; and
- (d) the body corporate enters into, resolves to enter into or proposes a reorganisation, moratorium or other form of administration involving an arrangement, composition or compromise with, or assignment for the benefit of, its creditors generally or any class of them, other than for the purposes of a reconstruction or amalgamation while solvent.

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

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

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

Law means:

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

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

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

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

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

..

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

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

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

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

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

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

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

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

Security Interest includes:

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

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

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

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

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

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

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

Subdivision Plan means the plan in Schedule 3.

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

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

Tenant's Site Works has the meaning given to the term "Developer's Site Works" in the Development Management Agreement, in so far as the works are within, or for the benefit of, the Land and performed by the Tenant on or after the grant of the Construction Licence.

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

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

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

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

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

1.2 Interpretation

- (a) Words which begin with a capital letter and are not defined in this agreement but are defined in the Ground Lease have the same meaning in this agreement as in the Ground Lease.

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

1.2 Headings

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

2 Agreement to grant Ground Lease

2.1 Grant

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

2.2 Delivery of Form of Ground Lease to the Tenant

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

2.3 Delivery of Form of Ground Lease

Within 10 Business Days of receipt of the Form of Ground Lease under clause 2.2, the Tenant and the Guarantor must execute the Form of Ground Lease in triplicate and the Tenant must hold the executed form of Ground Lease in escrow.

2.4 Not used

2.5 Completion of Form of Ground Lease

The Tenant or its solicitors may:

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

2.6 Stamping

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

2.7 Parties bound

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

2.8 Consents

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

2.9 Caveats

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

3 Conditions subsequent

3.1 Agreement for lease is conditional

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

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

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

- (viii) the Tenant providing satisfactory evidence of Funding Commitments to the Landlord by the CC Date.

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

3.2 Development Application and Subdivision Application

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

3.3 Development Consent and Subdivision Approval

- (a) after receiving a Development Consent or Subdivision Approval from the Council the Tenant must provide a copy of that consent or approval to the Landlord.
- (b) after receiving a copy of the Development Consent or Subdivision Approval under clause 3.3(a), the Landlord must notify the Tenant whether or not that consent or approval is on conditions acceptable to the Landlord.
- (c) after the date the Tenant receives a Development Consent or Subdivision Approval from the Council, the Tenant must notify the Landlord whether or not the relevant consent or approval is on conditions acceptable to the Tenant.
- (d) The Landlord and Tenant must not reject the Development Consent or Subdivision Approval unless the Development Consent or Subdivision Approval are on conditions that are the relevant party's Unusual Conditions.

3.4 Construction Certificate

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

3.5 Landlord's works

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

3.6 Extensions of dates

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

a reasonable time

(e) If the CC Date is extended under paragraph (d), the Tenant must notify each other party to this agreement in writing of the relevant delay as soon as practicable after commencement of the relevant delay, and must notify each other party to this agreement in writing as soon as reasonably practicable after the expiry of the relevant period of delay of such expiry and of the total number of days by which the CC Date has been extended.

(f) Despite the provisions of clauses 3.6(a) to 3.6(e) and despite any other provision of this agreement:

- (i) if a party is unable to perform or is delayed in performing an obligation under this agreement by reason of a Force Majeure Event ("**Affected Party**"); and
- (ii) the Affected Party gives notice of such delay to each other party to this agreement,

then:

- (iii) that obligation is suspended but only so far and for so long as it is affected by the Force Majeure Event; and
- (iv) the Affected Party will not be responsible for any loss or expense suffered or incurred by any other party as a result of, and to the extent that, the affected party is unable to perform or is delayed in performing its obligations because of the Force Majeure Event.

(g) If the Development Consent is taken to be refused by the Council under section 82 of the *Environmental Planning and Assessment Act 1979* (NSW), ("**Act**") then if the Tenant:

- (i) lodges an application for review of the deemed refusal of the relevant consent under section 82A(1) of the Act; or
- (ii) appeals the deemed refusal of the consent under section 97 of the Act,

the Approval Date will be extended by the number of days from the date on which the relevant consent was deemed to be refused until the date on which:

- (iii) the Council makes a decision under section 82A(4) of the Act (if applicable); or
- (iv) the Land and Environment Court determines whether to confirm or refuse the deemed refusal of the relevant consent (if applicable).

(h) If the Approval Date is extended under paragraph (g):

- (i) the CC Date will also be automatically extended for the same number of days; and
- (ii) the Tenant must notify each other party to this agreement in writing as soon as practicable after the date on which the relevant consent was deemed to be refused and must further

notify each other party to this agreement in writing as soon as practicable after the date of the decision or determination under paragraph (g)(iii) or (iv), and of the number of days by which the Approval Date has been extended.

3.7 Termination

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

3.9 Construction Licence

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

4 Works

4.1 Manner of works

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

4.2 Changes to Plans and Specifications and Works

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

4.3 Inspection of Works

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

4.4 Practical Completion

- (a) The Tenant must use reasonable endeavours to achieve Practical Completion as soon as reasonably practicable following satisfaction of all of the conditions subsequent in clause 3.1.
- (b) The Tenant must notify the Landlord of the Tenant's estimated date of Practical Completion
- (c) Practical Completion is achieved when:
 - (i) the Subdivision Plan is registered at the New South Wales Land and Property Information, and a separate Certificate of Title for the Land is issued; and
 - (ii) the Architect certifies that the Works are substantially complete except for minor omissions and defects which do not prevent the Premises from being reasonably capable of being used for their intended purpose; and
 - (iii) the Landlord is provided with a copy of the Occupancy Permit.
- (d) The Tenant must cause the Architect to make his or her determination under clause 4.4(c) as an independent certifier.
- (e) The Tenant must keep the Landlord informed in writing of progress with the Works and must promptly notify the Landlord in writing when Practical Completion has been achieved and the date of Practical Completion.

4.5 Appointment of Architect

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

4.6 Ownership of fixtures

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

5 Encumbrance and assignment

5.1 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 5.1(a) if:
 - (i) the Tenant has given the Landlord and Developer notice in writing of the proposed assignment together with details of the parties and a copy of all proposed documentation and all other relevant information; and
 - (ii) the Tenant is not in default (of which it has notice) under this agreement, unless the default is waived by the Landlord or Developer; and
 - (iii) the Tenant establishes to the Landlord's and Developer's satisfaction that any proposed assignee meets each of the Assignment Tests; and
 - (iv) the Tenant, assignee, Guarantor and any guarantor of the proposed assignee (if applicable) enter into a deed in the form reasonably required by the Landlord, Tenant and Developer under which (amongst other things):
 - (A) the assignee agrees to perform all of the Tenant's express and implied obligations under this agreement, and (if applicable) the proposed guarantor of the assignee agrees to guarantee the proposed assignee's obligations in accordance with clause 18 of this agreement;
 - (B) the Tenant and Guarantor release the Landlord and Developer from all obligations under this agreement from the date of assignment except in respect of any claim(s) that have arisen before the date of assignment;
 - (C) the Landlord and Developer release the Tenant and Guarantor from all obligations under this agreement from the date of the assignment except in respect of any claim(s) that have arisen before the date of assignment;
 - (D) despite paragraph (C), if there is an assignment of the Tenant's rights or obligations under this agreement to a Related Body Corporate of the Tenant and the Tenant does not satisfy the condition in clause 5.1(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 5.1(b):
 - (i) the Tenant need not satisfy the condition in clause 5.1(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 5.1(b)(iii) is not satisfied, such assignment shall not release or diminish the obligations of the Tenant or the Guarantor under this agreement.
- (e) The Landlord and Developer must execute the deed referred to in clause 5.1(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.

5.2 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 5.2(a)(i).
- (b) Clause 5.2(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 5.2(d)(i).
- (e) The deed referred to in clause 5.2(a) must also include the Developer's, Tenant's or the Guarantor's (or any assignee's or any guarantor of the assignee's (if applicable)) limitation of liability clause, provided that the limitation of liability includes warranties by the Developer, Tenant, Guarantor, assignee or the guarantor of the assignee (if applicable) in their capacity as trustee, responsible entity or custodian of the Developer, Tenant, Guarantor, assignee or the guarantor of the assignee (if applicable) that it is the holder of the assets of the relevant trust, that its interest in this agreement will be assets of the relevant trust and that the Developer, Tenant, Guarantor, assignee or the guarantor of the assignee is and will be entitled to be indemnified out of the assets of the relevant trust in relation to its obligations under or in relation to this agreement (but subject to the usual exclusions).

5.3 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 agreement, Ground Lease and the Construction Licence 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 5.3(b) above will generally be consistent with the principles contained in Schedule 5 or must otherwise be on terms reasonably acceptable to the parties.
- (d) The parties agree to act reasonably and in good faith in relation to things requested by the Tenant or its 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 5 (including the financier's form of Multi-Party Side Deed), and the Landlord must act reasonably and in good faith in relation to the financier's requirements.

6 Termination

6.1 Termination Event

A Termination Event occurs if:

(a)

(ii) the Landlord gives written notice to the Tenant (with a copy to other party to this agreement) in respect of such breach and requests the Tenant to remedy that breach; and;

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

or

(b)

(i) Substantial Commencement of Construction has not occurred by

or

(ii) the Tenant Abandons the Works; and

(iii) the Landlord gives written notice to the Tenant 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 Tenant 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 Tenant to undertake any works in respect of or in connection with any part of the Works for an uninterrupted period of 90 days, which failure or delay is not caused by a Force Majeure Event.

6.2 Termination

(a) If a Termination Event occurs, the Landlord may terminate this agreement by written notice to each other party to this agreement.

(b) If this agreement is terminated under clause 6.2(a), then each party releases each other from liability or loss arising in connection with the termination of this agreement.

6.3 Obligations on termination

(a) If this agreement is terminated under clause 3.7 or this clause 6:

(i) the Tenant must remove the Tenant's property from the Premises; and

(ii) the Tenant must return the Premises to the condition they were in at the date the Tenant was given access to them; and

- (iii) the Tenant must vacate the Premises; and
 - (iv) the Tenant must give the Landlord the keys, access cards and similar devices in respect of the Building and the Premises held by the Tenant, the Tenant's employees and agents and any person who has been given them by the Tenant or the Tenant'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 Tenant's property as abandoned and deal with it in any way it sees fit at the Tenant's expense if the Tenant 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 Tenant 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 Tenant to the Premises unless the Landlord gives the Tenant a notice requiring the Tenant to remove that property.

6.4 No other right to terminate

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

7 Representations and warranties

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

9 Costs, charges, expenses and GST

9.1 Costs, charges and expenses

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

9.2 GST

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

9.3 Stamp duty

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

10 Insurances

The Tenant must:

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

11 Notices

- (a) A notice, approval, consent or other communication in connection with this agreement:
 - (i) may be given by an Authorised Officer of the relevant party; and
 - (ii) must be in writing unless expressly specified otherwise in this agreement; and
 - (iii) must be left at the address of the addressee or sent by prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee or sent by facsimile to the facsimile number of the addressee or sent by email to the email address of the addressee which is set out in item 8 of Schedule 1 or if the addressee notifies another address or facsimile number or email address then to that address or facsimile number or email address.
- (b) Unless a later time is specified in it a notice, approval, consent or other communication takes effect from the time it is received.
- (c) A letter or facsimile or email is taken to be received:
 - (i) in the case of a posted letter, on the third (seventh, if posted to or from a place outside Australia) day after posting;
 - (ii) in the case of a facsimile, on production of a transmission report by the machine from which the facsimile was sent which indicates that the facsimile was sent in its entirety to the facsimile number of the recipient notified for the purpose of this clause; and
 - (iii) in the case of an email, when the sender's email system confirms that it has been successfully sent and provided an

undeliverable message is not subsequently received by the sender.

12 Miscellaneous

12.1 Exercise of rights

The Tenant 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 Tenant or the Landlord does not prevent a further exercise of that or an exercise of any other right, power or remedy. Failure by the Tenant or the Landlord to exercise or delay in exercising a right, power or remedy does not prevent its exercise. The Tenant and the Landlord are not liable for any loss caused by the exercise, attempted exercise, failure to exercise or delay in exercising a right, power or remedy whether by reason of that party's negligence or otherwise.

12.2 Waiver and variation

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

12.3 Supervening legislation

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

12.4 Remedies cumulative

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

12.5 Indemnities

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

12.6 Further assurances

At the Landlord's request the Tenant must:

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

12.7 Payments

- (a) All parties must make payments under this agreement without set-off or counterclaim and free and clear of any withholding or deduction. All payments due by the Tenant under this agreement must be paid to the relevant party or to a person nominated by that party in a notice given to the Tenant.

- (b) If the Tenant pays an amount and it is found later that the amount payable should have been higher, then the relevant party may demand payment of the difference even though that party has given the Tenant a receipt for payment of the lower amount.
- (c) A party need not make demand for any amount required to be paid by the Tenant under this agreement unless this agreement expressly specifies that demand must be made.

12.8 Antecedent breaches

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

12.9 Antecedent obligations

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

12.10 Severability

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

12.11 Entire agreement

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

12.12 Landlord must execute

The Landlord must execute all documentation and do all things:

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

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

12.13 Approvals and consents

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

12.14 Exercise of power

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

13 Governing law, jurisdiction and service of process

13.1 Governing law

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

13.2 Jurisdiction

Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and courts of appeal from them. Each party waives any right it has to object to an action being brought in those courts including, without limitation, by claiming that the action has been brought in an inconvenient forum or that those courts do not have jurisdiction.

13.3 Service of process

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

14 Counterparts

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

15 Disputes

15.1 Notification

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

15.2 The reply

The party against whom the claim is made must reply

15.3 The dispute

If the claim is not accepted

15.4 Compulsory CEO conference

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

15.5 Expert

- (a) If the parties fail to resolve the dispute in accordance with clause 15.4, the parties must appoint a person ("**Expert**") to resolve the dispute. If the parties cannot agree on the appointment of the **Expert** then the **Expert** must be appointed by the President of the Australian Institute of Arbitrators and Mediators, New South Wales Chapter. Either party may approach the President of the Australian Institute of Arbitrators and Mediators, New South Wales Chapter to appoint the **Expert**.
- (b) Upon the **Expert** being appointed under clause 15.5(a) and accepting the appointment, the parties must direct the **Expert** to make a determination in relation to the dispute 14 days of the appointment.
- (c) The parties may make submission to the **Expert**.
- (d) The **Expert** must act and make a decision acting as an expert and not as an arbitrator and in accordance with the law of New South Wales.
- (e) The parties agree that the decision of the **Expert** will be final and binding upon them.
- (f) The costs of the **Expert** must be borne equally by the parties.
- (g) The parties must sign all documents and do all things reasonably necessary to effect the appointment of the **Expert** and to give effect to the intention of this clause 15.

16 Environmental monitoring

16.1 Landlord responsible for Contamination

- (a) The Landlord is responsible for:
 - (i) the remediation and management of any Contamination existing in, on or emanating from the Land or the Premises identified in the Planning Documentation; and
 - (ii) the remediation and management of any Contamination existing in, on or emanating from the Land to the extent that such Contamination renders the Land unsuitable for commercial and industrial use [#insert for Stage including Childcare use: "and, with respect to that part of the Land identified for childcare on the Development Masterplan (**Childcare Area**), unsuitable for childcare use"]; and
 - (iii) the remediation and management of any Contamination in the Land or the Premises to the extent such Contamination:
 - (A) renders the Land unsuitable for commercial and industrial use [#insert for Stage including Childcare use: "and, with respect to the Childcare Area, unsuitable for childcare use"]; and
 - (B) is caused or contributed to by:
 - (aa) the Landlord or the Landlord's Employees and Agents at any time after the date of the Initial Certification or Amended Certification (as relevant); or

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

16.2 Landlord's responsibility for certification

- (a) By the Remediation Date, the Landlord must (at its cost) procure and deliver:
 - (i) a Site Audit Statement from the Consultant addressed to the Landlord and the Developer certifying that the Land is suitable for commercial and industrial use without the need for any further remediation or management works ("**Initial Commercial Certification**"); [#insert for Stage including Childcare use: "and
 - (ii) a Site Audit Statement from the Consultant addressed to the Landlord and the Developer certifying that the Childcare Area is suitable for residential with gardens and accessible soil use without the need for any further remediation or management works ("**Initial Childcare Certification**");"]

(collectively "**Initial Certification**").
- (b) For the avoidance of doubt, the Landlord is responsible for the remediation and management of all Contamination as is required to

obtain the Initial Certification, even if that Contamination is not identified in the Planning Documentation.

- (c) after the Developer receives:
- (i) the Initial Commercial Certification, the Developer must give written notice as to whether or not the Initial Certification is acceptable to the Developer (acting reasonably). If the Developer's written notice states that it is not satisfied with the Initial Commercial Certification, the Developer must give reasons for its decisions; [#insert for Stage including Childcare use: "and
 - (ii) the Initial Childcare Certification, the Developer must give written notice as to whether or not the Initial Childcare Certification is acceptable to the Developer (acting reasonably). If the Developer's written notice states that it is not satisfied with the Initial Childcare Certification, the Developer must give reasons for its decisions"].
- (d) ff:
- (i) the Initial Commercial Certification is rejected by the Developer under clause 16.2(c), the Landlord must procure the Consultant to amend the Initial Commercial Certification or otherwise address the reason(s) for rejection, and deliver the amended certification to the Developer ("**Amended Commercial Certification**"). The provisions of this clause 16.2 will apply again to the Amended Certification; [#insert for Stage including Childcare use: "and
 - (ii) the Initial Childcare Certification is rejected by the Developer under clause 16.2(c), the Landlord must procure the Consultant to amend the Initial Childcare Certification or otherwise address the reason(s) for rejection, and deliver the amended certification to the Developer ("**Amended Childcare Certification**"). The provisions of this clause 16.2 will apply again to the Amended Childcare Certification."]
- Amended Certification** means the Amended Commercial Certification [#insert for Stage including Childcare use: "and the Amended Childcare Certification"].
- (e) If the Landlord (acting reasonably) does not agree with the Developer's reason(s) for rejecting the Initial Certification or Amended Certification, then the parties must refer the matter for determination under clause 20 of the Development Management Agreement (and references to the "Developer" under the Development Management Agreement will be read as references to the Developer under this agreement).
- (f) In this clause 16.2:
- (i) "**Consultant**" means a suitably qualified and accredited environmental consultant nominated by the Landlord and approved by the Developer, such approval not to be unreasonably withheld; and
 - (ii) "**Planning Documentation**" has the meaning given to that term in the Development Management Agreement.

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

16.3 Extension of time

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

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

give:

- (iii) written notice to the Landlord of any extension of the Remediation Date granted; or

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

(b) If the Developer:

(i) gives a notice under clause 16.3(a) stating it does not agree with the Landlord's notice under clause 16.3(a)(i); or

(ii) does not give a notice within the relevant time period under clause 16.3(a),

the Developer is deemed to dispute the Landlord's notice under clause 16.3(a)(i), and the parties must resolve the dispute in accordance with clause 20 of the Development Management Agreement (and references to the "Developer" under the Development Management Agreement will be read as references to the Developer under this agreement).

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

(i) the Landlord gives notice under clause 16.3(a)(i)

;

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

(iii) the Landlord is continuing to use reasonable endeavours to provide the Initial Certification or the Amended Certification (as relevant).

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

(i) if the Developer agrees with the Landlord's notice under clause 16.3(a)(i), as set out in the Developer's notice under clause 16.3(a); or

(ii) if clause 16.3(b) applies, as determined under clause 20 of the Development Management Agreement.

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

16.4 Tenant accepts Land

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

(i) subject to clause 16.4(b), accepts:

(A) any Contamination existing in or on the Land during the Developer's Period; and

(B) any Contamination existing in or on the Land as at the commencement date of the Construction Licence; and

(ii) subject to clause 16.4(b), releases the Landlord from any liability in respect of any Contamination existing in or on:

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

16.6 Notice of Contamination

Prior to the Commencement Date:

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

16.7 Landlord gives no warranties

Except as provided in this clause 16:

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

17 Easements

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

- (d) The Landlord must use reasonable endeavours to procure registration of the easements and covenants referred to in clause 17(b) as soon as reasonably practicable after the Tenant's request. 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 Tenant's obligations to pay the costs of the Subdivision Application under the Agreement for Ground Lease, the Tenant must pay the Landlord's reasonable costs of registering any additional easements and covenants requested by the Tenant and granted pursuant to this clause.

18 Guarantor's obligations

18.1 Liability of Guarantor

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

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

18.2 Liability of Guarantor Not Affected

The Guarantor is liable, even if:

- (a) one or more of the Guarantor dies;
- (b) the Landlord gives any extension of time or any other indulgence to the 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 Tenant or any Guarantor; or
- (g) the Tenant assigns its rights or obligations under this agreement.

18.3 Bankruptcy or Liquidation of the Tenant

The Guarantor agrees that:

- (a) the Landlord may retain all money received including dividends from the Tenant's bankrupt estate, and may allow the Guarantor a reduction in its liability under this guarantee only to the extent of the amount received;
- (b) the Guarantor must not seek to recover money from the Tenant to reimburse the Guarantor for payments made to the Landlord until the Landlord has been paid in full;

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

18.4 Purpose

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

18.5 Survival

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

18.6 Guarantor may not transfer

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

19 Foreign investment approval

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

20 Tenant's Limitation of liability

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

EXECUTED as an agreement

Agreement for Ground Lease

Schedule 1

Item 1 (definition of "Architect" in clause 1.1)	[#To be completed]	
Item 2 (definition of "Council" in clause 1.1)	Blacktown City Council	
Item 3 There is no item 3		
Item 4 (definition of "Land" in clause 1.1)	Proposed Lot [##] in Plan of Subdivision [##]	
Item 5 (definition of "Ground Rent" in clause 1.1)	[#To be completed], subject to clause 2.10.	
Item 6 (definition of "Access Date", "Approval Date", "Subdivision Date", "CC Date", "Payment Sunset Date" and "Remediation Date" in clause 1.1)	Access Date	
	Approval Date	
	Subdivision Date	
	CC Date	
	Payment Sunset Date	
	Remediation Date	
Item 7 (amount of public liability insurance under clause 10(a)(i))	\$20 million	

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

Agreement for Ground Lease

Schedule 2 – Plans and Specifications

Agreement for Ground Lease

Schedule 3 – Subdivision Plan



Schedule 4 – Unusual conditions

Schedule 5 – Financier side deed principles

- 1 The Landlord consents to the grant of the Security by the 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 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 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 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 any or all of the Transaction Documents if not remedied; and
 - (d) not exercise its right to terminate or rescind or suspend performance of any of its obligations under the relevant Transaction Documents for a period of 90 days after the notice in paragraph 4 (“**Cure Period**”).
- 5 The Financier may at any time and from time to time assume the rights and obligations of the Tenant under any or all of the Transaction Documents by notice to the Landlord during the Cure Period (“**Step-in Notice**”).
- 6 A Step-in Notice will be effective on and from the date that the notice is received by the Landlord (“**Enforcement Date**”).
- 7 If the Financier issues a Step-in Notice, the Financier:
 - (e) must perform all obligations of the Tenant as the case may be under the relevant Transaction Documents arising on and from the Enforcement Date;
 - (f) must remedy any default or breach of the relevant Transaction Documents by the Tenant which is the subject of the notice under paragraph 4; and
 - (g) is entitled to exercise all rights, powers and to perform all obligations of the Tenant under the relevant Transaction Documents.
- 8 If a Step-in Notice has been issued, the Landlord will only be entitled to terminate the Transaction Document if the Financier does not cure the breach or default the subject of the notice under paragraph 4.

- 9 If a Step-In Notice has been issued, the Financier may at any time, with prior notice to the Landlord, terminate the Step In from the date specified in that notice being a date after that notice is given to the Landlord ("**Step-Out Notice**").
- 10 If the Financier issues a Step-Out Notice, with effect from the date nominated under the Step-Out Notice, the Financier will be released from any and all obligations to the Landlord under the relevant Transaction Documents. Such release will not affect or prejudice the continuation of the 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 and Tenant must not amend or vary or agree to amend or vary the Transaction Documents without the prior written consent of the Financier.
- 13 Definitions

(h) "**Financier**" means the recipient of the Security.

(i) "**Encumbrance**" means an interest or power:

(i) reserved in or over an interest in any asset including any retention of title; or

(ii) created or otherwise arising in or over any interest in any asset under a bill of sale, mortgage, charge, lien, pledge, trust or power,

by way of, or having similar commercial effect to, security for the payment of a debt, any other monetary obligation or the performance of any obligation, and includes any agreement to grant or create any of the above.

(j) "**Security**" means an Encumbrance granted by the Tenant in favour of the Financier from time to time in respect of the Tenant's interest in the Transaction Documents.

(k) "**Security Agreement**" means an agreement for the grant of the Security between the Tenant and Financier.

(l) "**Step In**" means the assumption of rights and obligations of the Tenant under the Transaction Documents by the Financier in accordance with the Step-In Notice.

Agreement for Ground Lease

Signing page

DATED: _____

[#insert relevant execution clauses]

Agreement for Ground Lease

Annexure A - Form of Ground Lease



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**")

King & Wood Mallesons

Level 61

Governor Phillip Tower

1 Farrer Place

Sydney NSW 2000

Australia

T +61 2 9296 2000

F +61 2 9296 3999

DX 113 Sydney

www.kwm.com

REFERENCE SCHEDULE

Item 1 - Date of this Lease

The day of 20

Item 2 – Landlord

WESTERN SYDNEY PARKLANDS TRUST ABN 85 202 544 800 and its successors and assigns as lessor of the Premises ("**Landlord**")

Item 3 - Landlord's address for notices

Address: Level 7, 10 Valentine Avenue, Parramatta, NSW 2150
Fax: +61 2 9895 7580
Email address: Kerry.Jahangir@wspt.com.au
Attention: KerryJahangir

Item 4 – Tenant

[#To be inserted] and its successors and permitted assigns

Item 5 – Not used

.....

Item 6 - Tenant's address for notices

[#To be inserted]

Item 7 – Guarantor

[#To be inserted]

Item 8 - Guarantor(s) address for notices

[#To be inserted]

Item 9 – Premises

[#To be inserted. To be whole of land]

Item 10 - Permitted Use

Supermarkets, speciality shops, bulky goods and large format retail

[Redacted text block containing multiple lines of yellowed-out content]

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:

Access Roads the roads shown in the plan attached at Schedule 3

Agreement for Ground the agreement for ground lease between the Landlord, the Tenant

Lease	and [#insert developer entity for relevant agreement for ground lease] dated [#insert]
Amended Certification	has the meaning given to that term in the Agreement for Ground Lease
API	Australian Property Institute or any body replacing it
Approval	all consents, permits, licences, approvals, authorisations and exemptions from, by or with an Authority
Assignment Tests	means that a person: <ul style="list-style-type: none">(a) is not Insolvent;(b) (combined with any proposed guarantor) is of sufficient financial standing to perform its relevant obligations under this Lease;(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;(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(e) is otherwise ready, willing and able to carry out the obligations of the Tenant under this Lease
Authority	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
Business Day	a day which is not a Saturday, Sunday or public holiday in Sydney
Certification Date	[#insert the date of the Initial Certification or Amended Certification (as relevant) provided by the Landlord under the Development Management Agreement]
Commencement Date	the date mentioned in item 12
Contamination	the presence in, on or under land, air or water of a substance (whether a soil, liquid, gas, odour, heat, sound, vibration or radiation) at a concentration above the concentration at which the substance is normally present, on or under (respectively) land, air or water in the same locality, being a presence that presents a risk of harm to human health or any other aspect of the Environment and Contaminant has a corresponding meaning
Council	Blacktown City Council, or the relevant local government authority or other relevant development consent authority.

Developer	Frasers Property Industrial Constructions Pty Limited
Developer's Period	means the period: <ul style="list-style-type: none">(a) commencing on [#insert the date the Developer commenced physical works for the Internal Infrastructure Works, the Developer's Site Works and any Additional Infrastructure Works (as those terms are defined in the Development Management Agreement) on the Land]; and(b) ending on [#insert the date of expiry of the Developer's Period for the Land as notified by the Developer to the Landlord under clause 14.6(f) of the Development Management Agreement]
Development Management Agreement	the development management agreement between the Landlord and the Developer (and other parties) dated [#insert]
Development Masterplan	means the document attached at Schedule 6. [#Note: The Development Masterplan current as at the date of the relevant Agreement for Ground Lease to be inserted at Schedule 6.]
Drainage Basins	means the drainage basins servicing the Land or Premises as shown on the plans in Schedule 2.
Environment	includes: <ul style="list-style-type: none">(a) eco systems and their constitute parts, including people and communities, natural and physical resources;(b) the qualities and characteristics of locations, places and areas; and(c) the social, economic, aesthetic and cultural aspects of a thing mentioned in paragraphs (a) or (b).
Environmental Law	includes any Law relating to any aspect of the Environment.
GST	GST within the meaning of the GST Act
GST Act	the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (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)
Initial Certification	has the meaning given to that term in the Agreement for Ground Lease
Initial Use	[#insert the initial proposed use in accordance with the site development proposal submitted under the Development Management Agreement]
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
Law	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
Lease Year	each period of 365 days calculated from the Commencement Date (or 366 days in respect of a leap year)
LPI	Land and Property Information New South Wales or any replacement department or authority

Neighbourhood	means use of the Premises as a speciality and large format retail centre to service the neighbourhood of Eastern Creek
Other Use	any retail or quasi-retail use permitted by Law but not residential use
Outgoings	(a) rates, taxes, levies, assessments, impositions, duties and fees (other than income or capital gains tax) including without limitation water and sewerage rates, charges and costs for all emergency services levies, council rates and planning levies in respect of the Premises; and (b) land tax imposed in respect of the Premises
Owner's Period	means the period: (a) commencing on [#insert Effective Date under Development Management Agreement]; and (b) ending on [#insert commencement date of the Construction Licence for the Land], but excluding the Developer's Period
Permitted Use	the use specified in item 10
Premises	the premises described in item 9 and includes any buildings or other structures on the Premises
Related Body Corporate	has the meaning given to that term under the <i>Corporation Act 2001</i> (Cth)
Rent	the rent set out in item 14 and payable under clause 3 as varied from time to time
Retail Centre	means the land located on the corner of Rooty Hill Road South and Great Western Highway, Eastern Creek NSW, including all land within stages 1, 2, 3 and 4 of the development known, as at the date of this Lease, as the Eastern Creek Retail Centre
Retail Centre Tenant	means any tenant under a ground lease for part of the Retail Centre (but, for the avoidance of doubt, does not include any subtenants), including the Tenant
Retail Use	
Rent Day	has the meaning given to that term in clause 3.1
Retail Lease Strategy	(ctive that the businesses operated from the Premises:

Security Interest	includes: <ul style="list-style-type: none">(a) a mortgage, charge, lien or pledge or any other right by way of security; and(b) a security interest within the meaning of section 12(1) of the <i>Personal Properties Securities Act 2009</i> (Cth)
Services	all services and utilities to or of the Premises or the Land provided by authorities or the Landlord, including (but not limited to) power, water, gas, telecommunications, fire services, sewerage, trade waste removal and like utility services
Stage	4 step staging contemplated and described in the Development Masterplan and references to "Stage 1", "Stage 2", "Stage 3" and "Stage 4" are references to each of those stages
Tax Invoice	a tax invoice that complies with the GST Act.
Tenant	means the party described in item 4 and its successors and permitted assigns
Tenant's Associates	any employee, agent, visitor, sub-lessee or contractor of the Tenant
Tenant's Fittings	all equipment, machinery and other items including all furniture, furnishings, wall coverings and equipment of a similar nature, but

excluding Tenant's Fixtures

Tenant's Fixtures all improvements, buildings, fixtures, fixed plant and equipment, fittings and partitions existing on or constructed on the Premises from time to time

Tenant's Property the Tenant's Fittings and the Tenant's Fixtures

Term the term specified in item 11

Termination Date 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

Termination Event – Not Rent has the meaning given to that term in clause 16.1(b)

Termination Event - Rent has the meaning given to that term in clause 16.1(a)

Trafficable Vehicular Roadway roadway of such engineering, structure, materials and design appropriate for the effective long term use of the traffic and vehicles which from time to time use the Access Roads

this Lease means this Lease

Upgrade Works has the meaning given to that term in clause 14.4(b)

Valuer an independent valuer who must:

- (a) be a full time member of the API;
- (b) have at least 5 years' experience in valuing premises similar to the Premises; and
- (c) be active in the property market at the time of appointment

WHS Law 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 *Work Health and Safety Act 2011 (NSW)* and *Work Health and Safety Regulations 2011 (NSW)*

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

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 or 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 months' 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

On each anniversary of the Commencement Date, the Rent is to be increased
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, on or before the due date for payment, provided that, in relation to any Outgoings referred to in clause 5.1(c), the Tenant must make payment by the due date for payment, or promptly after receipt of the relevant notice or correspondence, whichever is the later.
- (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.
- (d) Where the Landlord has paid any Outgoings, the Tenant must pay any amount payable by it in relation to such Outgoings to the Landlord within 10 Business Days after the Landlord has made written request for payment to the Tenant which includes reasonable details.

5.2 Drainage Basins

- (a) The parties agree that the Landlord is responsible for the costs incurred in connection with maintaining and repairing the Drainage Basins in accordance with clause 14.3 ("**Drainage Basins Cost**") and the Tenant is not required to contribute to the Drainage Basins Cost.
- (b) Despite clause 5.2(a), where the Tenant and the Tenant's Associates (or either of them) damage the Drainage Basins (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 Access Roads

- (a) The parties agree that the Tenant must contribute to the Landlord's costs in connection with maintaining, repairing and, if agreed by Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads, upgrading and replacing the Access Roads in accordance with clause 14.4 ("**Access Roads Cost**"). The parties agree that the Access Roads Costs will include the Landlord's costs in connection with capital works in respect of the repair and maintenance of the Access Roads Costs. However, the parties agree the Access Road Costs will only include capital costs in respect of Upgrade Works to the extent the Upgrade Works were agreed by the Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads in accordance with the provisions of clause 14.4.

- (b) The Tenant's contribution to the Access Roads Cost will be based on the proportion that the land area of the Premises bears to the total land area benefited by the Access Roads, as determined by the Landlord (acting reasonably) from time to time.
- (c) Despite clause 5.3(b), where the Tenant and the Tenant's Associates (or any of them) damage the Access Roads (other than as a result of fair wear and tear from use which is consistent with the specification for which the Access Roads were designed) then the Tenant is liable for all reasonable costs of repair works attributable to the rectification of that damage.
- (d) 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 5.3 and 14.4.
- (e) The Landlord must use its reasonable endeavours to minimise the Access Roads Costs and the costs referred to in clause 5.3(c) to ensure that the amount of those costs is fair and reasonable having regard to the standard, quality and condition of the Access Roads.
- (f) Each Outgoings Year, the Landlord must give the Tenant and every other Retail Centre Tenant a budget setting out:
 - (i) the Landlord's reasonable estimate of the Access Roads Cost in respect of the repair and maintenance (excluding capital costs) of the Access Roads and reasonable details of how the estimate is arrived at; and
 - (ii) the reasonable anticipated capital works required to repair or replace the Access Roads, the estimated costs of such capital works and reasonable details of how the estimate is arrived at,("Draft Budget").
- (g) Within 10 Business Days of receipt of the Draft Budget, the Tenant must notify the Landlord whether or not it approves the Draft Budget (such approval not to be unreasonably withheld). If the Tenant does not approve the Draft Budget, it must give reasons for its rejection and, subject to clause 5.3(h) and clause 5.3(i), the Landlord may re-submit a revised Draft Budget to the Tenant and every other Retail Centre Tenant addressing the reasons for the Tenant's rejection (and any other Retail Centre Tenant's rejection). The provisions of clause 5.3(g) will apply to the revised Draft Budget.
- (h) If Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads approve the Draft Budget, then the Draft Budget is deemed to be approved under this Lease ("**Approved Budget**") and the Landlord must, within 10 Business Days of receiving the last approval from the Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads, give to the Tenant a notice stating the Landlord's reasonable estimate of the Tenant's contribution to the Access Roads Cost for that Outgoings Year, which must be based on the Approved Budget.
- (i) If Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads do not approve the Draft Budget the Landlord may, instead of re-submitting a revised Draft Budget to the Tenant and every other Retail Centre Tenant, refer the dispute to an expert to resolve the dispute. If the Landlord and the Retail Centre Tenants cannot agree on the appointment of an expert, then the expert must be appointed by the President of the Australian Institute of Arbitrators and Mediations, New South Wales Chapter. Clauses 20.5(b) to 20.5(f)(inclusive) and clause 20.5(h) apply to the determination by the expert. The costs of the expert are an "Access Road Cost" for the purpose of this Lease.
- (j) The Tenant must pay instalments in advance on each Rent Day on account of the Access Roads Cost. Each instalment is the Landlord's estimate of the Access Roads Cost for that Outgoings Year divided by the number of Rent Days in that Outgoings Year.

- (k) The Tenant need not pay for instalments for the first Outgoings Year until the Landlord gives it a notice stating its estimate of the Access Roads Cost for that Outgoings Year.
- (l) 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 Access Roads Cost, an instalment equal to that payable on the previous Rent Day.
- (m) As soon as possible after the end of an Outgoings Year,
; the Landlord must give the Tenant a notice giving details of the actual Access Roads Cost (including details of the costs of the capital works (if any) required to repair or replace the Access Roads) supported by copies of all accounts and receipts.
- (n) 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 Access Roads Cost for the Outgoings Year to which the notice applies and what the notice says is payable.
- (o) Despite clause 5.3(n), the Tenant is not required to pay the Landlord the difference between what the Tenant has paid on account of Access Roads Cost if the actual cost incurred by the Landlord for capital works exceeds the estimated cost of such works set out in the Approved Budget by more than % unless the Tenant has previously approved the additional cost in writing, such approval not to be unreasonably withheld.

5.4 Apportionment

Outgoings and Access Roads Cost 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.

5.5 Minimisation of Outgoings and Access Roads Cost

- (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 Retail Centre; and
 - (ii) minimise the Access Roads Cost to ensure the amount of the Access Roads Cost is fair and reasonable having regard to the standard and quality of the Access Roads.
- (b) 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.

5.6 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 Landlord 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)
 - (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, any improvements and all plant and equipment 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);
- (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); and

- (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).

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; and
- (c) in accordance with any reasonable directions given and reasonable 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 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 storage 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 storage tanks and make good any damage caused by the installation or removal of the underground storage 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 Vesting in Landlord

Other than as required by Law, it is the express intention of the parties that all improvements and works which are Tenant's Fixtures:

- (a) vest in the Tenant until the expiration of the Term or sooner determination of this Lease, and each party must execute further documents as may be required to effect that vesting; and
- (b) if not already vested, will vest in 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 and each party must execute further documents as may be required to effect that vesting.

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 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 the sooner determination of this Lease, the Tenant must ensure it has complied with its obligations under clause 11.7(g).

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)

- (c) 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 Retail Centre, a copy of which is attached at Schedule 5 (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 Permitted Use

- (a) Subject to clauses 11.1(b), 11.2(b) and 11.2(c), the Tenant must obtain the Landlord's prior written consent (acting reasonably) to change the Permitted Use and, if approved, the provisions of clause 11.2(d) apply to vary the Rent under this Lease with effect from the date that the Landlord approves the change of the Permitted Use (**Varied Rent Date**).
- (b)
- (c) The Landlord must promptly provide its approval to a request by the Tenant to change the Permitted Use under clause 11.2(a) if:
 - (i) the proposed permitted use is a Retail Use; and
 - (ii) subject to the Tenant obtaining all Approvals required for the proposed permitted use, the proposed permitted use will 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.

If the Landlord does not provide its approval in accordance with this clause 11.2(c) within 15 Business Days of the Tenant's request under clause 11.2(a), the Landlord will be deemed to have approved the change to the Permitted Use.

- (e) The proposed new use of the Premises must comply with:

- (i) the provisions of the State Environmental Planning Policy (Western Sydney Parklands) 2009;
- (ii) the plan of management for the Land or Premises that the Landlord has prepared and established for the Retail Centre, a copy of which is attached at Schedule 5 (to the extent that plan is still in place);
- (iii) the relevant development approval in respect of the Land and improvements on the Land;
- (iv) all Laws and requirements of any Authorities; and
- (v) the WSPT Act.

11.3 Security

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

11.4 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.

11.5 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.
- (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.

11.6 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 11.6(a) and 11.6(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 11.6(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 11.6(d), (ii) or (iii) are at any time not satisfied, the Tenant must immediately take out the insurance provided for in this clause 11.6 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 11.6(a) and 11.6(b) will be deemed fully complied with by the Tenant where:
 - (i) the Tenant's global insurance policy includes the insurances required under clauses 11.6(a) and 11.6(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.

11.7 Environmental Requirements

- (a) Subject to clause 11.7(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; and
 - (ii) 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) Subject to clause 11.7(e), the Tenant is responsible for the remediation and management of Contamination existing in or on the Premises after the Commencement Date and any remediation works carried out by the Tenant will be:
 - (i) subject to the consent of the Landlord (which must not be unreasonably withheld or delayed); and
 - (ii) at the Tenant's cost.

- (d) Clauses 11.7(b) and 11.7(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) The parties agree that clause 11.7(c) does not apply to any Contamination existing in, on or emanating from, the Land or the Premises to the extent such Contamination:
 - (i) is caused by any person, other than the Tenant or the Tenant's Associates or the Developer or the Developer's authorised representatives, consultants, employees, agents, contractors or invitees after the Certification Date and during the Owner's Period before the Commencement Date; or
 - (ii) is caused by the Landlord or the Landlord's Agents after the Certification Date; or
 - (iii) emanates from adjoining land and is not caused by the Tenant.
- (f) 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.
- (g) 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 by any person, other than the Tenant or the Tenant's Associates or the Developer or the Developer's authorised representatives, consultants, employees, agents, contractors or invitees during that part of the Owner's Period after the Certification Date and before the Commencement Date; or
 - (ii) is caused or contributed to by Landlord or the Landlord's Agents after the Certification Date; or
 - (iii) emanates from adjoining land and is not caused by the Tenant.
- (h) 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 11.7(g) 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 11.7(g)(i), 11.7(g)(ii) or 11.7(g)(iii)).

11.8 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.

11.9 Not used

11.10 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) on the land known as the Eastern Creek Retail Centre (as at the date of this Lease) during the initial development of that land by the Developer.

11.11 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, sublicense or otherwise part with possession of the Premises, provided that the Tenant provides notice in writing of its intention to sublet, licence or part with possession to the Landlord including details.
- (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(c)(ii).
 - (ii) For the purpose of clause 13.1(c)(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(c), 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):
 - (i) 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 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, and (if applicable) the proposed guarantor agrees to guarantee the proposed assignee's obligations 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) 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 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 13.3(a)(i).

- (b) Clause 13.3(a) will not apply in relation to any transfer to any government or statutory authority, or any transfer effected by any statute, provided that in the case of a transfer to any government or statutory authority which is not effected by statute, the Landlord procures the proposed new registered proprietor to enter into a deed with the 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 13.3(c)(i).
- (d) The deed in clause 13.3(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).

13.4 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 13.4(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.

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

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

14.4 Access Roads

- (a) The Landlord must, during the Term, repair, maintain and, where requested by a the Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads, upgrade and replace the Access Roads in order to keep the Access Roads as a Trafficable Vehicular Roadway in accordance with this clause 14.4.
- (b) The Tenant may at any time (but not more than once in every 5 years of the Term) give the Landlord written notice requesting the Landlord undertake upgrade or replacement (or both) works to the Access Road ("**Upgrade Works**"), including reasonable detail of the Upgrade Works requested by the Tenant.
- (c) If the Tenant gives a notice under clause 14.4(b), the Landlord must use reasonable endeavours to obtain the consent of the other Retail Centre Tenants to the Upgrade Works within a reasonable time and keep the Tenant reasonably informed of the Landlord's communications with the other Retail Centre Tenants in relation to the Upgrade Works.
- (d) If the Landlord obtains the consent of the Retail Centre Tenants which lease more than 50% of the total land area benefited by the Access Roads the Landlord must carry out the Upgrade Works within a reasonable time after receiving the estimated cost of the Upgrade Works from the Retail Centre Tenants.
- (e) The Landlord acknowledges and agrees that the Tenant, and any subtenants, licensees and occupiers of any part of the Premises in common with the Landlord and all others having the right to use the Access Roads, may use the Access Roads at any time for the purpose of accessing the Premises.
- (f) The Tenant and the Tenant's Associates must:
 - (i) not do any act likely to jeopardise or prejudicially affect the safety or reliable working of the Access Roads and must at all times refrain from using the Access Roads in a matter likely to obstruct or unreasonably hinder access to the Access Roads by others with the like right;

- (ii) cause as little inconvenience as is practical and minimise any interference to the use of the Access Roads by others with a like right;
 - (iii) not park or stand a motor vehicle or any other item on the Access Roads, except where expressly permitted;
 - (iv) not construct any structure on the Access Roads;
 - (v) not do anything on or use the Access Roads in a manner which is unlawful on public or private roads in New South Wales; and
 - (vi) not cause any damage to the Access Roads (other than fair wear and tear).
- (g) The Landlord may make reasonable rules about the use of the Access Roads by the Tenant and the Tenant's Associates. The rules may not be inconsistent with the terms of this Lease and to the extent of any inconsistency, the terms of this Lease prevail.

14.5 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.

14.6 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

The Landlord may enter the Premises at any time after giving 24 hours' notice to:

- (a) inspect the Premises;
- (b) 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.

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) Subject to clause 15.4(b) and 15.4(c), the Landlord may grant easements and covenants for the provision of Services:
 - (i) as required pursuant to any condition of the "Subdivision Approval" or the "Development Consent" (as those terms are defined in the Agreement for Ground Lease); and

- (ii) where any such condition has been accepted by the Developer and the Tenant in accordance with clause 3.2 of the Agreement for Ground Lease; or
 - (iii) where reasonably requested by a Retail Centre Tenant for access over relevant roads or use of infrastructure necessary for Services to the premises under the relevant ground lease where that access or infrastructure is within, or benefits, the premises.
- (b) Where reasonably requested by the 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).
- (c) The Tenant must not object to the establishment of any rights referred to in clause 15.4(a) unless the establishment of that right would substantially lessen the enjoyment of rights conferred on the Tenant by this Lease.
- (d) The Landlord must use reasonable endeavours to procure registration of the easements and covenants referred to in clause 15.4(b) 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

16.2 Landlord's Rights for a Termination Event

16.3 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.

16.4 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.

16.5 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 16.5 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, 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 at the time of the damage or the destruction is no longer the sub-tenant, the Tenant must use reasonable endeavours to source a pre-commitment from a sub-tenant or sub-tenants; and
 - (iii) the Tenant must use reasonable endeavours to build a new building or other premises 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 clause 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 years

- (a) If the whole or any substantial part of the Premises is damaged or destroyed during the last 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 years of the Term, the Tenant must notify the Landlord if the Tenant elects not to rebuild or reinstate the whole or a substantial part of the Premises within 12 months of the date of the damage. 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.

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 under clause 11.2(d)(iii)), 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

20.3 The dispute

If the claim is not accepted 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 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, 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
- (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. MISCELLANEOUS

21.1 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.

21.2 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.

21.3 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.

21.4 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.

21.5 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.

21.6 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.

21.7 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.

21.8 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.

21.9 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.

21.10 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.

21.11 Obligations of Tenant's Associates

- (a) The Tenant must ensure that:
 - (i) the Tenant's Associates (not including sublessees) 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 not to 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.

21.12 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.

21.13 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.

22. INTERPRETATION

22.1 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 dueon a day which is not a Business Day, the date, period or financial obligation is extended to the next Business Day.

22.2 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.

22.3 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 under this Lease for a period of 90 days after the notice in paragraph 4 ("**Cure Period**").
- 5 The Financier may at any time and from time to time assume the rights and obligations of the 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.
- 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. Such release will not affect or prejudice the continuation of the Tenant's obligations to the Landlord under this Lease.
- 11 Exercise of any rights or powers under the Security Agreement by the Financier will not of itself constitute a default or breach of this Lease and will not of itself entitle the Landlord to exercise any right of termination of this Lease.

12 The Landlord and Tenant must not amend or vary or agree to amend or vary this Lease 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 Tenant in favour of the Financier from time to time in respect of the Tenant's interest in this Lease.

(d) "**Security Agreement**" means an agreement for the grant of the Security between the Tenant and Financier.

(e) "**Step In**" means the assumption of rights and obligations of the Tenant under this Lease by the Financier in accordance with the Step-In Notice.

Schedule 2 – Drainage Basins Plan

Schedule 3 - Access Roads Plan



Schedule 4 – Not used

Schedule 5 – Plan of Management



Schedule 6 – Development Masterplan

Schedule 7 – Calculations

1



1. 1

2.

3. 1. 1

4.



Signing page

DATED: _____

Certified correct for the purposes of the *Real Property Act 1900* (NSW).

[*insert relevant execution clauses*]

**Eastern Creek Retail Centre - Development
Management Agreement**
Annexure B – Pro Forma Construction Licence

Construction Licence

Western Sydney Parklands Trust

ABN 85 202 544 800

(Owner)

and

[#insert Developer's name]

ABN [#insert]

(Developer)

Eastern Creek Retail Centre

[#This Pro Forma Construction Licence is prepared for a Take Out Transaction.]

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This licence is made on

between:

1. The party named in **item 1 of Schedule 1 (Owner)**;
2. The party named in **item 2 of Schedule 1 (Developer)**.

Recitals

- (A) The Owner is the registered proprietor of the Land.
- (B) The Owner has agreed to grant the Developer a non-exclusive licence to enter, use and occupy the Land during the Term for the Permitted Use, and on the terms and conditions contained in this licence.

Part A Definitions and Interpretation

1 Definitions

In this licence these words have these meanings:

Adjustment Note	defined in clause 12.1 ;
AFGL Conditions	the conditions set out in clause 3.1(a) of the Agreement for Ground Lease;
Agreement for Ground Lease	the agreement for ground lease entered into between the Owner, Developer and [#insert Tenant's name] on or around the date of this licence;
Amended Certification	has the meaning given to that term in the Agreement for Ground Lease;
Business Day	a day on which trading banks are opened for banking business in Sydney;
Commencement Date	the date described in item 4 of Schedule 1 ;
Date of Practical Completion	the date that "Practical Completion" is achieved under the Agreement for Ground Lease;
Developer	the Developer named in item 2 of Schedule 1 and its successors and assigns;
Developer's Employees and Agents	each of the Developer's employees, officers, agents, surveyors, contractors, consultants and invitees;

Developer's Infrastructure Works	has the meaning given to the term 'Internal Infrastructure Works' in the Development Management Agreement, in so far as those works are within, or for the benefit of, the Land;
Developer's Site Works	has the meaning given to that term in the Development Management Agreement, in so far as those works are within, or for the benefit of, the Land;
Development Management Agreement	has the meaning given to that term in the Agreement for Ground Lease;
Expiry Date	the date specified in item 5 of Schedule 1 or any earlier date on which this licence is terminated;
Ground Lease	has the meaning given to that term in the Agreement for Ground Lease;
GST and GST law	defined in clause 12.1 ;
Initial Certification	has the meaning given to that term in the Agreement for Ground Lease;
Land	the land described in item 3 of Schedule 1 and where the context allows, the fixtures, fittings, furnishings, plant, machinery and equipment (if any) from time to time installed in the Land;
Landlord's Site Works	has the meaning given to the term "External Infrastructure Works" in the Development Management Agreement, in so far as those works are within, or for the benefit of, the Land.
Licence Fee	the fee set out in item 7 of Schedule 1 ;
Owner	the Owner named in item 1 of Schedule 1 and its successors and assigns;
Permitted Use	the use of the Land permitted under clause 9 ;
Relevant State	New South Wales;
Retail Centre	means the land located on the corner of Rooty Hill Road South and Great Western Highway, Eastern Creek NSW;
Security Interest	includes: <ul style="list-style-type: none"> (a) a mortgage, charge, lien or pledge or any other

right by way of security; and

- (b) a security interest within the meaning of section 12(1) of the *Personal Properties Securities Act 2009* (Cth);

Tax Invoice is defined in **clause 12.1**;

Tenant **[#insert Tenant's name]**;

Term has the meaning given to that term in **clause 6**;

WHS Law any occupational, health and safety law, regulation or by-law that applies to work being (or to be) carried out on the Land. This definition includes the provisions under the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulations 2011* (NSW); and

Works has the meaning given to that term in the Agreement for Ground Lease.

2 Interpretation

2.1 In this licence, unless the context otherwise requires:

- (a) derivatives of a word or phrase defined in this agreement have corresponding meanings;
- (b) headings are included to assist interpretation but do not form part of this agreement;
- (c) words of one gender include any other gender;
- (d) the singular includes the plural and the plural includes the singular;
- (e) a reference to a person includes an individual, a body corporate or an Authority;
- (f) a reference to a thing (including, but not limited to, a right, a building and the Land) includes any part of that thing;
- (g) a reference to a "contractor" includes a subcontractor;
- (h) reference to a "month" means one calendar month (for example, if a payment is to be made within one month of demand and the demand is made on 16 June then the payment must be made on or before 16 July);
- (i) a promise or agreement by 2 or more persons under this agreement binds those persons jointly and each of them individually;
- (j) a reference to a clause, schedule or exhibit is a reference to a clause, schedule or exhibit to this licence;
- (k) a reference to this licence includes all the schedules and exhibits to it;
- (l) references to statutes, regulations, ordinances or local laws extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them;

- (m) a provision of this licence must not be construed against a party solely because that party was responsible for preparing this agreement or that provision;
- (n) where any form of the word 'include' appears, it is to be read as if followed by the words 'without limitation';
- (o) unless defined in this licence, words and phrases defined in the Agreement for Ground Lease have the same meaning; and
- (p) unless otherwise specified, time is of the essence in respect of each of the Owner's obligations under this licence.

3 Headings

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

Part B Conditions Precedent

4 Commencement conditional

4.1 This licence is subject to and conditional on;

4.2 Except for this clause 4 and clauses 11, 12, 16, 17, 18, 21, 22, 24, 25, 26, 27 and 28 and Schedule 1, this licence will have no effect and the parties will have no obligations under this licence until the condition precedent in clause 4.1 is satisfied.

Part C Grant of licence and automatic termination

5 Licence

5.1 In consideration for the payment of the Licence Fee, the Owner grants to the Developer a non-exclusive licence from the Commencement Date to enter, use and occupy the Land, with or without the Developer's Employees and Agents, for the Permitted Use and on the terms and conditions in this licence.

5.2 The Owner grants the non-exclusive licence under clause 5.1 to the Developer for the purpose of constructing and completing the Works.

6 Term of this licence

This licence begins on the Commencement Date and ends at midnight on the Expiry Date.

7 Automatic termination

Despite any other provision of this licence, this licence will terminate, without the need for any further action by either party, on commencement of the Ground Lease.

8 Contractual rights

The rights given to the Developer under this licence are contractual only and do not give the Developer any interest in the Land or the right to lodge a caveat.

9 Permitted Use

The Developer must not use the Land for any purpose other than the use specified in item 6 of Schedule 1.

Part D Licence Fee

10 Licence Fee

10.1 On and from the Commencement Date, and subject to clause 10.2, the Developer must pay the Licence Fee to the Owner by equal monthly instalments in arrears.

10.2 Despite any other provisions of this licence, the Development Management Agreement and the Agreement for Ground Lease, the Developer is not required to pay the Licence Fee during, or in respect of, any period of delay to the Landlord's Site Works:

- (a) caused by a matter referred to in clauses 6.3(a)(ii)(C) or 6.3(a)(ii)(E) of the Development Management Agreement; or
- (b) from the date the Owner was required to complete the Landlord's Site Works in accordance with clause 6 of the Development Management Agreement until the date that the Landlord's Site Works are completed,

but only to the extent, and for the period, that the Developer is delayed in carrying out the Developer's Infrastructure Works, the Developer's Site Works or the Works as a result of the delay to the Landlord's Site Works.

10.3 Despite any other provisions of this licence, the parties agree that:

- (a) a party's ("**Paying Party**") obligation to make a payment to any other party ("**Receiving Party**") only arises upon receipt of a relevant tax invoice from the Receiving Party; and
- (b) the Paying Party must make the relevant payment within 10 Business Days from the date it receives the relevant tax invoice from the Receiving Party.

Part E Payments and costs

11 Costs of lease and stamp duties

11.1 Subject to clause 11.2, the Owner must pay its own costs of and incidental to the preparation and execution of this licence.

11.2 In accordance with clause 24.1 of the Development Management Agreement, the Developer agrees to reimburse to the Owner, the Owner's reasonable legal costs in relation to the negotiation, preparation and execution of this licence up to a maximum amount of _____.

- 11.3 The Developer must pay its own costs of and incidental to the preparation and execution of this licence.
- 11.4 The Developer must pay any stamp duty (if any) assessed on this licence or any renewal or extension of this licence.

12 Goods and Services Tax

12.1 In this clause:

- (a) **"GST"** means a tax that is payable under the GST law and imposed as a goods and services tax by any of the following:
- (i) the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (Cth)*;
 - (ii) the *A New Tax System (Goods and Services Tax Imposition - Customs) Act 1999 (Cth)*;
 - (iii) the *A New Tax System (Goods and Services Tax Imposition - Excise) Act 1999 (Cth)*;
 - (iv) regulations related to any of these Acts; or
 - (v) any amendment to any of these Acts or regulations or both or any other Act by any of the Commonwealth, State or Territory Governments which imposes a goods and services tax, a broad base consumption tax value added tax, retail turnover tax or a tax of a similar nature;
- (b) **"Primary Payment"** means any payment by the Developer to the Owner of any Licence Fee or other amount payable by a Recipient to a Supplier under this licence;
- (c) **"Recipient"** means the person to whom a Taxable Supply is made under this licence;
- (d) **"Supplier"** means the person who makes a Taxable Supply under this licence; and
- (e) **"Adjustment Note"**, **"GST law"**, **"Taxable Supply"** and **"Tax Invoice"** have the meanings given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

12.2 All Primary Payments specified in this licence are exclusive of GST.

12.3 If the Supplier is liable under the GST law for any GST on any Primary Payment, the Recipient must pay to the Supplier instead of the Primary Payment, an amount (**Adjusted Primary Payment**) calculated in accordance with the following formula:

$$APP = PP + (PP \times R)$$

where:

APP is the Adjusted Primary Payment;

PP is the Primary Payment; and

R is the rate of goods and services tax specified in the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (Cth)*.

12.4 Subject to clause 12.5 the Recipient must pay to the Supplier the Adjusted Primary Payment calculated under clause 12.3:

- (a) at the same time; and
- (b) in the same manner,

as the Recipient is required to pay the Primary Payment.

- 12.5 As a precondition to the Recipient paying the GST component of the Adjusted Primary Payment to the Supplier, the Supplier must issue to the Recipient a Tax Invoice in respect of the payment required. All Tax Invoices must show GST as a separate item.
- 12.6 If the Supplier refunds to the Recipient any amount under this licence, the Supplier must also issue to the Recipient an Adjustment Note in respect of the refund.
- 12.7 Any amount to be reimbursed by a party under this licence must not exceed the GST inclusive price paid by the party seeking the reimbursement.

13 Statutory Costs and Outgoings

The Developer is responsible for the cost of all:

- 13.1 statutory charges and taxes which are payable in relation to the Land including rates assessments or other fees, levies or charges (for example Council rates, water rates, sewerage rates) and, subject to clause 4.2(f) of the Development Management Agreement, land tax;
- 13.2 costs of maintaining the Land in the state or condition as at the Commencement Date. For the avoidance of doubt, this does not in any way limit the Developer's obligation to undertake and complete the Developer's Infrastructure Works and the Works;
- 13.3 any costs incurred by the Developer in compliance with any laws or requirements in respect of the Land; and
- 13.4 power, water, gas and other services supplied to the Land,

from the Commencement Date and must reimburse the Owner to the extent those costs are paid by the Owner within 10 Business Days of the Owner providing to the Developer reasonable evidence of the costs incurred.

Part F Use of Land

14 Proper use of Land

- 14.1 The Developer must not use the Land for any illegal purpose.
- 14.2 The Developer must not cause any nuisance by its use of the Land.
- 14.3 The Developer must maintain all licences, consents, permits and registrations required for carrying on the Works
- 14.4 The Developer must comply with all Laws in respect of this licence.

15 Alterations to the Land

Within 14 days of a request being made by the Developer, the Owner must at the Developer's cost sign any application, form or other document required to be signed by the Owner for the consent or approval of any Authority to alterations or additions to the Land contemplated under the Agreement for Ground Lease.

Part G Developer's parting of possession

16 Developer assignment and subleasing

- 16.1 The Developer must not assign this licence, other than in accordance with a corresponding assignment under clause 5.1 of the Agreement for Ground Lease.
- 16.2 Despite clause 16.1, the Developer may sub-licence its interests under this licence provided:
- (a) the Developer gives written notice to the Owner of its intention to sub-licence, including details of the sub- licensee entity; and
 - (b) the sub-licence is for the Permitted Use.

17 Owner assignment and subleasing

The Owner must not sell, assign, concurrently lease or transfer its interest in the Land or this agreement, other than in accordance with a corresponding assignment under clause 5.3 of the Agreement for Ground Lease.

18 Multi-party side deed

- 18.1 The parties acknowledge that the Developer may (and is entitled to) grant a security interest (including a Security Interest) over its rights under this licence to its financier or financiers.
- 18.2 If requested by the Developer, the Owner must enter into a deed or deeds with the Developer and the Developer's financier in a form reasonably required by the Developer's financier ("**Multi-party Side Deed**").
- 18.3 The Multi-Party Side Deed referred to in clause 18.2 above will generally be consistent with the principles contained in Schedule 5 of the Agreement for Ground Lease or will otherwise be on terms reasonably acceptable to the parties.
- 18.4 The parties agree to act reasonably and in good faith in relation to things requested by the Developer or its respective financier or financiers, including the negotiation and execution of a Multi-Party Side Deed. Without limiting the previous sentence, the Owner accepts that the Developer's financier may have requirements that are different to the principles contained in Schedule 5 of the Agreement for Ground Lease (including the financier's form of Multi-Party Side Deed), and the Owner must act reasonably and in good faith in relation to the financier's requirements.

Part H Insurance and risk

19 Insurance

- 19.1 Release and indemnity
- (a) The Developer releases the Owner from any claim, action, damage, loss, liability, cost or expense which the Developer incurs or is liable for in connection with any damage, loss, injury or death to or of any person or property arising from the Developer's access to or use of the Land and any liability for damage to the Developer's property arising from the Developer's access to or use of the Land, except to the extent such damage, loss, injury or death is caused or contributed to by the act or omission of the Owner or the Owner's authorised representatives, consultants, employees, agents, contractors or invitees.

- (b) The Developer indemnifies the Owner against any claim, action, damage, loss, liability, cost or expense which the Owner incurs or is liable for in connection with any damage, loss, injury or death caused or contributed to by the Developer's or the Developer's authorised representatives', consultants', employees', agents', contractors' or invitees', access to or use of the Land, except to the extent such damage, loss, injury or death is caused or contributed to by the act or omission of the Owner or the Owner's authorised representatives, consultants, employees, agents, contractors or invitees.

19.2 The Developer must maintain the insurances required under the Agreement for Ground Lease during the Term.

Part I Expiry of licence

20 End of licence

- 20.1 On the Expiry Date the Developer must vacate the Land.
- 20.2 The Developer has no make good obligations under this licence, but may have obligations under clause 6.3 of the Agreement for Ground Lease.
- 20.3 The termination of this licence will not affect any rights of either party for any breach of this licence prior to the termination.

Part J Termination

21 Termination interdependent

This licence automatically ends at the same time that the Agreement for Ground Lease ends.

22 No other right to terminate

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

Part K General

23 Access

- 23.1 The Developer may enter, use and access the Land. The Developer may also access the Land over parts of any land in the Retail Centre as is reasonably required to enter, use and access the Land, but only to the extent that the Owner is, at the relevant time, entitled to grant such access having regard to any agreements for lease, licences or leases of the Retail Centre land.
- 23.2 The Owner or its agents may enter the Land in accordance with the provisions of the Agreement for Ground Lease.
- 23.3 Despite any other provision of this licence, the Developer acknowledges that the the Developer's employees, contractors, agents, invitees and visitors may not access the Land before receiving the Owner's site training (except where the Developer's employees, contractors, agents, invitees and visitors have received the Owner's site training in accordance with the Development Management Agreement). The Owner must make the Owner's site induction training available to the Developer's employees, contractors, agents, invitees and visitors on reasonable notice by the Developer.

24 Notices affecting Land

If the Owner receives any notices from an Authority which relate to:

- (a) planning permits or development approvals;
- (b) rezoning of land;
- (c) compulsory acquisition of land;
- (d) resumption of land;
- (e) road widening;
- (f) rates;
- (g) taxation; or
- (h) interruption of services,

which would or could affect the Land the Owner must give a copy of the notice to the Developer within 14 days after it is received by the Owner.

25 Mortgagee's consent

The Owner must obtain the consent to this licence of any mortgagee or caveator from time to time at its cost and promptly provide a copy to the Developer.

26 Notices to Owner

A notice, request, consent, approval or other communication (each a **notice**) to be given by the Developer to the Owner under this licence must be given in the manner described in clause 11 of the Agreement for Ground Lease.

27 Notices to Developer

A notice, request, consent, approval or other communication (each a **notice**) to be given by the Owner to the Developer must be given in the manner described in clause 11 of the Agreement for Ground Lease.

28 Merger, partnerships, implied covenants, entire agreement, severability and relevant law

28.1 This licence does not constitute or imply a partnership between the parties.

28.2 If any provision of this licence is or becomes invalid or unenforceable:

- (a) the remaining provisions are not affected; and
- (b) each remaining provision is valid and enforceable to the extent the law allows.

28.3 This licence takes effect as a contract made in the Relevant State and is governed by and must be performed according to the law of the Relevant State.

Part L WHS Law

29 Developer must comply

- 29.1 The Developer must comply with all laws in connection with the Developer's use of the Land and the Works, including the WHS Law.
- 29.2 For the purposes of the WHS Law, the owner appoints the Developer to be its principal contractor with respect to the Works and authorizes the Developer to have management or control of the Land and to discharge the duties of a principal contractor under the WHS Law.
- 29.3 As principal contractor, the Developer acknowledges and agrees that:
- (a) the Works are and will remain the responsibility of the Developer; and
 - (b) the Developer must ensure that the Works are carried out in compliance with the requirements of the WHS Laws.
- 29.4 The Developer's appointment as principal contractor for the purposes of the WHS Law will start on commencement of the Works and will terminate at such time as the Works are completed.

Part M Environmental obligations

30 Developer's obligations

- 30.1 Subject to clause 30.2, the Developer accepts the Land in its existing state and condition as at the Commencement Date.
- 30.2 The Owner must, as soon as reasonably practicable, remediate and manage any Contamination existing in, on or emanating from the Land for which the Owner is responsible under clause 15.1(a)(iii) of the Development Management Agreement.
- 30.3 Without limiting the Developer's obligations under clause 15.6(d) of the Development Management Agreement, the Developer is responsible for the remediation and management of any Contamination existing in or on the Land from the Commencement Date until the Expiry Date to the extent such Contamination:
- (a) renders the Land unsuitable for commercial and industrial use; and
 - (b) is caused or contributed to by:
 - (i) the Developer or the Developer's authorised representatives, consultants, employees, agents, contractors or invitees; and
 - (ii) any person other than the Owner or the Owner's authorised representatives, consultants, employees, agents, contractors or invitees.
- 30.4 Clause 30.3 also applies to any Contamination leaching from the Land onto adjoining land but only to the extent the leaching is caused or contributed to by the Developer or the Developer's authorised representatives, consultants, employees, agents, contractors or invitees.
- 30.5 During the Term, the Developer must use reasonable endeavours not to cause or perform or allow any activity which may result in or cause or contribute to:
- (a) any Contamination on, in or emanating from the Land; or

- (b) exacerbate or add to any pre-existing Contamination on, in or emanating from the Land.

Part N Ownership of fixtures

31 Acknowledgment

- 31.1 The Owner acknowledges that:
 - (a) the Developer will undertake and complete the Works during the Term;
 - (b) the Tenant will pay certain amounts to the Developer for the construction and completion of the Works.
- 31.2 Other than as required by Law, and subject to clause 6.3 of the Agreement for Ground Lease, it is the express intention of the parties that all improvements forming part of the Works that are constructed on the Land vest in the Tenant during the Term, and each party must execute further document as may be required to effect that vesting.

Part O Interest

32 Interest

- 32.1 The Developer must pay interest on any money owing to the Owner which is not paid on the due date. The interest payable:
 - (a) is at a rate 2% per annum higher than the National Australia Bank Limited ABN 12 004 044 937 Business Lending Indicator Base Rate on the date on which default occurs;
 - (b) applies from the day after the money should have been paid to the day that the money is actually paid; and
 - (c) is capitalised on the last day of each month.
- 32.2 If the basis for calculation of interest payable under clause 32.1(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.

Part P Disputes

33 Comply with Agreement for Ground Lease

If a dispute arises out of or in connection with this agreement, each party must comply with the provisions of clause 15 of the Agreement for Ground Lease.

Part Q Counterparts

34 Execution in counterparts

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

Executed as a deed

Schedule 1

1.	Owner:	Western Sydney Parklands Trust	
		ABN:	85 202 544 800
		Address:	Level 7, 10 Valentine Avenue, Parramatta, NSW 2150
		Telephone:	+61 2 9895 7500
		Fax:	+61 2 9895 7580
		Attention:	Kerry Jahangir
2.	Developer:	[#insert details]	
		ABN:	[#insert details]
		Address:	[#insert details]
		Telephone:	[#insert details]
		Fax:	[#insert details]
		Attention:	[#insert details]
3.	Land:	Proposed Lot [##] in Plan of Subdivision [##] [#To be completed]	
4.	Commencement Date:	The day after the conditions in clause 4.1(b) are satisfied..	
5.	Expiry Date:	The earlier of: (a) the Date of Practical Completion; and (b) the date on which the Agreement for Ground Lease is terminated.	
6.	Permitted Use	Construction and development of the Works in accordance with the Agreement for Ground Lease.	
7.	Licence Fee	[\$ ##] per annum (plus GST) [#To be inserted]	

Signing Page

[#Insert relevant execution clauses]

Construction Licence

Western Sydney Parklands Trust

ABN 85 202 544 800

(Owner)

and

[#insert Tenant's name]

ABN [#insert]

(Tenant)

Eastern Creek Retail Centre

[#This Pro Forma Construction Licence is prepared for an Owner/Occupier Transaction.]

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This licence is made on

between:

1. The party named in **item 1 of Schedule 1 (Owner)**;
2. The party named in **item 2 of Schedule 1 (Tenant)**.

Recitals

- (A) The Owner is the registered proprietor of the Land.
- (B) The Owner has agreed to grant the Tenant a non-exclusive licence to enter, use and occupy the Land during the Term for the Permitted Use, and on the terms and conditions contained in this licence.

Part A Definitions and Interpretation

1 Definitions

In this licence these words have these meanings:

Adjustment Note	defined in clause 12.1 ;
AFGL Conditions	the conditions set out in clause 3.1(a) of the Agreement for Ground Lease;
Agreement for Ground Lease	the agreement for ground lease entered into between the Owner, Developer and Tenant on or around the date of this licence;
Amended Certification	has the meaning given to that term in the Agreement for Ground Lease;
Business Day	a day on which trading banks are opened for banking business in Sydney;
Commencement Date	the date described in item 4 of Schedule 1 ;
Date of Practical Completion	the date that "Practical Completion" is achieved under the Agreement for Ground Lease;
Developer	means the Developer under the Development Management Agreement and its successors and assigns;
Developer's Infrastructure Works	has the meaning given to the term 'Internal Infrastructure Works' in the Development Management Agreement, in so far as those works are within, or for the benefit of, the Land;

Development Management Agreement	has the meaning given to that term in the Agreement for Ground Lease;
Expiry Date	the date specified in item 5 of Schedule 1 or any earlier date on which this licence is terminated;
Ground Lease	has the meaning given to that term in the Agreement for Ground Lease;
GST and GST law	defined in clause 12.1 ;
Initial Certification	has the meaning given to that term in the Agreement for Ground Lease;
Land	the land described in item 3 of Schedule 1 and where the context allows, the fixtures, fittings, furnishings, plant, machinery and equipment (if any) from time to time installed in the Land;
Landlord's Site Works	has the meaning given to the term "External Infrastructure Works" in the Development Management Agreement, in so far as those works are within, or for the benefit of, the Land.
Licence Fee	the fee set out in item 7 of Schedule 1 ;
	;
Owner	the Owner named in item 1 of Schedule 1 and its successors and assigns;
Permitted Use	the use of the Land permitted under clause 9 ;
Relevant State	New South Wales;
Retail Centre	means the land located on the corner of Rooty Hill Road South and Great Western Highway, Eastern Creek NSW;
Security Interest	includes: <ul style="list-style-type: none"> (a) a mortgage, charge, lien or pledge or any other right by way of security; and (b) a security interest within the meaning of section 12(1) of the <i>Personal Properties Securities Act 2009</i> (Cth);
Tax Invoice	is defined in clause 12.1 ;

Tenant	the Tenant named in item 2 of Schedule 1 and its successors and assigns;
Tenant's Employees and Agents	each of the Tenant's employees, officers, agents, surveyors, contractors, consultants and invitees;
Tenant's Site Works	has the meaning given to the term "Developer's Site Works" in the Development Management Agreement, in so far as those works are within, or for the benefit of, the Land;
Term	has the meaning given to that term in clause 6 ;
WHS Law	any occupational, health and safety law, regulation or by-law that applies to work being (or to be) carried out on the Land. This definition includes the provisions under the <i>Work Health and Safety Act 2011</i> (NSW) and the <i>Work Health and Safety Regulations 2011</i> (NSW); and
Works	has the meaning given to that term in the Agreement for Ground Lease.

2 Interpretation

2.1 In this licence, unless the context otherwise requires:

- (a) derivatives of a word or phrase defined in this agreement have corresponding meanings;
- (b) headings are included to assist interpretation but do not form part of this agreement;
- (c) words of one gender include any other gender;
- (d) the singular includes the plural and the plural includes the singular;
- (e) a reference to a person includes an individual, a body corporate or an Authority;
- (f) a reference to a thing (including, but not limited to, a right, a building and the Land) includes any part of that thing;
- (g) a reference to a "contractor" includes a subcontractor;
- (h) reference to a "month" means one calendar month (for example, if a payment is to be made within one month of demand and the demand is made on 16 June then the payment must be made on or before 16 July);
- (i) a promise or agreement by 2 or more persons under this agreement binds those persons jointly and each of them individually;
- (j) a reference to a clause, schedule or exhibit is a reference to a clause, schedule or exhibit to this licence;
- (k) a reference to this licence includes all the schedules and exhibits to it;
- (l) references to statutes, regulations, ordinances or local laws extend to all statutes, regulations, ordinances or local laws amending, consolidating or replacing them;

- (m) a provision of this licence must not be construed against a party solely because that party was responsible for preparing this agreement or that provision;
- (n) where any form of the word 'include' appears, it is to be read as if followed by the words 'without limitation';
- (o) unless defined in this licence, words and phrases defined in the Agreement for Ground Lease have the same meaning; and
- (p) unless otherwise specified, time is of the essence in respect of each of the Owner's obligations under this licence.

3 Headings

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

Part B Conditions Precedent

4 Commencement conditional

4.1 This licence is subject to and conditional on;

4.2 Except for this clause 4 and clauses 11, 12, 16, 17, 18, 21, 22, 24, 25, 26, 27 and 28 and Schedule 1, this licence will have no effect and the parties will have no obligations under this licence until the condition precedent in clause 4.1 is satisfied.

Part C Grant of licence and automatic termination

5 Licence

5.1 In consideration for the payment of the Licence Fee, the Owner grants to the Tenant a non-exclusive licence from the Commencement Date to enter, use and occupy the Land, with or without the Tenant's Employees and Agents, for the Permitted Use and on the terms and conditions in this licence.

5.2 The Owner grants the non-exclusive licence under clause 5.1 to the Tenant for the purpose of constructing and completing the Works.

6 Term of this licence

This licence begins on the Commencement Date and ends at midnight on the Expiry Date.

7 Automatic termination

Despite any other provision of this licence, this licence will terminate, without the need for any further action by either party, on commencement of the Ground Lease.

8 Contractual rights

The rights given to the Tenant under this licence are contractual only and do not give the Tenant any interest in the Land or the right to lodge a caveat.

9 Permitted Use

The Tenant must not use the Land for any purpose other than the use specified in item 6 of Schedule 1.

Part D Licence Fee

10 Licence Fee

10.1 On and from the Commencement Date, and subject to clause 10.2, the Tenant must pay the Licence Fee to the Owner by equal monthly instalments in arrears.

10.2 Despite any other provisions of this licence, the Development Management Agreement and the Agreement for Ground Lease, the Tenant is not required to pay the Licence Fee during, or in respect of, any period of delay to the Landlord's Site Works:

(a) caused by a matter referred to in clauses 6.3(a)(ii)(C) or 6.3(a)(ii)(E) of the Development Management Agreement; or

(b) from the date the Owner was required to complete the Landlord's Site Works in accordance with clause 6 of the Development Management Agreement until the date that the Landlord's Site Works are completed,

but only to the extent, and for the period, that:

(c) the Developer is delayed in carrying out the Developer's Infrastructure Works; or

(d) the Tenant is delayed in carrying out the Tenant's Site Works or the Works,

as a result of the delay to the Landlord's Site Works.

10.3 Despite any other provisions of this licence, the parties agree that:

(a) a party's ("**Paying Party**") obligation to make a payment to any other party ("**Receiving Party**") only arises upon receipt of a relevant tax invoice from the Receiving Party; and

(b) the Paying Party must make the relevant payment within 10 Business Days from the date it receives the relevant tax invoice from the Receiving Party.

Part E Payments and costs

11 Costs of lease and stamp duties

11.1 Subject to clause 11.2, the Owner must pay its own costs of and incidental to the preparation and execution of this licence.

- 11.2 The Tenant agrees to reimburse to the Owner, the Owner's reasonable legal costs in relation to the negotiation, preparation and execution of this licence up to a maximum amount of . The Owner agrees clause 24.1(b)(iii) of the Development Management Agreement does not apply in relation to this licence.
- 11.3 The Tenant must pay its own costs of and incidental to the preparation and execution of this licence.
- 11.4 The Tenant must pay any stamp duty (if any) assessed on this licence or any renewal or extension of this licence.

12 Goods and Services Tax

12.1 In this clause:

- (a) "GST" means a tax that is payable under the GST law and imposed as a goods and services tax by any of the following:
- (i) the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (Cth)*;
 - (ii) the *A New Tax System (Goods and Services Tax Imposition - Customs) Act 1999 (Cth)*;
 - (iii) the *A New Tax System (Goods and Services Tax Imposition - Excise) Act 1999 (Cth)*;
 - (iv) regulations related to any of these Acts; or
 - (v) any amendment to any of these Acts or regulations or both or any other Act by any of the Commonwealth, State or Territory Governments which imposes a goods and services tax, a broad base consumption tax value added tax, retail turnover tax or a tax of a similar nature;
- (b) "Primary Payment" means any payment by the Tenant to the Owner of any Licence Fee or other amount payable by a Recipient to a Supplier under this licence;
- (c) "Recipient" means the person to whom a Taxable Supply is made under this licence;
- (d) "Supplier" means the person who makes a Taxable Supply under this licence; and
- (e) "Adjustment Note", "GST law", "Taxable Supply" and "Tax Invoice" have the meanings given by section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

12.2 All Primary Payments specified in this licence are exclusive of GST.

12.3 If the Supplier is liable under the GST law for any GST on any Primary Payment, the Recipient must pay to the Supplier instead of the Primary Payment, an amount (**Adjusted Primary Payment**) calculated in accordance with the following formula:

$$APP = PP + (PP \times R)$$

where:

APP is the Adjusted Primary Payment;

PP is the Primary Payment; and

R is the rate of goods and services tax specified in the *A New Tax System (Goods and Services Tax Imposition - General) Act 1999 (Cth)*.

- 12.4 Subject to clause 12.5 the Recipient must pay to the Supplier the Adjusted Primary Payment calculated under clause 12.3:
- (a) at the same time; and
 - (b) in the same manner,
- as the Recipient is required to pay the Primary Payment.
- 12.5 As a precondition to the Recipient paying the GST component of the Adjusted Primary Payment to the Supplier, the Supplier must issue to the Recipient a Tax Invoice in respect of the payment required. All Tax Invoices must show GST as a separate item.
- 12.6 If the Supplier refunds to the Recipient any amount under this licence, the Supplier must also issue to the Recipient an Adjustment Note in respect of the refund.
- 12.7 Any amount to be reimbursed by a party under this licence must not exceed the GST inclusive price paid by the party seeking the reimbursement.

13 Statutory Costs and Outgoings

The Tenant is responsible for the cost of all:

- 13.1 statutory charges and taxes which are payable in relation to the Land including rates assessments or other fees, levies or charges (for example Council rates, water rates, sewerage rates) and land tax. Despite the previous sentence, the parties agree that the Tenant is not responsible for, and is not required to pay any land tax (including any back dated charges, penalties or fees) charged or payable on the whole or any part of the Land in respect of a period prior to the Commencement Date;
- 13.2 costs of maintaining the Land in the state or condition as at the Commencement Date;
- 13.3 any costs incurred by the Tenant in compliance with any laws or requirements in respect of the Land; and
- 13.4 power, water, gas and other services supplied to the Land,

from the Commencement Date and must reimburse the Owner to the extent those costs are paid by the Owner within 10 Business Days of the Owner providing to the Tenant reasonable evidence of the costs incurred.

Part F Use of Land

14 Proper use of Land

- 14.1 The Tenant must not use the Land for any illegal purpose.
- 14.2 The Tenant must not cause any nuisance by its use of the Land.
- 14.3 The Tenant must maintain all licences, consents, permits and registrations required for carrying on the Works
- 14.4 The Tenant must comply with all Laws in respect of this licence.

15 Alterations to the Land

Within 14 days of a request being made by the Tenant, the Owner must at the Tenant's cost sign any application, form or other document required to be signed by the Owner for the consent or approval of any Authority to alterations or additions to the Land contemplated under the Agreement for Ground Lease.

Part G Tenant's parting of possession

16 Tenant assignment and subleasing

- 16.1 The Tenant must not assign this licence, other than in accordance with a corresponding assignment under clause 5.1 of the Agreement for Ground Lease.
- 16.2 Despite clause 16.1, the Tenant may sub-licence its interests under this licence provided:
- (a) the Tenant gives written notice to the Owner of its intention to sub-licence, including details of the sub-licensee entity; and
 - (b) the sub-licence is for the Permitted Use.

17 Owner assignment and subleasing

The Owner must not sell, assign, concurrently lease or transfer its interest in the Land or this agreement, other than in accordance with a corresponding assignment under clause 5.2 of the Agreement for Ground Lease.

18 Multi-party side deed

- 18.1 The parties acknowledge that the Tenant may (and is entitled to) grant a security interest (including a Security Interest) over its rights under this licence to its financier or financiers.
- 18.2 If requested by the Tenant, the Owner 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**").
- 18.3 The Multi-Party Side Deed referred to in clause 18.2 above will generally be consistent with the principles contained in Schedule 5 of the Agreement for Ground Lease or will otherwise be on terms reasonably acceptable to the parties.
- 18.4 The parties agree to act reasonably and in good faith in relation to things requested by the Tenant or its respective financier or financiers, including the negotiation and execution of a Multi-Party Side Deed. Without limiting the previous sentence, the Owner accepts that the Tenant's financier may have requirements that are different to the principles contained in Schedule 5 of the Agreement for Ground Lease (including the financier's form of Multi-Party Side Deed), and the Owner must act reasonably and in good faith in relation to the financier's requirements.

Part H Insurance and risk

19 Insurance

- 19.1 Release and indemnity
- (a) The Tenant releases the Owner from any claim, action, damage, loss, liability, cost or expense which the Tenant incurs or is liable for in connection with any damage, loss, injury or death to or of any person or property arising from the

Tenant's access to or use of the Land and any liability for damage to the Tenant's property arising from the Tenant's access to or use of the Land, except to the extent such damage, loss, injury or death is caused or contributed to by the act or omission of the Owner or the Owner's authorised representatives, consultants, employees, agents, contractors or invitees.

- (b) The Tenant indemnifies the Owner against any claim, action, damage, loss, liability, cost or expense which the Owner incurs or is liable for in connection with any damage, loss, injury or death caused or contributed to by the Tenant's or the Tenant's authorised representatives', consultants', employees', agents', contractors' or invitees', access to or use of the Land, except to the extent such damage, loss, injury or death is caused or contributed to by the act or omission of the Owner or the Owner's authorised representatives, consultants, employees, agents, contractors or invitees.

- 19.2 The Tenant must maintain the insurances required under the Agreement for Ground Lease during the Term.

Part I Expiry of licence

20 End of licence

- 20.1 On the Expiry Date the Tenant must vacate the Land.
- 20.2 The Tenant has no make good obligations under this licence, but may have obligations under clause 6.3 of the Agreement for Ground Lease.
- 20.3 The termination of this licence will not affect any rights of either party for any breach of this licence prior to the termination.

Part J Termination

21 Termination interdependent

This licence automatically ends at the same time that the Agreement for Ground Lease ends.

22 No other right to terminate

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

Part K General

23 Access

- 23.1 The Tenant may enter, use and access the Land. The Tenant may also access the Land over parts of any land in the Retail Centre as is reasonably required to enter, use and access the Land, but only to the extent that the Owner is, at the relevant time, entitled to grant such access having regard to any agreements for lease, licences or leases of the Retail Centre land.
- 23.2 The Owner or its agents may enter the Land in accordance with the provisions of the Agreement for Ground Lease.

23.3 Despite any other provision of this licence, the Tenant acknowledges that the Tenant's employees, contractors, agents, invitees and visitors may not access the Land before receiving the Owner's site training (except where the Tenant's employees, contractors, agents, invitees and visitors have received the Owner's site training in accordance with the Development Management Agreement). The Owner must make the Owner's site induction training available to the Tenant's employees, contractors, agents, invitees and visitors on reasonable notice by the Tenant.

24 Notices affecting Land

If the Owner receives any notices from an Authority which relate to:

- (a) planning permits or development approvals;
- (b) rezoning of land;
- (c) compulsory acquisition of land;
- (d) resumption of land;
- (e) road widening;
- (f) rates;
- (g) taxation; or
- (h) interruption of services,

which would or could affect the Land the Owner must give a copy of the notice to the Tenant within 14 days after it is received by the Owner.

25 Mortgagee's consent

The Owner must obtain the consent to this licence of any mortgagee or caveator from time to time at its cost and promptly provide a copy to the Tenant.

26 Notices to Owner

A notice, request, consent, approval or other communication (each a **notice**) to be given by the Tenant to the Owner under this licence must be given in the manner described in clause 11 of the Agreement for Ground Lease.

27 Notices to Tenant

A notice, request, consent, approval or other communication (each a **notice**) to be given by the Owner to the Tenant must be given in the manner described in clause 11 of the Agreement for Ground Lease.

28 Merger, partnerships, implied covenants, entire agreement, severability and relevant law

28.1 This licence does not constitute or imply a partnership between the parties.

28.2 If any provision of this licence is or becomes invalid or unenforceable:

- (a) the remaining provisions are not affected; and
- (b) each remaining provision is valid and enforceable to the extent the law allows.

- 28.3 This licence takes effect as a contract made in the Relevant State and is governed by and must be performed according to the law of the Relevant State.
-

Part L WHS Law

29 Tenant must comply

- 29.1 The Tenant must comply with all laws in connection with the Tenant's use of the Land and the Works, including the WHS Law.
- 29.2 For the purposes of the WHS Law, the owner appoints the Tenant to be its principal contractor with respect to the Works and authorizes the Tenant to have management or control of the Land and to discharge the duties of a principal contractor under the WHS Law.
- 29.3 As principal contractor, the Tenant acknowledges and agrees that:
- (a) the Works are and will remain the responsibility of the Tenant; and
 - (b) the Tenant must ensure that the Works are carried out in compliance with the requirements of the WHS Laws.
- 29.4 The Tenant's appointment as principal contractor for the purposes of the WHS Law will start on commencement of the Works and will terminate at such time as the Works are completed.
-

Part M Environmental obligations

30 Tenant's obligations

- 30.1 Subject to clause 30.2, the Tenant accepts the Land in its existing state and condition as at the Commencement Date.
- 30.2 The Owner must, as soon as reasonably practicable, remediate and manage any Contamination existing in, on or emanating from the Land for which the Owner is responsible under clause 16.1(a)(iii) of the Agreement for Ground Lease.
- 30.3 The Tenant is responsible for the remediation and management of any Contamination existing in or on the Land from the Commencement Date until the Expiry Date to the extent such Contamination:
- (a) renders the Land unsuitable for commercial and industrial use; and
 - (b) is caused or contributed to by any person other than the Owner or the Owner's authorised representatives, consultants, employees, agents, contractors or invitees.
- 30.4 Clause 30.3 also applies 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 authorised representatives, consultants, employees, agents, contractors or invitees.
- 30.5 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:
- (a) any Contamination on, in or emanating from the Land; or

- (b) exacerbate or add to any pre-existing Contamination on, in or emanating from the Land.

Part N Ownership of fixtures

31 Acknowledgment

- 31.1 The Owner acknowledges that the Tenant will undertake and complete the Works during the Term.
- 31.2 Other than as required by Law, and subject to clause 6.3 of the Agreement for Ground Lease, it is the express intention of the parties that all improvements forming part of the Works that are constructed on the Land vest in the Tenant during the Term, and each party must execute further document as may be required to effect that vesting.

Part O Interest

32 Interest

- 32.1 The Tenant must pay interest on any money owing to the Owner which is not paid on the due date. The interest payable:
 - (a) is at a rate 2% per annum higher than the National Australia Bank Limited ABN 12 004 044 937 Business Lending Indicator Base Rate on the date on which default occurs;
 - (b) applies from the day after the money should have been paid to the day that the money is actually paid; and
 - (c) is capitalised on the last day of each month.
- 32.2 If the basis for calculation of interest payable under clause 32.1(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.

Part P Disputes

33 Comply with Agreement for Ground Lease

If a dispute arises out of or in connection with this agreement, each party must comply with the provisions of clause 15 of the Agreement for Ground Lease.

Part Q Counterparts

34 Execution in counterparts

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

Executed as a deed

Schedule 1

1.	Owner:	Western Sydney Parklands Trust	
		ABN:	85 202 544 800
		Address:	Level 7, 10 Valentine Avenue, Parramatta, NSW 2150
		Telephone:	+61 2 9895 7500
		Fax:	+61 2 9895 7580
		Attention:	Kerry Jahangir
2.	Tenant:	[#insert details]	
		ABN:	[#insert details]
		Address:	[#insert details]
		Telephone:	[#insert details]
		Fax:	[#insert details]
		Attention:	[#insert details]
3.	Land:	Proposed Lot [##] in Plan of Subdivision [##] [#To be completed]	
4.	Commencement Date:	The day after the conditions in clause 4.1(b) are satisfied.	
5.	Expiry Date:	The earlier of: (a) the Date of Practical Completion; and (b) the date on which the Agreement for Ground Lease is terminated.	
6.	Permitted Use	Construction and development of the Works in accordance with the Agreement for Ground Lease.	
7.	Licence Fee	[\$ ##] per annum (plus GST) [#To be inserted]	

Signing Page

[Insert relevant execution clauses]

**Eastern Creek Retail Centre - Development
Management Agreement**
Annexure C – Not used



**Eastern Creek Retail Centre - Development
Management Agreement**
Annexure D – Project Management Agreement

Project Management Agreement

Dated

Western Sydney Parklands Trust ABN 85 202 544 800 ("**Owner**")
Fraser's Property Industrial Constructions Pty Limited (ABN 85 095 586
708) ("**Project Manager**")

King & Wood Mallesons
Level 61
Governor Phillip Tower
1 Farrer Place
Sydney NSW 2000
T +61 2 9296 2000
F +61 2 9296 3999
DX 113 Sydney
Ref: WGW / 602-0012791

Project Management Agreement

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Project Management Agreement

Details

Parties	Owner and Project Manager	
Owner	Name	Western Sydney Parklands Trust
	ABN	85 202 544 800
	Address	Level 7, 10 Valentine Park PARRAMATTA NSW 2150
	Telephone	+61 2 9895 7500
	Fax	+61 2 9895 7580
	Attention	Kerry Jahangir
	Project Manager	Name
ABN		85 095 586 708
Address		Building C, Level 3 1 Homebush Bay Drive RHODES NSW 2138
Telephone		+61 2 9767 2000
Fax		+61 2 9767 2900
Attention		Shannon Stewart
Recitals		A
	B	The Owner and the Project Manager have agreed to enter into this Project Management Agreement in relation to the completion of the Works.
	C	The Project Manager has agreed to provide project management services for the Works and to control, manage, co-ordinate and supervise all activities involved in the Works subject to the terms and conditions contained in this agreement.
Governing law	New South Wales	
Date of agreement	See Signing page	

Project Management Agreement

General terms

1 Definitions and interpretation

1.1 Definitions

In this agreement unless the context otherwise requires:

Approvals means all permits, licences, consents, certificates or other approvals or exemptions obtained or required to be obtained from all relevant statutory or other authorities in relation to the carrying out of the Works.

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

Consultant means any architect, builder, designer, engineer, quantity surveyor, lawyer, auditor, insurance consultant, financial consultant or other expert appointed from time to time as a consultant to the Works by the Owner, including those appointed by the Project Manager on behalf of the Owner under this agreement.

Copyright Works means any copyright work forming part of the Documentation or any documents which the Project Manager is required to provide to the Owner under this agreement.

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

Details means the section of this agreement headed "Details".

Development Management Agreement means the Eastern Creek Retail Centre Development Management Agreement, dated on or about the date of this deed, between the Owner (as land owner), Frasers Property Industrial Constructions Pty Limited (as developer) and Frasers Property Limited (as guarantor).

Documentation means any documentation required for the proper completion of the Services.

Insolvency Event means the happening of any of these events:

- (a) an application is made to a court for an order or an order is made that a body corporate be wound up; or
- (b) an application is made to a court for an order appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order; or
- (c) except to reconstruct or amalgamate while solvent on terms approved by the other party a body corporate enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent on terms approved by the other party or is otherwise wound up or dissolved; or

- (e) a body corporate is or states that it is insolvent; or
- (f) as a result of the operation of section 459F(1) of the Corporations Act, a body corporate is taken to have failed to comply with a statutory demand; or
- (g) a body corporate is or makes a statement from which it may be reasonably deduced by the other party that the body corporate is, the subject of an event described in section 459C(2)(b) or section 585 of the Corporations Act; or
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) a person becomes an insolvent under administration as defined in section 9 of the Corporations Act or action is taken which could result in that event; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction.

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

Project Brief means the design brief for the Works attached as Schedule 7 of the Development Management Agreement.

Project Budget means the expenditure budget in relation to the Works attached at Schedule 2.

Project Expenses means all costs and expenses incurred in relation to the Works.

Project Quality Plan means a written plan which sets out how the Project Manager intends to provide quality control to the Works, and identifies levels of quality that the Project Manager must adhere to at all times.

Services means the services to be provided by the Project Manager in connection with the Works as set out in Schedule 1.

Term has the meaning given to it in the Development Management Agreement.

WH&S Act means the *Work Health and Safety Act 2011 (NSW)*.

Works has the meaning given to the term "External Infrastructure Works" in the Development Management Agreement.

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

1.2 Interpretation

In this agreement unless the contrary intention appears:

- (a) a reference to this agreement or another instrument includes any variation or replacement of any of them;
- (b) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (c) the singular includes the plural and vice versa;
- (d) the word "person" includes a firm, body corporate, a trust, an unincorporated association or an authority;
- (e) a reference to a person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and permitted assigns;
- (f) an agreement, representation or warranty on the part of or in favour of two or more persons is for the benefit of them jointly and severally;
- (g) a reference to any thing (including any amount) is a reference to the whole and each part of it and a reference to a group of persons is a reference to all of them collectively, to any two or more of them collectively and to each of them individually;
- (h) where any form of the word 'include' appears, it is to be read as if followed by the words 'without limitation'; and
- (i) if an act prescribed under this agreement to be done by a party on or by a given day is done after 5.30 pm on that day, it is to be taken to be done on the following day.

1.3 Headings

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

2 Consideration

The parties acknowledge incurring obligations and giving rights under this agreement for valuable consideration received from the other.

3 Functions and duties of the Project Manager

3.1 General

- (a) The Project Manager agrees to act as project manager and be responsible for the control, management, co-ordination and supervision of all activities of the Works, including:
 - (i) project managing the Owner's compliance with the Owner's obligations for the Works under the Development Management Agreement and;

- (ii) performing the Services set out in Schedule 1.
- (b) Despite any other provision of this agreement, the Project Manager is not responsible for a breach by the Owner of its obligations under the Development Management Agreement in connection with the Works provided the Project Manager has acted in accordance with the Project Manager's obligations under this agreement.

3.2 Decisions concerning the Works

Subject to the terms of this agreement, the Project Manager, in its role as project manager, is responsible for all decisions and recommendations in relation to the Works, other than as set out in clauses 6.1 and 6.2.

3.3 Supervision

The Project Manager must at all times, during the Works:

- (a) use all due skill and care in carrying out its obligations under this agreement;
- (b) maintain supervision, control and co-ordination of its officers, employees and agents; and
- (c) use only appropriately qualified, competent and skilled personnel.

3.4 Development Management Agreement

Nothing in this agreement prejudices the parties' rights under the Development Management Agreement.

4 Access to the land

4.1 Access

The Owner agrees that the Project Manager has the non-exclusive licence to occupy and has full and free access to all land owned by the Owner as may be necessary for the purposes of this agreement.

4.2 No Interest

Nothing in this agreement will operate or be deemed or construed as to give the Project Manager any legal or beneficial interest in any land.

5A Project Budget

5A.1 Project Budget

The parties agree the Project Budget as at the date of this agreement is attached at Schedule 2.

5A.2 Amended Project Budget

- (a) The Project Manager must:
 - (i) submit amendments to the Project Budget for approval by the Owner; or

- (ii) confirm to the Owner that there are no amendments to the last Project Budget issued by the Owner,

every 6 months after the date of this agreement.

- (b) In addition to providing the amendments or confirmation required under clause 5A.2(a), the Project Manager may at any time during the Term, submit to the Owner amendments to the Project Budget for approval by the Owner.
- (c) The Owner must (acting reasonably):
 - (i) review the amendments submitted to the Owner; and
 - (ii) notify the Project Manager of whether it approves or does not approve the amendments within 10 Business Days of the date of submission of the amendments by the Project Manager, and if it does not approve the amendments, must give reasons for its decision.

The Owner must not unreasonably withhold its approval of the amendments.

- (d) If the Owner approves the amendments, the amended Project Budget becomes the "Project Budget" for the purposes of this agreement.

5 Authority of the Project Manager

5.1 Independent Contractor

The Owner appoints the Project Manager to carry out the Services as independent and impartial contractor to the Owner.

5.2 Authority includes

Subject to clause 5.3, the authority under clause 5.1 extends to any action necessary for the Project Manager to carry out the Services.

5.3 Authority excludes

The authority in clause 5.2 does not include:

- (a) incurring or causing the Owner to incur any expenditure (including Project Expenses) in excess of the amounts provided for in the Project Budget except as permitted under clause 6.3(a); or
- (b) undertaking any material alteration or modification of the Approvals.

6 Owner's control of the Works

6.1 Ultimate risk and control

The Owner bears the ultimate risk in the Works and may determine and issue reasonable written instructions to the Project Manager in connection with:

- (a) the Approvals; and
- (b) the Project Budget.

6.2 Owner may set policies

The Owner may set policies for the carrying out of the Works including setting reasonable policies as to:

- (a) incurring expenditure not provided for in the Project Budget; and
- (b) final approval for the drawing of funds or expenditure of contingencies even if budgeted for in the Project Budget.

6.3 Project Manager must comply with instructions

The Project Manager must comply with instructions and policies described in clauses 6.1 and 6.2 except if:

- (a) it cannot do so due to a serious and immediate emergency where prompt action is required without the ability to seek instructions of the Owner; or
- (b) the action taken is of a minor nature and does not impact on attainment of the Project Budget (including cashflows).

This clause 6.3 does not prevent the Owner from changing their policies or instructions, and the Project Manager must nevertheless comply with those changed reasonable policies or instructions.

6.4 Ownership of, and copyright in, Documentation

- (a) Subject to clause 6.4(c), the Project Manager:
 - (i) assigns to the Owner absolutely all of the rights, title and interest in any Documentation upon its creation; and
 - (ii) must procure from each subcontractor or Consultant the assignment of all rights, title and interest in any Documentation created by those subcontractors or Consultants to the Owner upon its creation.
- (b) The Project Manager must, if required by the Owner, do all further things reasonably necessary to assign the Project Manager's right, title and interest in any of the Documentation to the Owner.
- (c) If the Project Manager's rights, title and interest in any of the Documentation are not capable of being assigned to the Owner, the Project Manager must ensure that the Owner is irrevocably licensed (whether by sub-licence from the Project Manager or direct licence from the owner of the right, title and interest) to use that Documentation in connection with the Works.

6.5 Moral Rights

- (a) The Project Manager:
 - (i) must use its reasonable endeavours to procure from:
 - (A) any person (including each of its relevant employees and relevant employees of its subcontractors, Consultants and agents) who is an author of any Copyright Works (in this clause 6.5 called "**the author**") which are assigned or licensed to the Owner under this agreement; or

- (B) the employer of any author, who is not an employee of the Project Manager, as agent for the author; and
- (ii) to the extent the Project Manager itself has Moral Rights as an author of such Copyright Works, grant,

to the extent permitted by law, an unconditional and irrevocable assignment or waiver of all Moral Rights in respect of such Copyright Works to which the author or the Project Manager (as the case may be) may be or become entitled, whether in Australia or overseas; to:

- (iii) the Owner;
- (iv) the Owner's licensees and successors in title; and
- (v) any other person authorised by the Owner or by such a licensee or successor in title.

- (b) The Project Manager must give, and must use its best endeavours to procure that each author (or the employer of each author, who is not an employee of the Project Manager, as agent for each author) gives, a written consent authorising:

- (i) the Owner;
- (ii) the Owner's licensees and successors in title; and
- (iii) any other person authorised by the Owner or by such a licensee or successor in title,

to exercise in accordance with this agreement all acts comprised in the copyright in the Copyright Works, including:

- (iv) the use, dealing, reproduction, modification, distortion, abridgement, revision, retitling, transmission, publication, exhibition, adaptation or translation into other dimensions, format or media of those Copyright Works;
- (v) having the Copyright Works bear the name of the Works, the Owner or any other person associated with the Works; and
- (vi) changing, relocating, demolishing or destroying any two or three dimensional reproduction of those Copyright Works without notice to or consultation with the author,

without attribution of authorship to the Project Manager or the author (as the case may be) or even if it results in "*derogatory treatment*" (as contemplated by the Copyright Act 1968 (Cth)) which may be prejudicial to the Project Manager's or author's honour or reputation.

- (c) The Project Manager must ensure that any consent, assignments and waivers referred to in clause 6.5(a) and 6.5(b) are genuinely given and not obtained by duress or by the making of any false or misleading statement.
- (d) The Owner may give a written direction to the Project Manager to provide to the Owner all consents, assignments and waivers referred to in clause 6.5(a) and 6.5(b) that are required to be given or have been obtained by the Project Manager.

- (e) The Project Manager must promptly comply with a direction given under clause 6.5(d).

7 Information in relation to the Works

7.1 Information

The Project Manager must make available to the Owner and any person reasonably nominated by the Owner all documents containing information concerning the Works or the Services that it has in its possession or which may come into its possession during the continuance of this agreement.

7.2 Reporting requirements

The Project Manager agrees to keep the Owner regularly and comprehensively informed in relation to the Works, including providing the Owner with:

- (a) monthly reports within 7 days of the end of each month on the status of the Works, including with respect to:
 - (i) council approval status;
 - (ii) payment/financial status;
 - (iii) quality control;
 - (iv) review of financial performance against Project Budget; and
 - (v) progress against any construction program; and
- (b) monthly reports with respect to revenue and expenditure, including as against the Project Budget.

7.3 Project Manager must advise

The Project Manager must promptly advise the Owner of:

- (a) any matter of significant importance requiring prompt notification to the Owner before the succeeding monthly report;
- (b) any decision required by the Owner and the deadline for providing it; and
- (c) any variance from the Project Budget that becomes apparent to the Project Manager.

7.4 Format of reports

The format of reports shall be as reasonably required by the Owner.

8 Project Management Fee

- (a) On the last day of each month of the Term, the Project Manager must submit a payment claim to the Owner setting out:
 - (i) the Project Expenses incurred to date;

- (ii) such copies of invoices and other documentary evidence as may be reasonably required by the Owner so that it can verify the Project Expenses incurred; and
- (iii) the Project Management Fee in respect of the Project Expenses in clause 8(a)(i).

("Payment Claim").

The Payment Claim must include a copy of the Project Budget.

- (b) The Owner must, within 10 Business Days of receiving a Payment Claim under clause 8(a), give the Developer a payment schedule ("**Payment Schedule**") which states:
 - (i) the Project Expenses incurred to date;
 - (ii) the amount already paid by the Owner to the Project Manager for the Project Management Fee in respect of the Works;
 - (iii) the amount (if any) which the Owner believes to be then payable by the Owner to the Project Manager on account of the Project Management Fee; and
 - (iv) if the amount which the Owner proposes to pay to the Project Manager is stated in a Payment Schedule to be less than the amount claimed by the Project Manager in the relevant Payment Claim, the reason why the amount which the Owner proposes to pay the Project Manager is less than the amount claimed in the Payment Claim.
- (c) The Owner must pay the amount payable under each Payment Schedule
- (d) If the amount of the Project Management Fee stated in a Payment Schedule is less than the amount stated in the Project Manager's relevant Payment Claim, then:
 - (i) the Project Manager may by notice to the Owner refer the matter for determination under clause 13;
 - (ii) the Owner must comply with its obligation under clause 8(c); and
 - (iii) following a determination under clause 13, the parties must make the relevant adjustments to the amounts payable under this clause 8 of the date of the relevant determination.
- (e) Payment is only to be taken as payment on account. The issue of a Payment Schedule by the Owner and any payment of money to the Project Manager prior to Practical Completion of the Works:
 - (i) does not constitute approval of any work or an admission or representation by the Owner, or evidence that, Services have been performed in accordance with this agreement;
 - (ii) is not evidence of the value of Services covered by the Payment Schedule;
 - (iii) will not be taken as an admission of liability by the Owner; and

- (iv) is not evidence that the part of the Services covered by the Payment Schedule has been satisfactorily carried out in accordance with this agreement;
- (f) after Practical Completion of all of the Works the Project Manager may give the Owner a final Payment Claim which must include all amounts which the Project Manager claims from the Owner on account of the Project Management Fee.
- (g) To the extent that the *Building and Construction Industry Security of Payment Act 1999* (NSW) ("**the Act**") applies to this agreement;
 - (i) the Project Manager agrees with the Owner that any dates prescribed in this clause 8 as a date on which the Project Manager must make a Payment Claim is, for the purposes of section 8 of the Act, the "reference date" (as defined in the Act);
 - (ii) the Project Manager agrees that a Payment Schedule issued under this agreement is a "payment schedule" as defined in the Act and that the amount set out in the Payment Schedule is, for the purposes of sections 9 and 10 of the Act, the amount of the "progress payment" (as defined in the Act) calculated in accordance with the terms of this agreement to which the Project Manager is entitled in respect of the Payment Claim in response to which the Payment Schedule was issued; and
 - (iii) for the purposes of section 17(3) of the Act, the Project Manager irrevocably chooses the Resolution Institute, Australia, as the "authorised nominating authority" (as that term is defined in the Act) for any adjudication application it may make under the Act in respect of the subject matter of this agreement.

9 Payment of expenses incurred by the Project Manager

9.1 Reimbursement of expenses

The Owner must pay or reimburse the Project Manager for:

- (a) any expenses approved by the Owner either specifically or generally under the terms of this agreement; and
- (b) any other expenses identified in the Project Budget paid by the Project Manager on behalf of the Owner in the performance of the Services.

9.2 Invoices

The Project Manager must, at the same time it issues a Payment Claim under clause 8(a), invoice the Owner for the expenses claimed by the Project Manager pursuant to clause 9.1 and provide written evidence to satisfy the Owner that such expenses have been properly incurred and are reimbursable under clause 9.1.

10 Insurance

- (a) The Project Manager must keep:

- (i) Public Liability Insurance in the name of the Project Manager as well as any contractor, with the Owner to be listed as an additional insured for liability arising out of the Project Manager's or contractor's actions; and
 - (ii) Professional Indemnity Insurance in the name of the Project Manager for its potential liability in relation to design and project management services.
- (b) Prior to commencement of any works, the Project Manager must produce to the Owner a copy of the certificate of currency of each policy and evidence that such policies satisfy the requirements of this clause 10.

11 Work Health and Safety

The Project Manager must comply with all laws in providing the Services, including the WH&S Act.

12 Termination

12.1 Agreement expires

This agreement will expire upon the earlier of:

- (a) completion of the Works; and
- (b) termination of the Development Management Agreement,

unless this agreement is terminated earlier under this clause 12.

12.2 Default

If:

- (a) the Project Manager; or
- (b) the Owner,

is in default under this agreement, the party to whom the defaulted obligation is owed ("**Non-Defaulting Party**") may by written notice request the defaulting party to remedy the default. If, at the expiration of 30 Business Days from receipt of such notice, the default has either not been remedied to the satisfaction of the Non-Defaulting Party or is not capable of remedy, the party to whom the defaulted obligation is owed may forthwith terminate this agreement.

12.3 Definition of Default

For the purposes of this clause 12 "**default**" under this agreement with respect to the defaulting party means:

- (a) an Insolvency Event occurs in respect of the defaulting party; or
- (b) the defaulting party ceases to carry on its business or a substantial part thereof; or
- (c) the defaulting party fails to perform a material obligation under this agreement.

12.4 Delivery of documents

On termination of this agreement the Project Manager must promptly deliver all documents and records relating to the Works to the Owner.

12.5 Fees cease to accrue

On termination under clause 12.2 the Project Management Fee shall cease to accrue.

13 Dispute resolution

13.1 Notification

If a dispute between the Owner and the Project Manager arises out of or in connection with this agreement, each party must (except in any proceedings for equitable relief, in which case this clause 13.1 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.

13.2 The reply

The party against whom the claim is made must reply _____ s after receipt of the detailed particulars.

13.3 The dispute

If the claim is not accepted _____ provision of the reply to the party making the claim then a dispute is deemed to exist.

13.4 Compulsory CEO conference

Upon a dispute being deemed to exist under clause 13.3, the parties must cause their respective chief executives to meet _____ 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 13.5.

13.5 Expert

- (a) If the parties fail to resolve the dispute in accordance with clause 13.4, the parties must appoint a person ("**Expert**") to resolve the dispute. If the parties cannot agree on the appointment of the Expert _____, then the Expert must be appointed by the President of the Australian Resolution Institute, New South Wales Chapter. Either party may approach the President of the Australian Resolution Institute, New South Wales Chapter to appoint the Expert.
- (b) The Expert shall be appointed under such form of expert determination agreement as may be customarily recommended or used by the Australian Resolution Institute for that purposes, or if there is no such form of agreement, then in such form as may be reasonably required by the Expert.
- (c) Upon the Expert being appointed under clause 13.5(a) and accepting the appointment, the parties must direct the Expert to make a determination in relation to the dispute within 14 days of the appointment.
- (d) The parties may make submissions to the Expert.

- (e) The Expert must act and make a decision acting as an expert and not as an arbitrator.
- (f) The parties agree that the decision of the Expert will be final and binding upon them.
- (g) The costs of the Expert must be borne equally by the Owner and the Project Manager.
- (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 13.

14 Warranties

14.1 Mutual warranties

The Owner and the Project Manager each represent and warrant that:

- (a) its respective obligations under this agreement are valid and binding and are enforceable against it in accordance with its terms; and
- (b) it has power to enter into and observe its obligations under this agreement and all documents and transactions contemplated by this agreement; and
- (c) this agreement and the transactions under it do not contravene its constituent documents or any law, regulation or official directive or any of its obligations or undertakings by which they or any of its assets are bound or cause a limitation on their powers or powers of their directors to be exceeded.

14.2 Owner representation and warranties

- (a) The Owner represents and warrants that:
 - (i) it has been duly constituted under the WSPT Act;
 - (ii) it has in full force and effect the authorisations necessary under the WSPT Act to enter into this agreement and all documents contemplated by this agreement, observe obligations under them and allow them to be enforced; and
 - (iii) it does not hold its interest under this agreement as trustee.
- (b) The Owner represents and warrants to the Project Manager that the Owner has obtained all necessary consents to enter into this agreement, (including all consents required under the WSPT Act, any finance, security or other documents).

14.3 Project Manager warranties

The Project Manager represents and warrants that 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.

15 Notices

15.1 General

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

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

15.2 Method of service

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

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

15.3 Address for service

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

Owner

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

facsimile: +61 2 9895 7580

email: Kerry.Jahangir@wspt.com.au

attention: Kerry Jahangir

Project Manager

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

facsimile: +61 2 9767 2900

email: Shannon.Stewart@frasersproperty.com.au

attention: Shannon Stewart

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

15.4 Service by post

A communication given by post shall be deemed received:

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

15.5 Service by facsimile

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

15.6 Service by email

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

15.7 Form received

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

15.8 Service after hours

If a communication to a party is received by it:

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

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

16 GST

- (a) An amount payable by a party under this agreement in respect of a taxable supply by the other party, unless expressed to represent the price of supply, represents the value of the supply and the recipient of the supply must, in addition to that amount and at the same time, pay to the supplier the GST in respect of the supply.
- (b) If this agreement requires a party to pay, reimburse or contribute to an amount paid or payable by the other party in respect of a creditable acquisition from a third party, the amount for payment, reimbursement or contribution will be the value of the acquisition by the other party plus, if the payment, reimbursement or contribution is consideration for a taxable supply, the GST payable in respect of that supply.
- (c) A party is not obliged under clauses 16(a) or 16(b) to pay the GST on a taxable supply to it under this agreement until that party is given a valid tax invoice for the supply.
- (d) Expressions used in this clause 16 have the meanings given to them in the GST Act.

17 Miscellaneous

17.1 Amendment

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

17.2 Waiver and exercise of rights

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

17.3 Rights cumulative

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

17.4 Further assurance

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

17.5 Computation of time

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

17.6 Governing law and jurisdiction

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

17.7 Joint and several liability

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

17.8 Counterparts

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

17.9 Effect of execution

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

17.10 Entire understanding

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

17.11 No agency

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

17.12 Exercise of power

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

EXECUTED as an agreement

Project Management Agreement

Schedule 1 - The Services to be provided by the Project Manager

Project Management Agreement

Schedule 2 – Project Budget



Project Management Agreement

Signing page

DATED: _____

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

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

Authority: s 8 of the Western Sydney Parklands Act 2006

..... Signature of witness: Signature of delegate:
..... Name of witness (print)	Name of delegate: Suellen Fitzgerald
..... Occupation of witness (print)	Position: Executive Director

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

..... Signature of witness) Signature of attorney
..... Name of witness (block letters)) Name of attorney

