

Agreement for Lease Bungarribee Park Sydney Zoo

**Western Sydney Parklands Trust
ABN 85 202 544 800**

**Sydney Zoo Pty Ltd
ACN 168 970 090**

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PART 1

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3. DEVELOPER'S UNUSUAL CONSENT CONDITIONS
4. DRAFT SUBDIVISION PLAN
5. CONCEPT PLAN
6. EQUITY INVESTORS
7. WORKS
8. CERTIFIER DEED
9. LEASE

AGREEMENT FOR LEASE

DATE

PARTIES

WESTERN SYDNEY PARKLANDS TRUST ABN 85 202 544 800

Level 7, 10 Valentine Avenue, Parramatta NSW 2150

("WSPT")

SYDNEY ZOO PTY LTD ACN 168 970 090

("Developer")

RECITALS

- A. WSPT is the owner of the Premises.
- B. In May 2013, WSPT invited prospective proponents to submit responses to the Request for Proposals.
- C. In March 2014, WSPT advised the Developer that it had been short-listed for detailed negotiations.
- D. WSPT has agreed to grant the Developer the rights contained in this Agreement for the consideration stated in and otherwise in accordance with the terms and conditions set out in this Agreement.
- E. On Practical Completion of the Works WSPT agrees to grant to the Developer and the Developer agrees to take the Lease.

OPERATIVE PROVISIONS

1. INTERPRETATION

1.1 Definitions

In this Agreement unless the contrary intention appears:

Acceptable Development Consent has the meaning given in clause 6.5.

Acceptable Equity Investor means a proposed Equity Investor that has been approved by WSPT in accordance with clause 2.4.

Actual Works Cost means the costs actually incurred by the Developer in carrying out the Works.

Agistment Licence means the licence to use part of the Premises for the purposes of the agistment of animals and animal handling provided for in clause 11.

Approvals means all approvals, authorisations, permits, consents, licences, exemptions and the like which are required to be issued by or obtained from any Authority in connection with the Premises or Permitted Use or the performance by the Developer of its obligations under this Agreement.

Assignment Tests means that a person (and in the case of (b) and (c), each director of that person):

- (a) is solvent;
- (b) has not been the subject of significant adverse publicity that would cause a reasonable person to have concerns about reputational risk to the Lessor or the fitness or ability of the Developer to perform its obligations;
- (c) has not been the subject of any formal adverse finding by any Authority;
- (d) has sufficient funding available to fund the Works the subject of the Development;
- (e) (or a Related Body Corporate of the person who is to be involved in the Development) has demonstrable experience in successfully delivering and marketing comparable developments to the Development; and
- (f) is otherwise ready, willing and able to carry out the Works as required by this Agreement.

Authority means any government department or agency, local government, council, government or statutory authority, or any other such body, which imposes a Requirement or whose consent is required in connection with the performance by any person of any obligation under, or in connection with, this Agreement or otherwise in connection with the Premises.

Base Rent means the annual rent calculated in accordance with clause 13.3.

Builder means the principal builder engaged by the Developer to carry out the Works.

Building means all buildings and other Improvements forming part of the Premises from time to time.

Business Day means any day which is not a Saturday, Sunday or public holiday in New South Wales or 27, 28, 29, 30 or 31 December.

Certifier Deed means the deed to be entered into between the Independent Certifier, WSPT and the Developer, substantially in the form of the draft certifier deed in Schedule 8.

Change of Control has the meaning given in clause 21.3.

Claim means any claim, notice, demand, action, proceeding, litigation, investigation or judgement, requisitions, damage, loss, cost, expense or liability whether immediate, future or contingent and whether based in contract, tort, statute or otherwise and whether involving a third party or a Party to this Agreement.

Concept Plan means a concept plan substantially in the form of the draft concept plan in Schedule 5 and including the components described in clause 5.3(a).

Consent Authority means in relation to the Development Application, the Authority or Authorities whose consent is required to enable the Premises to be lawfully used for the purposes specified in the Developer's Proposal and to enable the lawful carrying out of the Works, and in relation to any other Works, the Authority or Authorities whose consent is required to enable such Works to be lawfully carried out. (For the avoidance of doubt, Consent Authority does not include the Independent Certifier.)

Construction Bank Guarantee has the meaning given in clause 26(a).

Construction Certificate means a certificate issued in accordance with section 109C(1)(b) of the *EPA Act*.

Construction Licence means the licence to be granted by WSPT to the Developer for the Developer to use the Premises for the Permitted Use, as provided for in clause 9.

Construction Licence Conditions Precedent means:

- (a) an Acceptable Development Consent in respect of the Development has been obtained;
- (b) provision to WSPT of the Construction Bank Guarantee relative to the Development;
- (c) the Developer has executed a building contract or building contracts with the Builder or Builders to carry out the Works;
- (d) the Developer has produced to WSPT evidence of Insurances for the Works;
- (e) the Developer has paid the Upfront Development Payment and any other amounts that have become due and payable by the Developer to WSPT under this Agreement;
- (f) the Developer has produced to WSPT evidence that the Funding Commitment is available to the Developer; and
- (g) there is no material unremedied Event of Default.

Construction Licence Commencement Sunset Date means the Construction Licence Commencement Sunset Date listed in the Sunset Dates in Item 5, as extended in accordance with this Agreement.

Construction Period means the period commencing in accordance with clause 8.1 and ending on the earlier to occur of:

- (a) the day immediately preceding the Lease Commencement Date; and
- (b) the date of termination of this Agreement.

Contamination means, in respect of land the presence of any substance, including any waste, Pollution, Hazardous Substance, toxic substance, dangerous goods, hazardous waste, special waste or any constituent of any such substance or waste such that:

- (a) the substance is above the concentration or level at which the substance is normally present in land in the same general locality; and
- (b) having regard to the use to which the land is put or is likely to be put, the presence of that substance presents a risk of harm to human health or any other aspect of the Environment or results in non-compliance with any Environmental Law,

and includes the act or omission giving rise to the contaminated state. For the purposes of this definition "land" shall include any air or water in, on, above or beneath the ground.

Critically Endangered Ecological Community has the meaning given to that term in the *Threatened Species Conservation Act 1995 (NSW)*.

Date for Practical Completion means the date for Practical Completion referred to Item 4.

Date of Practical Completion means the date that Practical Completion of the Works occurs.

Delay Event means an event or circumstance which impacts on the timing of the Works as set out in the Works Program.

Developer's Agents means the Developer's employees, contractors, agents and invitees.

Developer's Unusual Consent Conditions means the matters set out in Schedule 5.

Developer's Plant means (other than the Works) any and all Improvements, structures, plant, equipment, fixtures and fittings including all articles and items constructed, installed or brought onto the Premises by or on behalf of the Developer and owned or leased by or licensed to the Developer and including Improvements, structures, plant, equipment, fixtures and fittings constructed, installed and brought onto the Premises by the Developer prior to the commencement of the Construction Period or during the Construction Period, but excluding items leased by or licensed to the Developer under the Lease, the Construction Licence or the Agistment Licence.

Developer's Proposal means the written proposal submitted by Expansion Capital Pty Limited to WSPT in response to the Request for Proposals.

Development means the carrying out by the Developer of the Works.

Development Application means an application by the Developer to the Consent Authority for approval to use the Premises for the purposes specified in the Developer's Proposal and to carry out the Works.

Development Application Documents means all documents required to be lodged by the Developer with the Consent Authority as the Development Application.

Development Application Lodgement Sunset Date means the Development Application Lodgement Sunset Date listed in the Sunset Dates in Item 5, as extended in accordance with this Agreement.

Development Consent means approval of the Development Application by the Consent Authority.

Development Consent Sunset Date means the Development Consent Sunset Date listed in the Sunset Dates in Item 5, as extended in accordance with this Agreement.

DGRs means the application to be lodged by the Developer with the NSW Department of Planning requesting the issue of the Director General's environmental assessment requirements for the Development.

DGRs Lodgement Sunset Date means the DGRs Lodgement Sunset Date listed in the Sunset Dates in Item 5, as extended in accordance with this Agreement.

Draft Subdivision Plan means the draft plan of subdivision in Schedule 6.

Due Diligence Exclusivity Sunset Date means the Due Diligence Exclusivity Sunset Date listed in the Sunset Dates in Item 5, as extended in accordance with this Agreement.

Effective Date means the later of:

- (a) the day after the date that WSPT gives notice of the Minister's Consent to the Developer in accordance with clause 2.3(a); and
- (b) the day after the date that WSPT gives notice in accordance with clause 2.4(d) that it agrees that the Funding Commitment has been obtained.

Environment means all components of the earth, including:

- (a) land, air and water;
- (b) any layer of the atmosphere;
- (c) flora and fauna;
- (d) any organic or inorganic matter and any living organism including humans;
- (e) human made or modified structures and areas;
- (f) the aesthetic characteristics or components of the earth, including appearance, sound, odour, taste and texture; and
- (g) ecosystems with any combinations of the above.

Environmental Aspects means in relation to the Premises any breach of an Environmental Law or the existence of any Contamination, Hazardous Substance or Pollution whether originating from the Premises or elsewhere.

Environmental Investigation Report means the report from an appropriately qualified environmental consultant to be addressed to the Developer and WSPT in connection with the environmental investigation carried out at the request of the Developer in relation to Contamination in, on, or under the Premises, pursuant to clause 5.1.

Environmental Law means any law or State protection policy incorporated by reference to or being part of any Law relating to protection of the Environment.

EOT Event means:

- (a) in respect of a delay claimed by the Developer, any or all of the matters outlined in Part 1 of Schedule 2 which are, or which are reasonably, beyond the control of the Developer and which cause the Developer actual delay in meeting the requirements for the Date for Practical Completion or a Sunset Date; and
- (b) in respect of a delay claimed by WSPT, any or all of the matters outlined in Part 2 of Schedule 2 which are, or which are reasonably, beyond the control of WSPT and which cause WSPT actual delay in meeting its obligations under the clauses referred to in clause 14.3(a).

EPA Act means the *Environmental Planning and Assessment Act 1979*, NSW.

Equity Investor means any person who (whether legally or beneficiary including, without limitation, through holding companies or related companies or by agreement or understanding) owns or controls any shares or voting rights in the Developer.

Essential Term means the terms referred to in Item 12.

Event of Default has the meaning given in clause 22.1.

Event of Insolvency means for a person, being in liquidation or provisional liquidation or under administration, having a controller (as defined in the *Corporations Act*) or analogous person appointed to it or any of its property, being taken under section 459F(1) of the *Corporations Act* to have failed to comply with a statutory demand, being unable to pay its debts or otherwise insolvent, dying, ceasing to be of full legal capacity or otherwise becoming incapable of managing its own affairs for any reason, taking any step that could result in the person becoming an insolvent under administration (as defined in section 9 of the *Corporations Act*), entering into a compromise or arrangement with, or assignment for the benefit of, any of its members or creditors, or any analogous event.

Final Plans & Specifications means the plans and specifications contained in the Acceptable Development Consent, as may be varied from time to time by the Parties in writing.

Final Lease Commencement Sunset Date (Regardless of Circumstance) means the Final Lease Commencement Sunset Date (Regardless of Circumstance) listed in the Sunset Dates in Item 6.

Finance means, in respect of the Works, the financial accommodation to be provided by a Financier to the Developer to enable the carrying out of the Works.

Financier means each financier who provides Finance to the Developer.

Funding Commitment 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;
 - (i) ; or
 - (ii) the most recent estimated total cost of the Works;whichever is the higher, with not more than 50% of total funds to be provided by Financiers;
- (c) which are in writing, legally binding on the Acceptable Equity Investors and proposed Financiers, as the case may be, and enforceable by the Developer; and
- (d) which are unconditional, except for the following conditions:
 - (i) a condition that funding need not be provided unless commitments are obtained to provide funds totalling not less than ;
 - (ii) a condition that funds need not be provided until an Acceptable Development Consent has been obtained; and
 - (iii) such other conditions if any as have been approved by WSPT in writing.

General Standards for Exhibiting Animals means the publication entitled General Standards for Exhibiting Animals in NSW prepared by the Director-General NSW Agriculture dated 15 March 2004 in accordance with the *Exhibited Animals Protection Act Regulation 1995 (NSW)*.

Hazardous Substance means a substance that because of its quantity, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, or physical, chemical or infectious characteristics, may pose a hazard to property, human health or the Environment when improperly treated, stored, disposed of or otherwise managed.

Improvements means any structure or work of a permanent nature attached to the Premises.

Independent Certifier means the person appointed by the Developer to be the Independent Certifier for the purposes of this Agreement pursuant to clause 10.

Insurances means the policies of insurance referred to in clause 19.

Interest Rate means the annual percentage rate of interest charged by the Commonwealth Bank of Australia on business overdraft accounts exceeding \$100,000 plus 2% per annum, or if such an annual percentage rate is not published by the Commonwealth Bank of Australia, such rate as is in the opinion of any officer for the time being of the Commonwealth Bank of Australia an equivalent replacement rate.

Interim Access Road Works has the meaning given to that term in clause 7.1(a).

Interim Access Road Works Plan has the meaning given to that term in clause 7.1(b).

Item means an item in the Reference Schedule.

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

Lease means the form of lease attached to this Agreement in Schedule 10 and, where the context requires, includes the lease to be entered into pursuant to this Agreement.

Lease Commencement Date means the first day of the term of the Lease, being the date that is one Business Day after all of the Lease Commencement Conditions Precedent have been satisfied.

Lease Commencement Sunset Date means the Lease Commencement Sunset Date listed in the Sunset Dates in Item 5, as extended in accordance with this Agreement.

Lease Commencement Conditions Precedent means:

- (a) Practical Completion of the Works occurring on or before the Lease Commencement Sunset Date;
- (b) payment of the Upfront Development Payment and Outgoings payable during the Construction Period (but excluding Rent which commences from the Lease Commencement Date) and any other amounts that have become due and payable by the Developer to WSPT under this Agreement;
- (c) there is no material unremedied Event of Default;
- (d) the Actual Works Cost for the Works is not less than the Minimum Agreed Works cost;
- (e) all Approvals, required to enable the lawful use and occupation of the Premises under and in accordance with the Lease by the Developer have been obtained and are current;
- (f) the Concept Plan has been completed in accordance with clause 5.3, and a copy of the completed Concept Plan has been provided to WSPT;
- (g) the Developer has provided to WSPT the bank guarantee required to be provided under the Lease;
- (h) the Developer has provided to WSPT evidence satisfactory to WSPT (acting reasonably) that the Developer has complied with all its obligations under the Lease in relation to insurance; and

- (i) the Subdivision Plan has been registered at LPI NSW, or the Parties have agreed under clause 5.2(h) on an alternative to registration of the Subdivision Plan.

Make Good means:

- (a) if WSPT so requires by notice in writing to the Developer, the removal from the Premises of such parts of the Works and the Developer's Plant as may be specified in such notice, and the making good of those parts of the Premises affected by such removal so that any rubbish or debris is removed, the ground surface is at the same level as immediately surrounding ground, any necessary fill is of suitable quality having regard to surrounding ground, and free from Contamination and any other foreign objects, and the ground surface is sown with grasses and/or otherwise treated so that it conforms to adjoining ground surfaces in the immediate vicinity, and any Services in connection with such removed Works and the Developer's Plant are disconnected, removed and made safe in accordance with the requirements of relevant Authorities; and
- (b) subject to paragraph (a), the Premises are left in good condition, subject only to reasonable wear and tear and are clean and tidy.

Minimum Agreed Works Cost means the amount specified in Item 3.

Minister means the Minister from time to time responsible for the control and direction of the Western Sydney Parklands Trust, constituted under the *WSPT Act*.

Minister's Consent means the consent of the Minister provided for in clause 2, substantially in the form in Schedule 1.

Original Consortium Members means Corasta Pty Ltd ACN 079 106 675 and Geo-Aladja Pty Ltd ACN 159 379 049.

Outgoings has the meaning given in the Lease.

Parklands has the same meaning as in WSPT Act and includes the Premises.

Party means a party to this Agreement.

Permitted Use means the construction of the Works and any activity associated with such construction for the operation of a Zoological Park.

Pollution means and includes the release, emission or discharge into the Environment of a substance which causes damage or harm to any aspect of the Environment, and the degradation of, or adverse affectation of, the Environment including air pollution, pollution of surface or sub-surface waters, Contamination of land, emission of offensive noise and dust and other temporary effects on the Environment.

Practical Completion in respect of the Works has the meaning given to that term in clause 12.4.

Practical Completion Sunset Date means the relevant Practical Completion Sunset Date listed in the Sunset Dates in Item 5, as extended in accordance with this Agreement.

Premises means the land and/or buildings described in Item 1.

Project Control Group has the meaning given to that term in clause 3.1(a).

Rates means rates, land taxes (levied on a single holding basis), assessments and other charges (including charges for consumption and garbage and waste removal) imposed by an Authority, in respect of the Premises together with any interest, fines and penalties in connection with them.

Reference Schedule means the reference schedule which appears before Schedule 1.

Related Body Corporate means a related body corporate as defined in section 50 of the *Corporations Act 2001* (Cth).

Rent means the Base Rent and Revenue Rent.

Request for Proposals means the request for proposals issued by WSPT in relation to the Premises prior to commencement of this Agreement.

Revenue Rent means the revenue rent provided for in the Lease.

Requirement means any approval, consent, requirement, notice, order, licence or direction received from or given by any Authority (including, without limitation, Development Consents and Construction Certificates).

Services means the services (such as water, drainage, gas, electricity, communications) running through or servicing the Premises and includes all plant, equipment, pipes, wires, cables, ducts and other conduits in connection with them.

Services Works has the meaning given to that term in clause 7.2(a).

Services Works Plan has the meaning given to that term in clause 7.2(b).

Signage Policy means the signage policy developed and agreed in accordance with clause 4.

Subdivision means the subdivision of Lot 101 in Deposited Plan 1195067 in accordance with the Subdivision Plan.

Subdivision Plan means a plan of subdivision of Lot 101 in Deposited Plan 1195067 substantially in accordance with the Draft Subdivision Plan.

Subdivision Plan Registration Sunset Date means the relevant Subdivision Plan Registration Sunset Date listed in the Sunset Dates in Item 5, as extended in accordance with this Agreement.

Sunset Dates means the sunset dates specified in Item 5, as extended in accordance with this Agreement.

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

Upfront Development Payment means the sum of _____ plus GST.

Works means the works at the Premises to be carried out by the Developer, in accordance with the Developer's Proposal and Acceptable Development Consent, and as described in the Works Plan and any other works carried out by the Developer from time to time at the Premises, as permitted under this Agreement.

Works Plan means the plan prepared by the Developer and approved by WSPT in accordance with clause 9.3 which must include detailed provisions covering:

- (a) budget for the estimated cost of the Works, those costs to be prepared or approved by a quantity surveyor, and including all costs of the Developer incurred in connection with preparing the Works Plan;
- (b) the Developer's project delivery plans and timetable;

- (c) pre-construction works;
- (d) construction of Works;
- (e) Practical Completion;
- (f) commissioning and start of operations of completed Works; and
- (g) animal procurement and agistment plans.

Works Program means the timetable specified in Item 4.

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

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

WSPT's Unusual Consent Conditions means the conditions set out in Schedule 4.

WSPT's Works means the Interim Access Road Works and Services Works.

1.2 Interpretation

- (a) Words importing the singular shall include the plural and vice versa.
- (b) Gender words importing any particular gender include all genders. The word "person" includes any legal entity.
- (c) Subject to section 109 of the Commonwealth Constitution this Agreement shall be subject to and construed in accordance with the laws of the State of New South Wales and the parties agree that the courts of that State shall have jurisdiction to entertain any action in respect of or arising out of this Agreement.
- (d) All headings contained in this Agreement are for convenient reference only and are not intended to, and do not, form part of the substance of this Agreement.
- (e) Where the context permits, references in this Agreement to WSPT mean the Western Sydney Parklands Trust ABN 85 202 544 800.

2. COMMENCEMENT

2.1 Conditions Subsequent

- (a) This Agreement is subject to and conditional upon:
 - (i) WSPT obtaining the Minister's Consent to:
 - (A) this Agreement; and
 - (B) the Lease; and
 - (ii) the Developer satisfying the Funding Commitment.
- (b) clauses 3 to 31 (except for clauses 28, 29.2, 30, 31.10 and 31.11) will have no effect and the parties will have no obligations under such clauses until the conditions subsequent in clause 2.1(a) are satisfied.

2.2 Parties to Use Reasonable Endeavours

- (a) WSPT must use reasonable endeavours to obtain the Minister's Consent as soon as reasonably practicable after the date of this Agreement.

Bungarribee Park Agreement for Lease

- (b) The Developer must use reasonable endeavours to obtain the Funding Commitment as soon as reasonably practicable after the date of this Agreement.

2.3 Minister's Consent

- (a) WSPT must give written notice to the Developer stating that the Minister has provided the Minister's Consent within 5 Business Days after it received the Minister's Consent. WSPT must provide a copy of the Minister's Consent with the notice to the Developer.
- (b) If WSPT does not obtain the Minister's Consent and give notice in accordance with paragraph (a) by the date 60 days after the date of this Agreement, then either Party may terminate this Agreement by notice in writing to the other.
- (c) Any termination of this Agreement under this clause 2.3 will be without prejudice to any preceding breach of this Agreement.

2.4 Funding Commitment Requirements

- (a) If the Developer wishes to obtain the approval of WSPT to a proposed Equity Investor, the Developer must give notice in writing to WSPT requesting approval of the proposed Equity Investor together with sufficient information in relation to the proposed Equity Investor as may be required to enable WSPT to determine whether the proposed Equity Investor satisfies paragraphs (a), (b) and (c) of the Assignment Tests.
- (b) On receipt of a notice from the Developer under paragraph (a), WSPT must, subject to paragraph (f), within 5 Business Days give notice in writing to the Developer as to whether or not it approves the proposed Equity Investor and if not, the reasons for its decision, or whether it requires further information before it can make a decision. If WSPT requests further information, and the Developer provides that information, WSPT must, subject to paragraph (f), within 3 Business Days give notice in writing to the Developer as to whether or not it approves the proposed Equity Investor, and if not, the reasons for that decision.
- (c) The Developer must give written notice to WSPT when it considers that it has obtained the Funding Commitment together with sufficient information as may be required to enable WSPT to determine whether the Funding Commitment has been obtained.
- (d) On receipt of a notice from the Developer under paragraph (c), WSPT must subject to paragraph (f), within 5 Business Days give written notice to the Developer as to whether or not it agrees that the Funding Commitment has been obtained, and if not, the reasons for that decision, or whether it requires further information before it can make a decision. If WSPT requests further information, and the Developer provides that information, WSPT must subject to paragraph (f), within 3 Business Days give notice in writing to the Developer as to whether or not it agrees that the Funding Commitment has been obtained
- (e) If by the date 60 days after the date of this Agreement:
 - (i) the Developer has not given notice to WSPT under paragraph (c); or
 - (ii) WSPT has not given notice to the Developer under paragraph (d) that it agrees that the Funding Commitment has been obtained,either Party may terminate this Agreement by notice in writing to the other.
- (f) In making any decision under paragraph (b) or (d), WSPT must act reasonably.

- (g) For the avoidance of doubt, WSPT is not obliged to consider any notice or information provided by the Developer within the period of 5 Business Days occurring immediately prior to the 61st day after the date of this Agreement, or to respond to any notice given by the Developer under this clause 2.4 in that 5 Business Day period, but may do so at its discretion.
- (h) Any termination of this Agreement under this clause 2.4 will be without prejudice to any preceding breach of this Agreement.

2.5 Upfront Development Payment

Subject to clauses 5.1(f) and 5.2(e), in consideration of WSPT making the Premises available exclusively to the Developer for development in accordance with this Agreement, the Developer must pay the Upfront Development Payment to WSPT within five Business Days of the Effective Date, if a tax invoice has first been provided by WSPT for the Upfront Development Payment.

3. PROJECT CONTROL GROUP

3.1 Project Control Group

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

3.2 Reports

- (a) On and from the Effective Date and until the Date of Practical Completion, the Developer must prepare and provide to the Project Control Group, every 2 months, a report in a form reasonably required by WSPT, which contains:
 - (i) details of the Works carried out in the previous 2 months; and
 - (ii) details of the progress towards achieving the Works Program.
- (b) Where a Delay Event occurs:

- (iii) the Developer must provide reasonable details of the Delay Event in writing to the Project Control Group; and
- (iv) the Project Control Group must consider the details and make recommendations to the Developer about any remedial action which is reasonably necessary to address the consequences of the Delay Event.
- (c) After consulting with the Project Control Group, the Developer must take such action as is reasonably necessary to address the consequences of the Delay Event (without any requirement to accelerate), having regard to the recommendations of the Project Control Group.
- (d) The Developer must include details of any action taken by it in respect of a Delay Event in the reports provided under this clause 3.2.

3.3 Keeping WSPT Informed

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

4. SIGNAGE

- (a) As soon as practicable after the Effective Date, WSPT and the Developer must discuss a Signage Policy which will deal with:
 - (i) the size, nature, content, colour and location of all of the signs or advertisements that the Developer may erect in connection with the Development on the Premises, on WSPT owned land adjoining the Great Western Highway and in the Western Sydney Regional Parklands;
 - (ii) signs and advertisements that WSPT may erect on the perimeter of the Premises;
 - (iii) the inclusion of appropriate references to WSPT and the Premises on signs and advertisements in connection with the Development that are erected at the perimeter of the Premises;
 - (iv) restriction of third party advertising to within the Premises; and
 - (v) the application of the WSPT signage guidelines.
- (b) Within three months after the Effective Date, WSPT will prepare and submit to the Developer for approval the form of the Signage Policy.
- (c) The Developer must not unreasonably withhold or delay approval to the Signage Policy and in any event must notify WSPT no later than 15 Business Days after WSPT submits the Signage Policy:
 - (i) whether the Signage Policy is approved; or

- (ii) which aspects of the Signage Policy are not approved and the reasons for any aspect not being approved.
- (d) If paragraph (c)(ii) applies, WSPT must submit an amended Signage Policy to the Developer as soon as practicable and obtain the Developer's approval of it, as provided in paragraph (c).
- (e) Once the Signage Policy is agreed, the Developer must comply with it.
- (f) The Developer and WSPT must each pay their own costs of and incidental to this clause 4.

5. DEVELOPMENT APPLICATION

5.1 Environmental Investigation

- (a) The parties acknowledge and agree that the Developer must undertake an environmental investigation on the Premises at its own cost and must within 5 Business Days of receipt, provide WSPT with a copy of the Environmental Investigation Report.
- (b) If the Environmental Investigation Report refers to the existence of:
 - (i) Contamination within the Premises which should be remediated; or
 - (ii) a Critically Endangered Ecological Community within the Premises,

the Developer and WSPT must within 5 Business Days of the Developer providing a copy of the Environmental Investigation Report to WSPT, meet to discuss in good faith and assess the extent of any Contamination or the impact of the Critically Endangered Ecological Community referred to in the Environmental Investigation Report and the anticipated costs of remediating the Contamination or addressing any other the environmental issue in relation to the Premises.
- (c) In the event that the Developer is reasonably of the opinion that:
 - (i) the costs associated with:
 - (A) any remediation of Contamination; or
 - (B) managing the impact of the Critically Endangered Ecological Community within the Premises,

referred to or contemplated by the Environmental Investigation Report are likely to exceed \$1,000,000; or
 - (ii) the time required to remediate any Contamination or manage the impact of any Critically Endangered Ecological Community within the Premises is expected to be more than 6 months,

the Developer must as soon as reasonably practicable notify WSPT of such opinion and the Developer may terminate this Agreement by notice in writing to WSPT given at any time prior to the Due Diligence Exclusivity Sunset Date, subject to clauses 14.1 and 14.2. Any such termination of this Agreement will be without prejudice to any Party's rights under this Agreement or at Law arising prior to termination.

- (d) If the Developer terminates this Agreement in accordance with clause 5.1(c), or if this Agreement is otherwise terminated by either Party for any reason, to the extent possible, all of the Developer's rights in relation to the Environmental Investigation Report and any other reports or information provided to or obtained by the Developer in relation to the Premises will thereupon vest in WSPT, and the Developer must deliver to WSPT all such documents or information.
- (e) Subject to clause 14.2, if the Developer fails to provide a notice to WSPT pursuant to clause 5.1(c) prior to the Due Diligence Exclusivity Sunset Date, the Developer will be deemed to accept all risks in connection with any Environmental Aspects mentioned in the Environmental Investigation Report and any other Environmental Aspects affecting the Premises as at the date of the Environmental Investigation Report.
- (f) If the Developer terminates this Agreement in accordance with this clause 5.1, WSPT must refund the Upfront Development Payment to the Developer within 30 days.
- (g) Subject to clauses 14.1 and 14.2, if the Developer has not completed its due diligence and submitted the Environmental Investigation Report to WSPT by the Due Diligence Exclusivity Sunset Date, WSPT may terminate this Agreement in accordance with clause 14.1(a) at any time until the Environmental Investigation Report is completed and submitted to WSPT.

5.2 Subdivision

- (a) WSPT must, at its own cost, use reasonable endeavours to obtain all necessary Approvals in relation to the Subdivision (but not including registration of the Subdivision Plan at LPI NSW) by the date 6 months after the Effective Date and to then procure registration of the Subdivision Plan at LPI NSW prior to the Lease Commencement Date, subject to clause 14.3.
- (b) Subject to clause 5.2(c), WSPT must consult with the Developer in relation to the Subdivision Plan and any changes to the Draft Subdivision Plan required by any Authority to enable approval and registration of the Subdivision Plan.
- (c) If any Authority requires changes to the Draft Subdivision Plan which would:
 - (i) reduce the area of the Premises as provided in the Draft Subdivision Plan by more than 5%;
 - (ii) result in an increase in the cost of construction of the Works of more than \$2 million: or
 - (iii) prevent the Development from being carried out substantially in accordance with the Development Application; or
 - (iv) materially adversely impact on the Developer's Proposal and the Concept Plan,

the Developer may terminate this Agreement by notice in writing to WSPT.
- (d) If any Authority requires changes to the Draft Subdivision Plan which would:
 - (i) require WSPT to incur costs of more than \$200,000.00;

- (ii) materially adversely affect WSPT's ability to develop any other land in Bungarrabee Park as currently contemplated in the Bungarrabee Draft Master Plan; or
- (iii) would be inconsistent with the requirements of the WSPT Act or the *State Environmental Planning Policy (Western Parklands) 2009* or any Plan of Management or Precinct Plan for the Premises under the WSPT Act or the requirements of matters set out in section 16 (4)(a)-(c) inclusive of the WSPT Act or clause 12(a)-(n) inclusive of the *State Environmental Planning Policy (Western Parklands) 2009*,

WSPT may terminate this Agreement by notice in writing to the Developer.

- (e) If this Agreement is terminated under this clause 5.2, WSPT must refund the Upfront Development Payment to the Developer within 30 days.
- (f) Any termination of this Agreement will be without prejudice to any Party's rights under this Agreement or at Law arising prior to termination.
- (g) WSPT must:
 - (i) keep the Developer informed as to the progress of the registration of the Subdivision Plan; and
 - (ii) without delay notify the Developer in writing when the Subdivision Plan has been registered at LPI NSW.
- (h) If for any reason the Subdivision Plan has not been registered at LPI NSW by the Subdivision Plan Registration Sunset Date the Parties:
 - (i) must meet in good faith to discuss an alternative to obtaining registration of the Subdivision Plan at LPI NSW;
 - (ii) must endeavour to agree on an alternative to registration of the Subdivision Plan within one month of the Subdivision Plan Registration Sunset Date; and
 - (iii) acknowledge and agree that if the parties agree on an alternative to registration of the Subdivision Plan, the costs of obtaining any further Approvals required to implement that alternative must be borne by WSPT, unless the parties agree otherwise.

5.3 Concept Plan

- (a) The Developer must without delay prepare the Concept Plan which must be generally consistent with the draft concept plan in Schedule 5 and which must provide for:
 - (i) development of a high quality, family oriented zoological park;
 - (ii) themed around 'on-safari', natural experiences providing educational and entertaining interactions with animals;
 - (iii) management of issues of conservation, habitat protection and indigenous culture preservation;
 - (iv) a minimum species list of at least (30) exhibits and attractions including exotic animals and Australian fauna;

- (v) complementary visitor services, restaurant and gift shop;
 - (vi) ancillary activities – function centre and retail veterinary clinic; and
 - (vii) educational facilities and interpretative activities.
- (b) The Developer must consult with WSPT in relation to preparation of the Concept Plan and incorporate the reasonable requirements of WSPT in the Concept Plan, and provide a copy of the Concept Plan to WSPT when it has been completed.

5.4 DGRs

Subject to clauses 14.1 and 14.2, if the Developer has not lodged the DGRs by the DGRs Lodgement Sunset Date, WSPT may terminate this Agreement in accordance with clause 14.1(a) at any time until the DGRs are lodged.

5.5 WSPT's Consent to the Development Application Documents

- (a) The Developer, at its own expense, must without delay prepare the Development Application Documents in accordance with the Developer's Proposal, Concept Plan and the Works Program.
- (b) The Developer must, in accordance with the Works Program, give a copy of the Development Application Documents to WSPT, to obtain the prior written consent of WSPT to the Development Application Documents and the lodgement of the Development Application with the Consent Authority.
- (c) WSPT must notify the Developer, in writing, of its consent or refusal to the Development Application Documents within 15 Business Days after receiving the Development Application Documents from the Developer.
- (d) Subject to clauses 5.5(e) and 5.5(f), if WSPT refuses consent to the Development Application Documents WSPT must give written reasons outlining the deficiencies in the Development Application Documents and the reasons why WSPT refuses to give its consent.
- (e) Subject to clause 5.5(f), WSPT must not withhold its consent to the Development Application Documents unless they are materially inconsistent with the Concept Plan or would not give effect to the development of the Works in accordance with this Agreement.
- (f) WSPT must not withhold its consent to Development Application Documents in relation to matters approved previously by WSPT in writing in respect of the subject matter of those Development Application Documents, unless there is a material variation between the matters previously approved by WSPT in writing and the Development Application Documents.
- (g) WSPT must act reasonably and promptly in considering any Development Application Documents lodged by the Developer with WSPT for consent and provide its response within 20 Business Days.
- (h) In the event that WSPT refuses consent to the Development Application Documents, as provided for in this clause 5.5, then the Developer must, within 15 Business Days (or such other time agreed between WSPT and the Developer) after the giving of notice of refusal under clause 5.5(c), resubmit amended Development Application Documents to WSPT for consent in accordance with this clause 5.5.

5.6 Variation to the Works and the Development Application Documents

- (a) If the Developer wishes to vary the Works or the Development Application Documents, the Developer and WSPT must follow the procedure contained in clause 5.5, in respect of any such variation to the Works or the Development Application Documents.
- (b) In addition to the Developer's obligations under clause 5.5 and 5.6(a), if the Developer wishes to vary the Works or the Development Application Documents, the Developer must first provide to WSPT all relevant documents and plans, including any required amendment to the Development Application Documents.
- (c) The Developer must obtain all Approvals relevant to any variations to the Works or the Development Application Documents approved under this clause 5.6.
- (d) WSPT and the Developer acknowledge and agree that WSPT's consent to a proposed variation under this clause 5.6 is not a consent to any extension of time necessary to carry out the proposed variation.

5.7 Lodgement of Development Application

- (a) Subject to clauses 14.1 and 14.2, by no later than the Development Application Sunset Date, the Developer, at its own expense, must prepare and lodge the Development Application, in the form approved in accordance with clause 5.5, with the Consent Authority.
- (b) Subject to clauses 14.1 and 14.2, if the Developer has not lodged the Development Application by the Development Application Lodgement Sunset Date, WSPT may terminate this Agreement in accordance with clause 14.1(a) until such time as the Development Application is lodged.

5.8 Costs

The Developer and WSPT must each pay their own costs of and incidental to clauses 5.5, 5.6 and 5.7.

6. DEVELOPMENT CONSENT

6.1 Development Consent

- (a) The Developer must, within 10 Business Days after receiving the Development Consent from the Consent Authority, provide to WSPT a copy of that Development Consent.
- (b) For the purposes of this clause 6.1 and clauses 6.2 and 6.3, references to Development Consent include any draft Development Consent issued by the Consent Authority.

6.2 Developer's Approval of the Development Consent

- (a) Within 20 Business Days after receiving a copy of any Development Consent the Developer must notify WSPT, in writing, whether the conditions of that Development Consent are acceptable to the Developer and, if not, provide reasons why the Development Consent conditions are not acceptable to the Developer, and provide further details as to what changes to the conditions are required and the reasons.

- (b) The Developer must accept a Development Consent condition unless that condition falls within the Developer's Unusual Consent Conditions.

6.3 WSPT's Approval to the Development Approval Conditions

- (a) Within 20 Business Days after receiving a copy of any Development Consent in accordance with clause 6.2(a) from the Developer, WSPT must notify the Developer, in writing, whether the Development Consent conditions are acceptable to WSPT and, if not, provide reasons why that Development Consent is not acceptable to WSPT and provide further details as to what changes are required (if any) and the reasons for those changes.
- (b) WSPT must accept a Development Consent condition unless the condition falls within WSPT's Unusual Consent Conditions.

6.4 Rights of termination – WSPT

Subject to clauses 14.1 and 14.2, if an Acceptable Development Consent has not been issued by the Consent Authority by the Development Consent Sunset Date, WSPT may terminate this Agreement in accordance with clause 14.1(a) until such time that an Acceptable Development Consent has been obtained.

6.5 Acceptable Development Consent

- (a) A Development Consent shall constitute an Acceptable Development Consent if it is acceptable to:
 - (i) the Developer in accordance with clause 6.2; and
 - (ii) WSPT in accordance with clause 6.3.

6.6 Rights of Termination – Developer

- (a) Subject to clauses 14.1 and 14.2, if an Acceptable Development Consent has not been issued by the Consent Authority by the Development Consent Sunset Date, other than by reason of a breach by the Developer of this Agreement, the Developer may, by written notice to WSPT, terminate this Agreement. Subject to clause 14.2, any notice under this paragraph (a) must be given within 30 Business Days after the Development Consent Sunset Date.
- (b) If the Development Consent includes one or more of the Developer's Unusual Consent Conditions, and the Developer has given notice to that effect to WSPT in accordance with paragraph (a), the Developer may, by written notice to WSPT, either:
 - (i) terminate this Agreement; or
 - (ii) elect to have the decision of the Consent Authority reviewed, within 60 Business Days after receipt by the Developer of the Development Consent. For the avoidance of doubt, if the Developer elects to have the decision of the Consent Authority reviewed, the Developer will cease to be entitled to terminate this Agreement under paragraph (a) if it does not exercise such right within 30 Business Days after the Development Consent Sunset Date, subject to clauses 14.1 and 14.2.

7. WSPT'S WORKS

7.1 Interim Access Road Works

- (a) Within 6 months of the Effective Date, subject to clause 14.3, WSPT at its own cost, must design, obtain all relevant Approvals for and construct, an interim access road extension from the existing Great Western Highway signalised intersection to the proposed Premises boundary, to provide access to the proposed Premises (Interim Access Road Works).
- (b) As soon as practicable after the Effective Date, WSPT must prepare the works plan for the Interim Access Road Works in compliance with all Laws and Approvals (Interim Access Road Works Plan).
- (c) Prior to commencing the Interim Access Road Works, WSPT must submit the Interim Access Road Works Plan to the Developer and obtain the Developer's approval of it.
- (d) The Developer must not unreasonably withhold or delay approval to the Interim Access Road Works Plan and in any event must notify WSPT no later than 15 Business Days after WSPT submits the Interim Access Road Works Plan as to:
 - (i) whether the Interim Access Road Works Plan is approved; or
 - (ii) which aspects of the Interim Access Road Works Plan are not approved and the reasons for any aspect not being approved.
- (e) If paragraph (d)(ii) applies, WSPT must submit an amended Interim Access Road Works Plan to the Developer as soon as practicable and obtain the Developer's approval of it, as provided in paragraph (d).
- (f) The Interim Access Road Works, excluding the final road surface:
 - (i) is to be built to comply with all requirements, conditions and orders of the Consent Authority; and
 - (ii) must be carried out:
 - (A) in a proper and workmanlike manner;
 - (B) using good quality materials and workmanship and in accordance with relevant Australian Standards; and
 - (C) in accordance with all Approvals.
- (g) The Developer has agreed that the completion of the final road surface is to be deferred to coincide with the Date of Practical Completion. The parties agree that the Developer is to manage and complete final construction of the road surface so as to enable integration with the Works, and the Developer shall invoice WSPT for the cost of the final road surface.
- (h) Before commencing work on the final road surface, the Developer must submit to WSPT details of the estimated cost of such work together with such copy quotations and other material as WSPT may reasonably require in writing to establish whether such costs are reasonable.
- (i) Within 10 Business Days of receipt of the estimated costs in relation to the final road surface pursuant to paragraph (h), WSPT must notify the Developer whether the estimated costs are approved, such approval not to be unreasonably withheld

or delayed. WSPT must pay the Developer's reasonable costs of completing the final road surface, payment to be made within 10 Business Days after receipt of appropriate tax invoices together with reasonable details of the completed works, the subject of the invoices.

- (j) The Developer and WSPT must each pay their own costs of and incidental to this clause 7.1.

7.2 WSPT's provision of services to the Premises

- (a) Before the Construction Licence Commencement Sunset Date, subject to clause 14.3 and subject to the Developer providing services capacity estimates, WSPT must, at its own cost, design, obtain all relevant Approvals for and construct, water, electricity and telecommunication services up to the Premises boundary (Services Works). The parties agree that some or all of the Services Works initially constructed by the Construction Licence Commencement Sunset Date in accordance with this clause 7.2, may be temporary. Where temporary Services Works are constructed, WSPT must at its own cost, subject to clause 14.3, construct permanent Services Works in accordance with this clause 7.2 before the Date of Practical Completion.
- (b) As soon as possible after the Effective Date, WSPT must prepare the works plan for the Services Works in compliance with all Laws and Approvals (Services Works Plan).
- (c) Prior to commencing the Services Works, WSPT must submit the Services Works Plan to the Developer and obtain the Developer's approval of it.
- (d) The Developer must not unreasonably withhold or delay approval to the Services Works Plan and in any event must notify WSPT no later than 15 Business Days after WSPT submits the Services Works Plan as to:
 - (i) whether the Services Works Plan is approved; or
 - (ii) which aspects of the Services Works Plan are not approved and the reasons for any aspect not being approved.
- (e) If paragraph (d)(ii) applies, WSPT must submit an amended Services Works Plan to the Developer as soon as practicable and obtain the Developer's approval of it, as provided in paragraph (d).
- (f) Subject to paragraph (a), the Services Works:
 - (i) are to be built to comply with all requirements, conditions and orders of the Consent Authority; and
 - (ii) must be carried out:
 - (A) in a proper and workmanlike manner;
 - (B) using good quality materials and workmanship and in accordance with relevant Australian Standards; and
 - (C) in accordance with all Approvals.
- (g) Subject to services agency requirements, electricity, water and telecommunication services are to be located within the easement for services shown on the Draft Subdivision Plan.

- (h) WSPT must:
 - (i) notify the Developer within 5 Business Days of practical completion of the Services Works being reached; and
 - (ii) provide a copy of the certificate prepared by a private certifier confirming completion of the Services Works.

7.3 Security and access controls

Notwithstanding anything to the contrary in this clause 7, from the date of commencement of the Construction Licence pursuant to clause 8.1(a):

- (a) the Developer and the Developer's Agents will be entitled to access and use the Interim Access Road Works in connection with the Permitted Use;
- (b) the Developer must control access to the Interim Access Road Works by maintaining a security access gate installed by WSPT where the Interim Access Road Works join the Great Western Highway (provided that the Developer must ensure that WSPT is provided with a key or other means of opening the security gate); and
- (c) the Developer will be responsible for maintaining the Interim Access Road Works.

7A EARLY ACCESS

- (a) From the Effective Date the Developer, its consultants, contractors and subcontractors may access the Premises, accompanied by a representative of WSPT, on the conditions referred to in paragraph (c).
- (b) WSPT must make a representative available to the Developer on request, provided two Business Days' notice has first been provided.
- (c) The Developer together with its consultants, contractors and subcontractors:
 - (i) agree that they enter the Premises at their own risk;
 - (ii) may bring any equipment reasonably necessary for the purposes of assessing the Premises, taking measurements and conducting tests, as reasonably required by the Developer; and
 - (iii) must comply with all further reasonable conditions required or reasonable directions imposed by WSPT or its representatives in connection with such access.

8. CONSTRUCTION LICENCE COMMENCEMENT

8.1 Commencement of Construction Licence

- (a) The Construction Licence will commence on the Business Day immediately following the day on which the last to be satisfied of the Construction Licence Conditions Precedent is satisfied.
- (b) The Developer or WSPT will notify the other in writing when it considers that all of the relevant Construction Licence Conditions Precedent have been fulfilled.

8.2 Pre-conditions to Commencement of Construction

- (a) The Developer shall not commence construction of the Works until:
 - (i) the Construction Licence Conditions Precedent have been satisfied;
 - (ii) it has obtained all necessary approvals for commencement of construction from Authorities and provided satisfactory evidence to WSPT (acting reasonably) of those approvals; and
 - (iii) it has satisfied WSPT (acting reasonably) that it has prepared and will implement an appropriate work health and safety plan, all relevant site, health, training and safety conditions and an environmental management plan as required by this Agreement.

8.3 Failure to Satisfy Construction Licence Conditions Precedent by Construction Licence Commencement Sunset Date

- (a) Subject to clauses 14.1 and 14.2, in the event that the Construction Licence Conditions Precedent are not satisfied by the Construction Licence Commencement Sunset Date then:
 - (i) WSPT shall not be obliged to grant the Construction Licence but may, if this Agreement is active, elect to do so at any time in the future in its absolute discretion;
 - (ii) either Party shall be entitled to terminate this Agreement, but in the case of termination by:
 - (A) the Developer, only if the failure to satisfy the Construction Licence Conditions Precedent has not been caused by a breach by the Developer of this Agreement and WSPT shall be free to deal with the Premises as it deems fit in its absolute discretion; and
 - (B) WSPT, only if the failure to satisfy the Construction Licence Conditions Precedent has not been caused by a breach by WSPT of this Agreement;
- (b) if this Agreement is terminated under paragraph (a):
 - (i) Subject to clauses 5.1(f) and 5.2(e), WSPT will be entitled to the Upfront Development Fee and any other amounts paid or due and payable by the Developer to WSPT under this Agreement up to and including the termination date;
 - (ii) the Developer will not be obliged to carry out any of the Works; and
 - (iii) the parties mutually release each other from all further obligations under this Agreement, (other than for amounts then due by either Party to the other) but without prejudice to any claim as a result of an antecedent breach.

9. WORKS AND CONSTRUCTION LICENCE PROVISIONS

9.1 Use of Premises

- (a) For the Construction Period the Developer may:
 - (i) use the Premises for the Permitted Use; and
 - (ii) grant a licence or sub-licence to third parties, including the Builder or to any sub-contractors in connection with the Permitted Use.
- (b) The Developer shall maintain and renew from time to time throughout the Construction Period all licences, permits, consents and registrations required for the carrying on of the Permitted Use under any Laws or as required by any Authority.
- (c) To the extent, if any, that the Developer is required by Law to obtain Approvals in relation to proposed Works, in addition to the Development Consent, the Developer must obtain such Approvals.

9.2 Access

- (a) Subject to the terms of this Agreement and in particular clause 9.2(b), the Developer will be entitled to have access to the Premises for the Permitted Use from the date on which the Construction Period commences.
- (b) The Developer must give to WSPT written notice at least 3 months prior to the date on which the Construction Period commences, requesting access to the Premises and specifying the anticipated date for commencement of the Construction Period. The Developer and WSPT will, having regard to the Works Program and the Developer's realistic assessment of when the Developer will need to have access to the Premises for the purpose of carrying out the Development and must use all reasonable endeavours to agree in advance on the date on which the Developer will give such notice to WSPT.

9.3 Works Plan and WSPT's Approvals

- (a) Prior to the Construction Licence Commencement Date, the Developer must prepare the Works Plan in compliance with all Laws and Approvals.
- (b) Prior to commencing the Works the Developer must submit the Works Plan to WSPT and obtain WSPT's approval of it.
- (c) WSPT must not unreasonably withhold or delay approval to the Works Plan and in any event must notify the Developer no later than 15 Business Days after the Developer submits the Works Plan as to:
 - (i) whether the Works Plan is approved; or
 - (ii) which aspects of the Works Plan are not approved and the reasons for any aspect not being approved. WSPT must approve the Works Plan unless it is substantially inconsistent with the Concept Plan or would not give effect to the development of the Works in accordance with this Agreement.
- (d) If paragraph (c)(ii) applies, the Developer must submit an amended Works Plan to WSPT as soon as practicable and obtain WSPT's approval of it, as provided in paragraph (c).

- (e) The Developer and WSPT must each pay their own costs of and incidental to this clause 9.3.

9.3A Works

- (a) When the Developer's proposed Works have been approved by WSPT in accordance with clause 9.3, and the Developer has obtained all necessary Approvals, and provided copies to WSPT, the Developer must proceed to carry out the approved Works in a proper and workmanlike manner and without undue delay. The Developer must use its reasonable endeavours to achieve Practical Completion of the Works by the Date for Practical Completion, however WSPT will not be entitled to damages or compensation from the Developer if the Works do not reach Practical Completion by the Date for Practical Completion other than for failure by the Developer to use such reasonable endeavours.
- (b) Subject to this Agreement, the Developer will be responsible for all infrastructure and other ancillary works associated with the Works, and for all costs and expenses whatsoever in relation to all Works.
- (c) The Developer must keep WSPT informed as to progress of all Works.
- (d) The Developer must ensure that all Works are carried out by suitably qualified and experienced trades people.
- (e) In carrying out Works, the Developer must ensure that the Requirements of all Approvals and all relevant Authorities and all applicable Laws are complied with.
- (f) In carrying out Works, the Developer must ensure that building materials and builder's refuse are stored neatly within the Premises, and that refuse is disposed of at regular intervals. The Developer must ensure that building materials and builder's refuse do not obstruct the footpaths or other areas adjacent to the Premises.
- (g) Upon completion of the Works, the Developer must obtain without delay such further Approvals as may be required to enable the Premises to be occupied and used as contemplated by the Development Consent, and must provide copies of all such approvals to WSPT.

9.4 Works to be Screened

Unless otherwise approved by WSPT, facilities for the servicing and construction of the Development are to be provided within the curtilage of the Premises. All such areas must, if required by WSPT (acting reasonably), or otherwise varied in accordance with an approved Development Consent, be screened from public view. The Developer must, if so directed by WSPT (acting reasonably), erect information notice boards around the boundary of the Premises at such locations as WSPT may direct.

9.5 Site Conditions

- (a) The Developer acknowledges that no representation, indemnity or warranty is or has been given by or on behalf of WSPT:
 - (i) as to the Premises (including but not limited to the nature, geology, hydrology, condition or state of repair of the Premises) or any structure on the Premises;

- (ii) with respect to the suitability of the Premises for the Development or the Works;
 - (iii) in relation to the completeness of:
 - (A) any technical surveys of the Premises provided to the Developer or any other person; or
 - (B) any other documents provided to the Developer or any other persons in relation to the Premises;
 - (iv) as to the existence of any Hazardous Substance in, on or under the Premises regardless of whether or not the same existed before, on or after the commencement of the Construction Licence;
 - (v) as to where there is any breach of or action required by any Environmental Laws;
 - (vi) as to the existence or imposition of any Requirement in respect of the Premises or the Development; and
 - (vii) as to any use to which the Premises may be put or its suitability or adequacy for all or any of the purposes of the Developer and the Developer must satisfy itself as to the suitability and use and shall be deemed to have accepted this Construction Licence with full knowledge and subject to any prohibitions or restrictions as to use under, arising out of or relative to any of the matters referred to above or in pursuance of or the subject of any legislation or Requirement.
- (b) Subject to this Agreement, the Developer accepts the Premises subject to the matters referred to in paragraph (a) and agrees that it will not make any claim or demand or take any action against WSPT in relation to any such matters.

9.6 Survey Plan

- (a) Within 30 Business Days of the Date of Practical Completion, an identification survey of the Premises must be prepared by a reputable and suitably qualified surveyor with 5 years experience, stating the lettable area of the Premises, certifying the position of Improvements on the Premises and any encroachments by or upon the Premises, certifying the position of any parts of the Premises affected by any easements, restrictions, covenants or other such matters, stating the distance of Improvements to boundaries and compliance with relevant ordinances, regulations easements, covenants, restrictions and the like, and any other matters commonly referred to in surveys. The survey shall be binding on the parties in the absence of manifest error.

9.7 Nuisance, Noise etc

- (a) The Developer will use all reasonable efforts to minimise any inconvenience, nuisance or damage of any kind to any adjoining land or adjoining water area or the interest of any adjoining owner having regard to the nature of the Works being carried on and industry practice and standards.
- (b) The Developer will utilise and be responsible to ensure that all workmen and contractors employed in carrying out the Works utilise methods available of noise suppressors or compressors, jackhammers and other building and/or other construction machinery, in accordance with good industry practice, to ensure that

the noise level emanating from the Premises during the Construction Period is kept to a reasonable minimum and otherwise meets the Requirements of each Authority and having regard to industry practice and standards.

9.8 Pipes and Conduits

WSPT must take reasonable steps to ensure that all redundant pipes and conduits leading to the Premises are sealed.

9.9 Removal of Rubble

During the Construction Period, the Developer will not unreasonably allow any rubbish, refuse, debris or other materials to collect or accumulate within, or in the vicinity, of the Premises.

9.10 Fire and Safety Precautions

- (a) During construction of the Works the Developer will ensure that at the Developer's cost:
 - (i) any fire rating Requirements relating to the Premises, are complied with to the satisfaction of relevant Authorities;
 - (ii) fire precautions within the Premises are maintained in accordance with all relevant Requirements; and
 - (iii) such measures are taken as are reasonably practicable to reduce fumes, dust, noise and vibration arising out of the carrying out of the Works so as to minimise any disturbance or damage to the occupiers of adjoining premises.

9.11 Public Health and Safety

- (a) The Developer must at all times ensure that it does not do anything which might or does endanger public health and safety in and around the precinct of the Premises.
- (b) The Developer must take whatever action is reasonably necessary to prevent endangerment to the public health and safety on the Premises.

9.12 Developer to comply with Statutory Requirements

- (a) The Developer shall at its own expense comply with and observe all Laws and Requirements in relation to or affecting the Premises or any Developer's Plant or the Development (including, without limiting the generality of the foregoing, any Laws and Requirements arising out of the use or occupation of the Premises from time to time) whether or not any such Laws or Requirements are addressed to or required to be effected by WSPT, the Developer or both.
- (b) Where any such Requirement is notified to or served upon the Developer, the Developer will promptly provide a copy to WSPT.

9.13 Ownership of Developer's Plant

As between WSPT and the Developer and regardless of any rule of law or equity to the contrary (but subject always to the other provisions of this Agreement) the property in the Developer's Plant does not vest in WSPT by affixation to the Premises but remains with

the Party in whom the property is vested when the item of Developer's Plant is constructed or brought onto the Premises until or unless specified otherwise in this Agreement.

9.14 Resumption

Without prejudice to or affecting any statutory right of the Developer to receive compensation nothing contained in this Agreement shall be deemed to preclude or prevent the exercise of any statutory right of resumption being taken affecting the Premises at any time during the Construction Period, but WSPT must immediately notify the Developer if it receives notice regarding any proposed resumption of the Premises.

9.15 No Liability or Obligation on WSPT

- (a) WSPT has no express or implied duty, obligation or liability in relation to the design or construction of the Works. The Developer expressly acknowledges and confirms without reservation that:
 - (i) WSPT is relying upon the skill and judgment of the Developer and the Developer is relying entirely on its own skill and judgment and that of its employees, consultants and agents in relation to the Works and is in no way relying upon the skill and judgment of WSPT, its employees, consultants and agents; and
 - (ii) the Developer acknowledges that the approval of WSPT is intended merely as a procedure to enable WSPT to exercise its rights and without limitation does not remove from the Developer or in any way exonerate the Developer or the responsibility of the Developer for the Works.

9.16 Cost of Consents and Construction

- (a) The Developer is entirely responsible for the payment of all costs associated with the obtaining of each Approval sought by or on behalf of the Developer in relation to the Development.
- (b) Subject to this Agreement, the carrying out of the Works is entirely at the cost of the Developer without any right of reimbursement, contribution or refund from WSPT.
- (c) The Developer is responsible (at its cost) for the provision of all plant, equipment, services, facilities, labour and materials required for the proper execution and completion of the Works and for the use and occupation of the Premises by the Developer or other users.
- (d) The Developer will apply for connection to the Premises of all relevant services necessary for the conduct of the Works from the boundary of the Premises and the use of the Premises including the provision of all separate metering.

9.17 WSPT's Right to Enter and Inspect

WSPT and persons or categories of persons authorised by it, shall, during the Construction Period, be entitled to enter the Premises, on reasonable prior notice being given to the Developer (of at least two Business Days) and in the company of a representative of the Developer, for the purposes of carrying out any appropriate inspections of the Development. WSPT must ensure that any person authorised by it who enters upon the Premises complies with the safety Requirements for the Works as notified to WSPT.

9.18 WSPT's Consultant

Bungarrabee Park Agreement for Lease

WSPT may from time to time and at its own cost appoint consultants or such other persons as it considers necessary, acting reasonably, to assist WSPT in respect of any right or obligation of WSPT as it may require for the purpose of carrying out the powers and giving effect to the rights of WSPT under the Construction Licence.

9.19 Bio-Filtration System

- (a) The Developer may elect to use a bio-filtration system including wetlands and retention dams, for the treatment of liquid animal waste.
- (b) If the Developer's right in paragraph (a) is exercised, the Developer must notify WSPT in writing and consult with WSPT in relation to the design of the proposed bio-filtration system and steps to be taken in relation to matters such as protection of vegetation and control of waste discharge. The Developer must comply with WSPT's reasonable requirements in relation to the bio-filtration system.
- (c) If the Developer's right in paragraph (a) is exercised, the Developer will obtain the Approval of any relevant Authority (if required) for the construction, development and use of the proposed bio-filtration system, and provide a copy of any such Approval to WSPT.

10. INDEPENDENT CERTIFIER

10.1 Function of the Independent Certifier

- (a) Not less than 30 days prior to commencement of the Construction Period the Developer must nominate a person who has the necessary expertise, experience and resources to carry out the responsibilities and functions of an Independent Certifier for the purposes of this Agreement, and request WSPT to approve that person. WSPT must not unreasonably withhold or delay such approval.
- (b) The primary function of the Independent Certifier is to certify Practical Completion of the Works.
- (c) Prior to commencement of the Construction Period, the Developer must appoint the Independent Certifier in connection with the Works and must procure that the Independent Certifier enters into, and the Developer and WSPT must enter into, the Certifier Deed.

11. AGISTMENT LICENCE

- (a) WSPT agrees to act reasonably in considering a written request by the Developer to occupy part of the Premises prior to the Lease Commencement Date, for the purposes of the agistment of animals and animal handling.
- (b) The granting of an Agistment Licence will be subject to:
 - (i) the Works in the proposed Agistment Licence area complying with the General Standards for Exhibiting Animals;
 - (ii) the Developer having obtained all necessary Approvals for the agistment of the animals on the Premises; and

- (iii) the provision of details to WSPT of the proposed location and area of enclosures, operational and security arrangements and the approval of such details by WSPT.
- (c) If the Developer does use the site for the agistment of animals or animal handling prior to commencement of the Lease, the Developer must if requested to do so by WSPT enter into a licence document in such form as WSPT may reasonably require. If such document is not entered into, any such use of the Premises will be on the terms provided in this clause 11, and clauses 9.2, 9.5, 9.6, 9.11, 9.12, 9.13, 9.14, 9.16, 9.17, 9.18 and 9.19. If this Agreement is terminated, the Agistment Licence will also terminate and the Developer must immediately vacate the Agistment Licence area and Make Good.

12. COMPLETION OF THE DEVELOPMENT AND ONGOING MANAGEMENT

12.1 Practical Completion Pre-sign Off Procedure

- (a) WSPT, the Developer (or its authorised representative for this purpose) and the Independent Certifier must carry out a joint inspection of the progress of the Development once in every quarter during the carrying out of the Development.
- (b) In respect of the Works the Developer must notify WSPT and the Independent Certifier no less than 20 Business Days and no more than 30 Business Days prior to the anticipated date of Practical Completion.
- (c) The Independent Certifier, a WSPT representative and a representative of the Developer must attend an initial inspection of the Works.
- (d) Within 3 Business Days of undertaking the initial inspection for the purposes of ascertaining whether Practical Completion has occurred, WSPT may issue the Independent Certifier and the Developer with a notice listing the works that WSPT considers are still to be carried out prior to Practical Completion.
- (e) Within 5 Business Days after the initial inspection referred to in clause 12.1(c), the Independent Certifier must consult with the Parties about the works it deems necessary to be carried out in order for Practical Completion to be achieved.
- (f) Subsequent to the consultations referred to in clause 12.1(e), the Developer, WSPT and the Independent Certifier must cooperate in carrying out such further inspections and consultations as may be necessary to enable the Independent Certifier to certify that Practical Completion has been achieved.
- (g) Once the Independent Certifier determines that Practical Completion has occurred, it must, within 2 Business Days of such determination, issue to the Parties a certificate stating that Practical Completion has occurred and the date on which Practical Completion occurred.
- (h) If the Developer believes that Practical Completion has occurred in respect of the Works and the procedures provided for in the preceding provisions of this clause 12.1 have taken place but the Independent Certifier has not yet issued a certificate under clause 12.1(g), the Developer may issue a written notice to the Independent Certifier and WSPT specifying the Works, and the date on which the Developer believes that Practical Completion occurred, and requesting that the Independent Certifier issue a certificate to that effect. WSPT may within 2 Business Days after the giving of such notice by the Developer issue the Independent Certifier and the Developer with a notice listing the works that WSPT considers are still to be

carried out to achieve Practical Completion. The Independent Certifier must not less than 2 Business and not more than 4 Business Days after the giving of such notice by the Developer either issue to the Parties a certificate as requested, or a notice listing the works that the Independent Certifier considers are still to be carried out prior to achieving Practical Completion.

12.2 Actual Works Cost

The Developer must spend not less than the Minimum Agreed Works Cost in carrying out the Works.

12.3 Details of Actual Works Cost

- (a) On the Date of Practical Completion, the Developer must provide to WSPT a detailed statement setting out the Actual Works Cost for the Works together with all necessary information verifying the Actual Works Cost as may be required by WSPT.
- (b) If the Actual Works Cost for the Works is less than the Minimum Agreed Works Cost then, at the direction of WSPT, subject to the Acceptable Development Consent, the Developer must promptly undertake additional work on the Premises so as to ensure that the Actual Works Cost is equal to or greater than the Minimum Agreed Works Cost.
- (c) The Developer must not undertake additional work until it has obtained the written approval of WSPT, such approval not to be unreasonably withheld or delayed.

12.4 Practical Completion of Works

- (a) The Works shall reach Practical Completion, when the following conditions have been satisfied, (apart from minor omissions and defects):
 - (i) the Works are completed except for minor omissions and defects:
 - (A) which do not prevent the Premises from being reasonably capable of being used for their intended purpose;
 - (B) in relation to which the Developer has reasonable grounds for not promptly rectifying them; and
 - (C) rectification of which will not prejudice the convenient and safe use of the Works; and
 - (ii) the Works have been completed in accordance with the Works Plan approved by WSPT, except for minor defects and omissions referred to in paragraph (a)(i); and
 - (iii) the Works are in accordance with all Approvals, Development Consents, Construction Certificates and the Final Plans and Specifications.
- (b) The Independent Certifier must issue a certificate to the Parties stating that Practical Completion has occurred in relation to the Works and the date on which Practical Completion occurred.

- (c) The Developer must, in respect of Works, obtain from the Consent Authority and provide to WSPT:
- (i) an Occupation Certificate under section 109C(1)(c) of the EPAA Act; and
 - (ii) a Compliance Certificate under section 109C(1)(a) of the EPAA Act;
- expeditiously following Practical Completion of the Works, and if on terms, then, in each case on terms acceptable to WSPT and the Developer acting reasonably.

12.5 Developer to Procure Certificate and Drawings

As soon as practicable but in any event within 80 Business Days after the Date of Practical Completion of the Works, the Developer must deliver to WSPT copies of "as built" drawings, specifications, relevant operation and service manuals and all necessary certificates, consents and approvals as required for the carrying out, construction of, occupancy of or use of the Works.

12.6 Defects and Defects Liability Period

All material defects or other material problems (for any reason including but not limited to faults in design, workmanship construction, materials or non-compliance with any Approval, Development Consent, Construction Certificate or Final Plans and Specifications) which are notified to the Developer in respect of the Works within 12 months after the Date of Practical Completion must without delay be rectified by the Developer at its cost, and in default WSPT may make good such defects and recover from the Developer the reasonable cost of making good such defects, provided that WSPT shall only make good defects after giving the Developer notice in writing of its intention to do so and allowing the Developer a reasonable period to make good such defects, unless the defects in WSPT's reasonable opinion are required to be made good immediately due to safety concerns.

12.7 Failure to achieve Practical Completion by Practical Completion Sunset Date

Subject to clauses 14.1 and 14.2, in the event that Practical Completion of the Works has not occurred by the Practical Completion Sunset Date then WSPT will have the right to terminate this Agreement, the Construction Licence, the Agistment Licence and any other licence granted under this Agreement and to otherwise enforce its rights under this Agreement and related securities and the Developer must, at the election of WSPT, Make Good and leave the Premises.

13. LEASE

13.1 Conditions Precedent to the Granting of the Leases and Variation of Lease

The Lease will commence on the Business Day immediately following the day on which the last of the Lease Commencement Conditions Precedent to be satisfied is satisfied and the parties agree to be bound immediately by the terms of the Lease from such commencing date whether or not the Lease has been executed by the Parties.

13.2 Rent

The Rent payable under the Lease will be Base Rent calculated in accordance with this clause 13.

13.3 Determination of Base Rent (Year 1)

(a) If the Lease Commencement Date occurs on or before 1 April 2017, the Base Rent (Year 1) to be inserted in item 6 of the reference schedule to the Lease will be

(b) If the Lease Commencement Date occurs later than 1 April 2017, the Base Rent (Year 1) to be inserted in item 6 of the reference schedule to the Lease is the amount calculated using the following formula:

$$A = B \times (\quad) ^ { ((C - D) / 365)}$$

where:

A = the amount of the Base Rent (Year 1) to be inserted in item 6 of the reference schedule to the Lease

B =

C-D = the number of days from and including 2 April 2017 to and including the Lease Commencement Date

13.4 Base Rent (Year 1) Reduction

The Base Rent (Year 1) calculated in clause 13.3 will be reduced by _____ for Year 1 of the Lease.

13.5 Granting of Lease

(a) Within 10 Business Days after satisfaction of the Lease Commencement Conditions Precedent WSPT must deliver to the Developer or the Developer's solicitors, 2 counterparts of the Lease, and with all blanks completed in accordance with paragraph (b) and first approved by the Developer's solicitors and 2 copies of the Environmental Investigation Report (which is to be an exhibit to the Lease).

(b) The Lease must be completed by WSPT's solicitors by inserting:

(i) the description of Premises on the front cover and in schedule 1, item 1 of the Lease;

(ii) the Commencement Date and Termination Date on the front cover and in schedule 1, items 2 and 3 of the Lease;

(iii) the commencement date and expiry date of the further term of 10 years in schedule 1, item 5 of the Lease;

(iv) the Base Rent in accordance with clauses 13.3 and 13.4 on the front cover and in schedule 1, item 6 of the Lease;

(v) the most recent version of the Concept Plan in schedule 2; and

(vi) all other details reasonably required to complete the Lease for registration purposes.

(c) Within 10 Business Days after WSPT has delivered the lease documents and 2 copies of the Environmental Investigation Report to the Developer or the Developer's solicitors, the Developer must deliver to WSPT:

- (i) the Lease and the Environmental Investigation Report in duplicate duly executed by the Developer; and
 - (ii) a cheque for all monies then due and payable by the Developer to WSPT for registration fees associated with the Lease.
- (d) After the Developer has delivered the lease documents and 2 copies of the Environmental Investigation Report to WSPT, WSPT must:
- (i) within 20 Business Days, execute the Lease and the Environmental Investigation Report in duplicate; and
 - (ii) arrange for the Lease to be registered at Land and Property Information NSW and for the original registered counterpart and one signed copy of the Environmental Investigation Report to be returned to the Developer or the Developer's solicitors promptly after registration.
- (e) From the Lease Commencement Date, WSPT and the Developer are bound by the Lease as if the Lease had been completed and executed by the Parties, whether or not the Lease has been completed and executed. If any provision of the Lease cannot be given effect to until a detail referred to in paragraph (b) has been determined and inserted, the provision becomes effective retrospectively when the detail has been determined and inserted.

13.6 Failure to Satisfy Conditions Precedent by Lease Commencement Sunset Date

- (a) In the event that the Lease Commencement Conditions Precedent are not satisfied by the earlier of the Lease Commencement Sunset Date, subject to clauses 14.1 and 14.2, and the Final Lease Commencement Sunset Date Regardless of Circumstances:
- (i) WSPT shall not be obliged to grant the Lease but may elect to do so at any time in the future in its reasonable discretion;
 - (ii) WSPT shall be entitled to terminate this Agreement (including but not limited to WSPT's obligations to grant the Lease and the Construction Licence and any Agistment Licence) and shall be free to deal with the Premises as it deems fit in its absolute discretion;
 - (iii) the Developer, at the election of WSPT, must Make Good;
 - (iv) WSPT is not required to refund to the Developer any moneys paid by the Developer under this Agreement;
 - (v) WSPT may exercise its rights under the Agreement and related securities including but not limited to the Construction Bank Guarantee.

13.7 No Interest in Land

Despite any other provision of this Agreement, the parties acknowledge and agree that nothing in this Agreement:

- (a) gives the Developer any right as a tenant of the Premises nor creates a relationship of landlord and tenant between WSPT and the Developer in relation to the Premises; nor
- (b) gives the Developer any interest in land in respect of the Premises,

prior to the Lease Commencement Date and the grant of the Lease in accordance with clause 13.1.

14. RIGHTS TO TERMINATE FOR NON-ACHIEVEMENT OF WORKS PROGRAM & DELAY

14.1 WSPT Termination Rights

- (a) Subject to clause 14.2, if the Developer has not:
- (i) completed its due diligence and submitted the Environmental Investigation Report by the Due Diligence Exclusivity Sunset Date;
 - (ii) lodged the DGRs by the DGRs Lodgement Sunset Date;
 - (iii) lodged the Development Application by the Development Application Lodgement Sunset Date;
 - (iv) obtained an Acceptable Development Consent by the Development Consent Sunset Date;
 - (v) substantially commenced construction by the Construction Licence Commencement Sunset Date; or
 - (vi) achieved Practical Completion by the Practical Completion Sunset Date,
- then WSPT must:
- (vii) subject to paragraph (b), notify the Developer in writing of the failure and allow the Developer a further 30 days to satisfy the relevant requirement; and
 - (viii) subject to paragraph (b), if the relevant requirement has not been satisfied within 30 days after WSPT's notice, then WSPT may terminate this Agreement by further notice in writing to the Developer.
- (b) If at the time that WSPT gives a notice to the Developer under paragraph (a)(vii), the Developer has in the reasonable opinion of WSPT completed 80% of the Works, WSPT must allow the Developer 90 days instead of 30 days in paragraphs (a)(vii) and (a)(viii).
- (c) If the Developer has not achieved lease commencement by the Final Lease Commencement Sunset Date (Regardless of Circumstances), then WSPT may terminate this Agreement by notice in writing to the Developer.

14.2 Developer's Entitlements to Delays

- (a) The Developer is entitled to an extension of time to the:
- (i) Due Diligence Exclusivity Sunset Date;
 - (ii) DGRs Lodgement Sunset Date;
 - (iii) Development Application Lodgement Sunset Date;
 - (iv) Development Consent Sunset Date;

- (v) Construction Licence Commencement Sunset Date;
- (vi) Date for Practical Completion and Practical Completion Sunset Date; and
- (vii) Lease Commencement Sunset Date

as a result of any EOT Event, for the period equivalent to the length of the delay, but there shall be no extension of the Final Lease Commencement Sunset Date (Regardless of Circumstance).

- (b) The Developer must give a written notice to WSPT, as soon as practicable after it becomes aware of the occurrence of an EOT Event which results in, or will give rise to, a delay. Such notice must:
 - (i) state, with as much detail as possible, the actual EOT Event, the cause of the EOT Event and the likely effect of the EOT Event on the Works Program and the extension of time claimed by the Developer;
 - (ii) state the steps being taken to alleviate and otherwise deal with the EOT Event and its cause; and
 - (iii) any other relevant facts on which the claim is based and the extension of time sought as a result of the EOT Event.
- (c) WSPT, acting reasonably, may within 10 Business Days after receiving notice in accordance with clause 14.2(b), determine:
 - (i) whether the commencement or completion of the relevant objective or other relevant obligation or the relevant Works (as applicable) has actually been delayed by the EOT Event;
 - (ii) the reasonable extension of time which is to apply, having regard to (among other things) whether the Developer has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the EOT Event (but not having regard to whether the Developer could, by committing extra resources or incurring extra expenditure, make up the time lost); and
 - (iii) provide written notification of this determination to the Developer.
- (d) If WSPT fails to make a determination and give notice to the Developer under clause 14.2(c), or the Developer disagrees with WSPT's determination, the Developer may within 20 Business Days after giving notice in accordance with clause 14.2(b) refer the matter for determination under clause 23.
- (e) The Developer must amend the Works Program to reflect any such extension of time under this Agreement and the Developer must promptly provide a copy of the amended Works Program to WSPT.
- (f) The Developer and WSPT respectively agree to take proper and reasonable steps to reduce the occurrence of delay and to avoid or minimise its consequences.

14.3 WSPT's entitlement to delays

- (a) WSPT is entitled to an extension of time to:

- (i) comply with its obligations under clause 5.2(a) in relation to Approvals to the Subdivision;
- (ii) comply with its obligations under clause 7.1(a) in relation to the Interim Access Road Works;
- (iii) comply with its obligations under clause 7.2(a) in relation to the Services Works,

as a result of any EOT Event, for the period equivalent to the length of the delay.

- (b) WSPT must give a written notice to the Developer, as soon as practicable after it becomes aware of the occurrence of an EOT Event which results in, or will give rise to, a delay. Such notice must:
 - (i) state, with as much detail as possible, the actual EOT Event, the cause of the EOT Event and the extension of time claimed by WSPT;
 - (ii) state the steps being taken to alleviate and otherwise deal with the EOT Event and its cause; and
 - (iii) any other relevant facts on which the claim is based and the extension of time sought as a result of the EOT Event.
- (c) The Developer, acting reasonably, may within 10 Business Days after receiving notice in accordance with clause 14.3(b), determine:
 - (i) whether the commencement or completion of the relevant objective or other relevant obligation (as applicable) has actually been delayed by the EOT Event;
 - (ii) the reasonable extension of time which is to apply, having regard to (among other things) whether WSPT has taken all reasonable steps to preclude the occurrence of the cause and minimise the consequences of the EOT Event (but not having regard to whether WSPT could, by committing extra resources or incurring extra expenditure, make up the time lost); and
 - (iii) provide written notification of this determination to WSPT.
- (d) If the Developer fails to make a determination and give notice to WSPT under clause 14.3(c), or WSPT disagrees with the Developer's determination, WSPT may within 20 Business Days after giving notice in accordance with clause 14.3 (b) refer the matter for determination under clause 23.
- (e) WSPT and the Developer respectively agree to take proper and reasonable steps to reduce the occurrence of delay and to avoid or minimise its consequences.

14.4 WSPT's right to suspend Works

- (a) Notwithstanding any other term of this Agreement, but subject to any Authority Requirements and without affecting the Developer's rights under clause 14.2, WSPT has the overriding right, by notice in writing to the Developer, to require the Developer to suspend the Works (or part thereof) where WSPT considers it:
 - (i) necessary for safety or security reasons; or

(ii) necessary to deal with an emergency situation,

provided WSPT, in exercising any right under this clause 14.3, must have regard to WSPT's obligations under clause 14.2 and at all times act reasonably and in good faith.

- (b) WSPT must, other than where occasioned by a default under this Agreement by the Developer (or in cases of emergency where no notice is required), first give notice to and consult with the Developer and endeavour to reach agreement with the Developer on:
- (i) the necessity for the suspension of the Works;
 - (ii) the duration of any proposed suspension; and
 - (iii) measures to minimise the impact on the Works and the Works Program of any proposed suspension.
- (c) The Developer is entitled to an extension of time to all affected dates referred to in clauses 14.2(a)(i)-14.2(a)(vii) by reason of a suspension by WSPT under clause 14.4(a) which is not caused by default by the Developer, for a period corresponding to the period of the suspension.
- (d) The Developer acknowledges and agrees that it has no entitlement whatsoever to any extra costs or damages if it is delayed or disrupted as a result of any suspension required by WSPT under this clause except to the extent that the reason for the suspension is caused or contributed to by the default of WSPT.

15. DEVELOPER PAYMENTS

15.1 Outgoings and Other Liabilities

- (a) In respect of the Construction Period the Developer:
- (i) must pay on time all Outgoings whether imposed on WSPT, the Developer or the Premises and, if required by WSPT, produce to WSPT the receipts for those payments within 20 Business Days after the respective due dates for payment; and
 - (ii) takes, and is subject to, the same responsibilities and liabilities in regard to the Premises including in respect of:
 - (A) persons and property; and
 - (B) capital and structural works, repairs and maintenance,which the Developer would take and be subject to if the Developer were the owner of the Premises.
- (b) If WSPT is legally obliged to pay an Outgoing, or the Outgoing is in the reasonable opinion of WSPT more appropriately payable directly by WSPT, then the Developer must reimburse or pay that amount to WSPT within 5 Business Days of WSPT making written request for payment (and WSPT must pay the amount if it has not previously done so).

- (c) If the Developer does not pay the Outgoings or other amounts payable under this clause 15.1 when they become due WSPT may, if it thinks fit, pay the same and any sum or sums so paid may be recovered by WSPT from the Developer on demand.
- (d) The other provisions of this Agreement do not limit this clause 15.1.

15.2 Payment of Outgoing Despite Termination

The Outgoings are payable by the Developer notwithstanding that this Agreement or the Construction Period may have expired or been determined before the Outgoings for any particular period or part of the Construction Period are capable of being calculated. In that case WSPT's reasonable estimate of the Outgoings as at the date of that expiry or determination is, as between WSPT and the Developer, taken to be the actual Outgoings payable by the Developer under clause 15.1 without any further adjustment.

15.3 Determination of Outgoings and Rates

In the event that the Developer objects to any assessment of Rates or Outgoings levied in respect of the Premises by any Authority, or the use or supply of services to the Premises, WSPT shall, upon the written request of the Developer, authorise the Developer to raise all objections and bring any appeal including an appeal or proceedings before any tribunal or court of competent jurisdiction in respect of the liability for or the amount of any tax, charge, levy or fee in respect of the Premises or the use or supply of services to the Premises, provided that the Developer shall indemnify WSPT in respect of any liabilities or expenses incurred by WSPT including any adverse costs orders as a result of any objection and or appeal brought by the Developer.

15.4 Developer to Pay for Services

In respect of the Construction Period, the Developer will as and when the same become due for payment pay to WSPT or to any other person or body authorised to supply the same all proper charges for gas, electricity, water or other services, either separately metered or otherwise attributed to the Premises, and supplied to the Developer or consumed in or on the Premises, by the Developer.

15.5 Developer to Pay for Cost of Works

Whenever the Developer is required under this Agreement to do or effect any act, matter, work or thing then the doing of such act matter or thing will unless this Agreement otherwise provides be at the sole risk, cost and expense of the Developer.

15.6 Interest on Overdue Payments

Without prejudice to any other rights, powers or remedies of WSPT under this Agreement, the Developer must pay to WSPT interest on any money due to WSPT under this Agreement but unpaid. Such interest will be calculated on a daily basis and on the basis of a year of 365 days from the due date up to and including the date of actual payment at the Interest Rate for successive 30 day periods. Interest will be payable monthly in arrears. If such interest is not paid when due, it will itself bear interest in accordance with this clause.

16. FOSSILS AND ABORIGINAL AND HISTORIC RELICS

16.1 Artefacts

All fossils, artefacts, coins, articles of value or antiquity and structures and other remains or things of geological, historical or archaeological interest discovered on or under the surface

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of the Premises are deemed, as between WSPT and the Developer, to be the absolute property of WSPT.

16.2 Discovery of Relics

- (a) The Developer must within five Business Days of discovery report to WSPT the discovery of any Aboriginal relic or historic relic during the course of any construction or maintenance work authorised by this Agreement and in such event such construction or maintenance work must cease immediately and an EOT Event can be claimed.
- (b) The Developer must arrange for an inspection of the site to be carried out at the earliest opportunity by a qualified archaeologist following notification by the Developer to determine the importance of the discovered relics.
- (c) Depending on the importance of the discovery, WSPT shall promptly:
 - (i) give consent to destroy the relic; or
 - (ii) specify and permit the salvage of the relics by a qualified archaeologist before work proceeds; or
 - (iii) direct that the work be varied to avoid further disturbance to the relics.

16.3 Special Protection of Relics

The Developer must satisfactorily carry out and perform all reasonably necessary protection or salvage works in clause 16 specified by WSPT in connection with all known relics affected by the activities authorised under this Agreement.

16.4 Costs of Investigation

The Developer must meet all reasonable costs associated with any archaeological investigation or protection or salvage works referred to herein.

16.5 Definition of Relics

- (a) For the purpose of this clause the terms:
 - (i) historic relic will have the same meaning as the term "relic" as defined in the Heritage Act 1977 (NSW); and
 - (ii) relics will mean Aboriginal relics and/or historic relics.

16.6 No claim by Developer

Subject to this Agreement, the Developer may not make any Claim against WSPT for any costs, losses or damages incurred by the Developer arising from or in connection with any matter referred to in this clause 16.

17. DEVELOPER'S OBLIGATIONS

17.1 Developer's Obligations

- (a) Without limiting the Developer's obligations under the Construction Licence in clause 9 the Developer must (and where applicable must ensure that the Developer's Agents):

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- (i) **(notice or order)**: give WSPT a copy of any notice or order which may materially affect WSPT or the Premises, or the use or occupation of the Premises, promptly after the Developer receives the notice or order;
- (ii) **(restrictions easement and covenants)**: comply with the restrictions, easements and covenants, if any, registered on the title to the Premises as at the date of this Agreement;
- (iii) **(general Parklands regulations)**: comply with any general regulations imposed by WSPT (acting reasonably) from time to time in respect of the Parklands provided that these are not inconsistent with the terms of this Agreement;
- (iv) **(emergency requirements)**: comply with the directions of WSPT in relation to security and emergency control at the Premises and the Parklands.

17.2 Prohibited Acts

- (a) Without limiting the Developer's obligations under clause 9, the Developer must not (and where applicable must ensure that its employees, contractors and invitees do not):
 - (i) **(nuisance)**: operate the business or do anything in or upon the Land or the Premises which in the reasonable opinion of WSPT may become a nuisance, disturbance, obstruction or cause of damage whether to WSPT or to other users of the Parklands or passers-by, nor use the Premises in any noxious, noisy or offensive manner;
 - (ii) **(danger)**: do anything in or around the Premises which is dangerous and outside the ordinary operation of the Developer's business;
 - (iii) **(damage or accident)**: damage the Premises or the Building and must inform WSPT of any material damage to, or significant accident in, the Premises as soon as the Developer becomes aware of it;
 - (iv) **(hazardous substances)** must not bring on to the Premises or keep any Hazardous Substance on the Premises, except as required for the operation of the Developer's business, without the prior consent of WSPT, which consent shall not be unreasonably withheld.
 - (v) **(contamination or pollution)**: do anything to contaminate, pollute or increase toxicity in the Premises or the Parklands or their environment; or
 - (vi) **(Authority consent or approval)**: object to any condition of a consent or approval issued by an Authority which repeats or reinforces a restriction, right, reservation or obligation under this Agreement.]

17.3 Security

The Developer is responsible for security at the Premises during the Construction Period, at its cost.

17.4 Work Health and Safety

(a) Work Health and Safety Act 2011

Subject to paragraph (c) and without limiting its obligations under any other provision of this Agreement, when the Developer is using and occupying the Premises it must comply with all applicable work health and safety legislation, including the Work Health and Safety Act 2011 (NSW) and the regulations made under that Act which the Developer acknowledges it will fully and competently do at all times.

(b) Developer's acknowledgement of WSPT's reliance

Subject to paragraph (c), the Developer acknowledges that WSPT relies on the Developer's competency and capability in meeting its obligations under clause 17.4(a) to put in place and control safe systems of work and relevant procedures and that WSPT has no control over the systems of work or procedures employed by the Developer while it is using and occupying the Premises or performing its obligations under this Agreement.

(c) **Principal Contractor**

(i) For the purposes of this clause, the following terms have these meanings:

Codes of Practice means all codes of practice approved under s 274 of the WHS Act and that are applicable to the Works.

Construction Work means 'construction work' as defined by the WHS Regulation.

WHS Act means the Work Health and Safety Act 2011 (NSW) and includes any amendment or replacement of it.

WHS Principal Contractor means the 'principal contractor' as defined by the WHS Regulation.

WHS Regulation means the Work Health and Safety Regulation 2011 (NSW) and includes any amendment or replacement of it.

(ii) The Developer acknowledges that it will appoint the Builder as the WHS Principal Contractor to conduct the Works until the Date of Practical Completion and authorises that person to have management or control of the Premises and to discharge the duties of a WHS Principal Contractor under the WHS Regulation.

(iii) In relation to the Interim Access Road Works and Services Works, WSPT must, up until the date of practical completion of those works, ensure that its subcontractors, employees and agents and any other person for whom it is responsible or over whom it is capable of exercising control, complies with any safety requirements notified to it by the Developer or the Builder from time-to-time, including any direction given to protect the health and safety of any person on or near the Premises.

(iv) The Developer must ensure that its Builder:

(A) complies with the WHS Act and the WHS Regulation;

(B) complies with its obligations as WHS Principal Contractor;

- (C) complies with its obligations as a person conducting a business or undertaking who is carrying out Construction Work;
 - (D) acknowledges that it has management and control of the Premises;
 - (E) complies with the Codes of Practice; and
 - (F) displays signs that are clearly visible on and from outside the Premises identifying the Builder as the WHS Principal Contractor and stating the contact telephone numbers of the Builder (including an after hours emergency telephone number).
- (v) WSPT authorises the Builder to exercise such authority of WSPT as is necessary to enable the Builder to discharge the responsibilities imposed on the WHS Principal Contractor. WSPT and the Developer agree that the Builder will have sufficient authority to comply with its obligations as the WHS Principal Contractor under the WHS Regulation.
 - (vi) The Developer (insofar as is permitted by law) will indemnify WSPT against any Claim which WSPT may suffer or incur, whether as a result of a civil claim or criminal prosecution, arising out of or in connection with a breach by the Developer of any of its obligations as principal contractor under any relevant legislative requirement except to the extent that any such Claim arises from or is caused or contributed to by the negligence or wilful act or omission on the part of WSPT or WSPT's employees, agents or contractors.

17.5 Developer to comply with Environmental Laws

- (a) WSPT does not warrant or represent:
 - (i) that the Premises are suitable for any use, or for any particular use;
 - (ii) that there are no Environmental Aspects either affecting the Premises or arising as a result of activities on the Premises;
 - (iii) the accuracy of information about the past use of the Premises before they were owned by WSPT; or that the Premises are or are not Contaminated, or the nature or extent of any Contamination.
- (b) Subject to clause 17.6, on and from the commencement of the Construction Period, the Developer accepts the Premises in its existing state and condition including any existing Contamination of the Premises to the extent identified in the Environmental Investigation Report.
- (c) Subject to clause 17.6, the Developer shall, as and from the commencement of the Construction Period, be responsible for, and will release WSPT from, any Claims in relation to Contamination, it causes to the Premises.
- (d) Subject to clause 17.6, to the extent that remediation is necessary to enable the Works to be carried out, the Developer agrees to pay for the cost of remediation of any Contamination.
- (e) The Developer must:
 - (i) not Contaminate the Premises;

- (ii) not cause any Pollution of or from the Premises;
 - (iii) subject to the other provisions of this Agreement regarding WSPT's access to the Premises, allow WSPT and WSPT's employees and contractors access to the Premises at reasonable times (provided written notice is first given) to carry out environmental audits, assessments and investigations of any part of the Premises;
 - (iv) at the Developer's cost, remediate any Contamination of or from the Premises to the extent caused by the Developer or the Developer's Agents.
- (f) In relation to its use of the Premises, the Developer must, during the Term, and in relation to the Premises:
- (i) comply with relevant Environmental Laws;
 - (ii) use its best endeavours to prevent a breach of any Environmental Law;
 - (iii) report any breach even if accidental; and
 - (iv) provide to WSPT as soon as reasonably practicable details of notices received by or proceedings commenced against the Developer pursuant to an Environmental Law:
 - (A) relating to a breach or alleged breach by the Developer or the Developer's Agents of an Environmental Law; or
 - (B) requiring the Developer or the Developer Agents to carry out works to decrease the affectation of the Premises by any Hazardous Substance; and
 - (v) before carrying out any remediation works, provide full written details of the Contamination and the proposed remediation works, and obtain the approval in writing of WSPT (such approval not to be unreasonably withheld) and all Approvals required from relevant Authorities for the carrying out of such remediation works.
- (g) Without prejudice to any other indemnity granted by this Agreement, but subject to clause 17.6, from the commencement date of the Construction Period, the Developer shall indemnify and keep WSPT indemnified against all Claims arising from a breach by the Developer of any Environmental Law which breach is in relation to the Premises or any Contamination caused by the Developer in relation to the Premises. This clause shall not merge on expiration or other determination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or determination.

17.6 Contamination Responsibility

Notwithstanding anything to the contrary in this Agreement, but subject to clause 17.5(d), the Developer is not obliged to remediate or take any other action in relation to Contamination which:

- (a) first affected the Premises after the date of the Environmental Investigation Report; and

- (b) was not caused by the Developer, or by any activity or occurrence on the Premises after the date of commencement of the Construction Period pursuant to clause 8.1.

Where paragraphs (a) and (b) apply, and the Contamination in question was caused by a particular third party or third parties, WSPT must if requested to do so by the Developer take such steps as may be reasonably required on its part to assist the Developer in taking action against such third party or third parties to prevent further Contamination and to have existing Contamination remediated.

17.7 Compliance with particular Legislation

Notwithstanding anything to the contrary in this Agreement, including without limitation, the description of the Permitted Use, the Developer must comply with the provisions of the *State Environmental Planning Policy (Western Parklands) 2009* and any Plan of Management or Precinct Plan for the Premises prepared and administered under the *Western Sydney Parklands Act (2006)*.

18. INDEMNITIES

18.1 Indemnity for use of Premises

The Developer must indemnify and keep indemnified WSPT from and against any Claims:

- (a) made upon or suffered or incurred by WSPT in respect of the Works, occupation, operation or use of the Premises; or
- (b) which WSPT may be or becomes liable, in respect of or arising directly from any loss, damage or injury to property or persons caused or contributed to by:
 - (i) any wilful or negligent act or omission;
 - (ii) any default under this Agreement;
 - (iii) the use of or presence on the Premises,

by or on the part of the Developer or the Developer's Agents except to the extent that any such Claims arise from or are caused or contributed to by the negligence or wilful act or omission on the part of WSPT or WSPT's employees, agents or contractors.

18.2 Indemnity Continues After Expiration of Agreement

The obligations of the Developer under this clause continue after the expiration or other determination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or determination.

18.3 Release of WSPT from Liability

- (a) The Developer shall occupy, use and keep the Premises at the risk of the Developer.
- (b) The Developer hereby releases WSPT from any:
 - (i) Claims resulting from any accident, damage or injury occurring in the Premises and any part thereof; and

- (ii) responsibility or liability for any loss of or damage to fixtures and/or personal property of the Developer or the Developer's Agents or of any member of the public whilst in or upon the Premises,

except to the extent that any such Claims arise from or are caused or contributed to by the negligence or wilful act or omission of WSPT or WSPT's employees, agents or contractors.

- (c) The obligations of the Developer under this clause shall continue after the expiration or other determination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or determination.

18.4 No Liability for Failure of Services

WSPT will not be under any liability for any loss, injury or damage sustained by the Developer or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by WSPT or enjoyed by the Developer in conjunction with the Premises or this Agreement provided that such failure is not due to the delay, negligent or wilful act or omission of WSPT its servants or agents.

18.5 Developer's Failure to Comply with Statutory Requirements

- (a) Where the Developer breaches any Law in relation to its use of the Premises it is taken to breach a condition of this Agreement
- (b) The Developer will indemnify and keep indemnified WSPT from and against any Claims arising from the non-compliance by the Developer with any New South Wales or Commonwealth legislation that may apply to the Developer's use and occupation of the Premises and access thereto and the Developer's operation of their business from the site and access thereto.
- (c) This clause shall not merge on the expiration or other determination of this Agreement in respect of any act, deed, matter or thing happening before such expiration or determination.

19. INSURANCES

19.1 Public Liability Insurance

The Developer will effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public liability insurance for an amount not less than the amount set out in Item 7 (or such other amount as WSPT may from time to time reasonably require) as the amount payable in respect of liability arising out of any one single accident or event. The public liability insurance must cover the Developer's obligations to indemnify WSPT under this Agreement pursuant to clause 18.1(b).

19.2 Building Insurance

The Developer will effect and maintain with a reputable and solvent insurer, an insurance policy, on such terms as is usual for policies of this type (having regard to the Permitted Use), insuring the Premises against loss, damage or destruction from any insurable risk (which must include loss, damage or destruction by fire, water, wind, hail, lightning, explosion, storm, tempest, smoke, riot, strikes, civil commotion, malicious damage, sprinkler leakage, impact by vehicles, flood, earthquake, theft, attempted theft, vandalism

and such other insurable risks of a nature and in an amount usually issued from time to time) for not less than their full insurable value on a full replacement or reinstatement basis and including, in the event of reinstatement, consequential loss provisions covering removal of debris. If any loss or damage occurs which is covered by any insurance, the Developer is required to maintain under this Agreement, the Developer must apply for the insurance proceeds promptly and use the proceeds to restore, replace, repair or reinstate the loss or damage.

19.3 Employers' Liability and Workers Compensation Insurance

The Developer will effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises employers' liability and workers compensation insurance.

19.4 Provisions Re Insurance Policies

- (a) All insurance policies required to be effected by the Developer pursuant to this Agreement are specified in Items 7 and 8 and shall be in place prior to occupying the Premises.
- (b) The Developer will produce to WSPT, when requested to do so, once per calendar year or once per period of insurance (whichever first occurs), a certificate of currency in respect of the insurance policies required to be effected by the Developer pursuant to this Agreement. The Developer must ensure that the certificate of currency (and if not the certificate of currency, a copy of the policy or other document acceptable to WSPT) for the public liability insurance policy shows that the policy complies with the requirements of clause 19.1.
- (c) The Developer will not at any time during the Term do any act or omit to do any act which it ought reasonably believe may render void or voidable any policy of insurance. If the Developer does any act or fails to do any act whereby the rate of premium on such insurance shall be liable to be increased, the Developer will obtain insurance cover for such increased risk and pay all additional premiums required on account of the additional risk caused by the use to which the Premises are put by the Developer.
- (d) The Developer will use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.
- (e) The Developer must if requested to do so by WSPT ensure that all insurance policies note the interest of WSPT as the owner of the Premises.

20. EASEMENTS

20.1 Easements

- (a) WSPT may grant rights of support or easements to or enter into any agreement with any person interested in any land or improvement near the Premises, or any Authority, to provide services for or access to the Premises or such other land or improvement or support any structure at any time on the Premises or such other land or improvement or for any other purpose provided that in granting such rights, the Developer's Permitted Use of the Premises or the ability of the Developer to perform its obligations or exercise its rights under this Agreement or the Lease are

not materially adversely affected. Before doing so, WSPT is to consult with the Developer.

- (b) Subject to paragraph (a), the Developer must at WSPT's request promptly execute any consents or other documents to enable WSPT to exercise its rights under this clause 20.1. WSPT and the Developer will act reasonably in creating easements on the Premises for such purposes as may be necessary from time to time.

21. ASSIGNMENT, SUBLEASING AND PARTING WITH POSSESSION

21.1 General Prohibition

Subject to the remaining provisions of this clause 21, the Developer must not assign, transfer, licence or otherwise deal with its interest under this Agreement (including the Construction Licence and the Agistment Licence).

21.2 Assignment

An assignment of the Developer's interest under this Agreement shall be deemed not to be a breach of clause 21.1 if:

- (a) the Developer has given WSPT at least one month's notice in writing of the proposed assignment together with details of the parties; and
- (b) the Developer is not in default under this Agreement, unless the default is waived by WSPT; and
- (c) the Developer establishes to WSPT's satisfaction that any proposed assignee meets each of the Assignment Tests;
- (d) WSPT is given any additional guarantee, indemnity or other security it reasonably requires in relation to the proposed transaction, to be prepared by WSPT's solicitors at the Developer's cost; and
- (e) the Developer and assignee enter into a deed in the form reasonably required by WSPT under which (amongst other things):
 - (i) the Assignee agrees to perform all of the Developer's express and implied obligations under this Agreement, including the obligation to indemnify WSPT;
 - (ii) the Developer releases WSPT from all obligations under this Agreement from the date of assignment except any claim(s) that have arisen before the date of assignment; and
- (f) WSPT has given its written consent to the proposed assignment, which consent must not be withheld or delayed if the requirements of paragraphs (a)-(e) have been satisfied.

21.3 Change of Control

- (a) The Developer must ensure that there is no Change of Control of the Developer. For the purposes of this clause 21, any of the following transactions is a Change of Control:

- (i) where the Developer is a body corporate, a transfer of shares with the result that:
 - (A) any one person (whether legally or beneficially including, without limitation, through related companies or by agreement or understandings) holds more than the effective voting control percentage then held by the Original Consortium Members; or
 - (B) the Original Consortium Members together hold less than 51% voting control shareholding of the Developer;
 - (ii) where the Developer is the trustee of a unit trust, a transfer of the units in that trust with the result that:
 - (A) the percentage of units in the trust or the business conducted by the trust on or in respect of the Development then held by any one person (whether legally or beneficially, including without limitation, through related companies or by agreement or understanding) exceeds the percentage held by the Original Consortium Members; or
 - (B) the Original Consortium Members together hold less than a 51% share of units in the trust and 51% voting rights in the trust;
 - (iii) any declaration by the Developer that it holds its interest in this Agreement on trust for any person or persons, with the effect that:
 - (A) the interest of any one person (whether legally or beneficially, including without limitation, through related companies or by agreement or understanding) exceeds the interest then held by the Original Consortium Members; or
 - (B) the Original Consortium Members together hold less than 51% beneficial ownership and voting rights.
- (b) A Change of Control will be deemed not to be a breach of paragraph (a) if:
- (i) the Developer has given WSPT at least one month's notice in writing of the proposed Change of Control together with details of the parties and a copy of all proposed documentation; and
 - (ii) the Developer is not in default under this Agreement, unless the default is waived by WSPT; and
 - (iii) the Developer establishes to WSPT's satisfaction that any proposed new shareholder, unit holder or trust beneficiary satisfies the requirements of paragraphs (b) and (c) of the definition of Assignment Tests in clause 1.1; and
 - (iv) the Developer has satisfied WSPT that after the Change of Control, the Developer will satisfy the Assignment Tests; and
- WSPT has given its written consent to the Change of Control.
- (c) Any transfers of shares in the Developer, any transfer of units in any unit trust of which the Developer is trustee and any declaration of trust by the Developer, which

does not fall within paragraphs(a)(i), (a)(ii) or (a)(iii) will also be regarded as a Change of Control, and prohibited by clause 21.3, unless:

- (i) the Developer gives prior notice in writing to WSPT together with copies of relevant documents; and
- (ii) WSPT approves of the proposed transaction, such approval not to be unreasonably withheld where in the opinion of WSPT, the transaction will not adversely affect WSPT or prejudice its rights or entitlements under this Agreement.

21.4 Change of Equity Investors

- (a) The Developer must ensure that no Equity Investor assigns, transfers or otherwise deals with its interest in the Developer, and that no person who is not an Equity Investor at the Effective Date becomes an Equity Investor.
- (b) Any of the events referred to in paragraph (a) will not be a breach of that clause if:
 - (i) the Developer has given WSPT at least 1 months' notice in writing of the proposed transaction together with details of the parties and a copy of all proposed documentation; and
 - (ii) the Developer is not in default under this Agreement, unless the default is waived by WSPT;
 - (iii) the Developer establishes to WSPT's satisfaction that the proposed assignee, transferee or other disponent of an Equity Investor's interest, or the new Equity Investor, as the case may be, satisfies the requirements of paragraphs (b) and (c) of the definition of Assignment Tests in clause 1.1; and
 - (iv) the Developer has satisfied WSPT that after the event, the Developer will satisfy the Assignment Tests; and

WSPT has given its written consent to the proposed transaction.

21.5 Mortgage and Charge

- (a) The Developer must not agree to create or allow to exist any charge, mortgage, lien or any other security or encumbrance in favour of any person (Mortgagee) over any interest it may have under this Agreement without the prior written consent of WSPT to be given or withheld in accordance with paragraph (b).
- (b) WSPT must not withhold its consent to a security where:
 - (i) the security is to a Financier of the Developer to enable the Developer to procure the funds to undertake the Development;
 - (ii) the Mortgagee has consented to entering into an agreement with WSPT containing terms and conditions which are reasonably acceptable to WSPT consistent with normal market practice and includes provisions that:
 - (A) require the Mortgagee to promptly notify WSPT if the Developer is in default under the security;

- (B) give the Mortgagee the right (subject to compliance with the terms of this Agreement) but not the obligation to carry out the obligations of the Developer under this Agreement; and
- (C) prohibit WSPT from terminating this Agreement for breach without prior notice to the Mortgagee, that allows the Mortgagee a reasonable period (having regard to the nature of the breach) to rectify the breach, provided that this paragraph (C) does not apply in relation to failure to achieve any Sunset Date.

The parties acknowledge and agree that execution of a financier tripartite deed in the form of the deed attached as Schedule 10 will comply with the requirements set out in this paragraph (b)(ii).

- (iii) WSPT acting reasonably is satisfied that the Developer will be able, after the security is granted, to comply with its obligations (including its financial obligations) under this Agreement.
- (c) The Developer will pay WSPT's reasonable costs and expenses of and incidental to matters the subject of this clause including, but not limited to, its reasonable legal costs and expenses.
- (d) To the extent that the provisions of paragraph (a) apply and paragraphs (b) and (c) are satisfied then WSPT will enter into the agreement as contemplated by paragraph (b)(ii).
- (e) If the Developer agrees to create or allow to exist any mortgage, security or encumbrance over any interest it may have under this Agreement in accordance with clause 21.5 and if requested by the Developer, WSPT must promptly enter into the form of financier tripartite deed attached as Schedule 10 with any changes reasonably required by a Financier in respect of that mortgage, security or encumbrance.

21.6 WSPT's Costs of Consent to Assignment

- (a) The Developer must pay WSPT all reasonable costs, charges and expenses incurred by WSPT of and incidental to any transaction referred to in this clause 21, including any inquiries which may be made by or on behalf of WSPT as to the respectability, responsibility, solvency, fitness and suitability of any person.

22. DEVELOPER'S DEFAULT

22.1 Events of Default

- (a) Each of the events set out in this clause 22.1 is an Event of Default, whether the cause is beyond the control of the Developer or any other person:
 - (i) any money payable by the Developer under this Agreement has not been paid by the due date and remains unpaid for 15 Business Days after notice in writing from WSPT to the Developer requesting payment, or, if payable on demand, has not been paid within 15 Business Days of the making of written request for payment; or
 - (ii) the Developer commits, permits or suffers to incur any breach or default in the due and punctual observance or performance of any of the covenants, obligations and provisions to be performed or observed by the Developer

under this Agreement (other than an obligation to pay money) and which breach or default, where it is capable of remedy, continues unremedied for 30 continuous Business Days after notice to remedy same has been given by WSPT to the Developer in writing; or

- (iii) an Event of Insolvency occurs in relation to the Developer; or
- (iv) the Developer repudiates its obligations under this Agreement.

22.2 Rights upon Event of Default

- (a) WSPT may at any time after the occurrence of any one or more of the Events of Default described in clause 22.1 and without prejudice to any other actions or remedies which WSPT has or may have or otherwise could have had for any such event, failure to perform or non-observance of any provision of this Agreement:
 - (i) terminate this Agreement by re-entering and taking possession of the Premises, using reasonable force to secure possession; or
 - (ii) by notice in writing to the Developer terminate this Agreement and from the date of giving such notice this Agreement will be terminated; or
 - (iii) institute proceedings for possession of the Premises against the Developer.
- (b) The termination of this Agreement will not prejudice or affect any rights or remedies of any Party against any other Party on account of any antecedent claim or antecedent breach or non-observance by any Party of any covenant or provision of this Agreement.

22.3 Sunset Dates

Nothing in this clause 22 requires WSPT to give a notice to remedy to the Developer in relation to a failure by the Developer to satisfy the requirements of this Agreement in relation to any Sunset Date, or otherwise limits the right of WSPT to terminate this Agreement in relation to any failure to comply with the requirements of this Agreement in relation to any Sunset Date.

22.4 WSPT's entitlement to damages

- (a) If the Developer:
 - (i) repudiates this Agreement;
 - (ii) breaches an Essential Term under this Agreement; or
 - (iii) defaults under this Agreement in any other way,the Developer must compensate WSPT for the loss or damage suffered by WSPT as a consequence of the repudiation, breach or other default, whether such loss or damage is suffered before or after any termination of this Agreement.
- (b) The Developer's obligation to compensate WSPT for loss or damage is not affected if:
 - (i) the Developer abandons or vacates the Premises;
 - (ii) WSPT elects to re-enter or to terminate this Agreement; or

- (iii) WSPT accepts the Developer's repudiation.
- (c) WSPT's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Agreement.

22.5 The Developer's entitlement to damages

- (a) If WSPT:
 - (i) repudiates this Agreement;
 - (ii) breaches an Essential Term under this Agreement; or
 - (iii) defaults under this Agreement in any other way,WSPT must compensate the Developer for the loss or damage suffered by the Developer as a consequence of the repudiation, breach or other default, whether such loss or damage is suffered before or after any termination of this Agreement.
- (b) WSPT's obligation to compensate the Developer for loss or damage is not affected if:
 - (i) the Developer abandons or vacates the Premises; or
 - (ii) the Developer accepts WSPT's repudiation.
- (c) The Developer's entitlement to damages is in addition to any other remedy or entitlement, including termination of this Agreement.

22.6 Waiver

A waiver by WSPT of a particular breach or default will not be deemed to be a waiver of the same breach or default if it occurs again or of any subsequent breach or default nor will WSPT's failure to take action on any breach or default be, or be construed as, a waiver of that breach or default.

23. DISPUTE RESOLUTION

23.1 Dispute Resolution

- (a) If a dispute arises out of or relates to this Agreement (including any dispute as to breach or termination of the Agreement or as to any claim in tort, in equity or pursuant to any statute) a Party to the Agreement may not commence any court or arbitration proceedings relating to the dispute unless it has complied with the following paragraphs of this clause 23.1 except where the Party seeks urgent interlocutory relief.
- (b) A Party to this Agreement claiming that a dispute ("the Dispute") has arisen under or in relation to this Agreement must give written notice to the other Party to this Agreement specifying the nature of the Dispute.
- (c) On receipt of that notice ("the Notice") by that other Party, the parties to this Agreement ("the Parties") must:
 - (i) endeavour in good faith to resolve the Dispute expeditiously by negotiation between persons who have authority to settle the Dispute and who are at

a higher level of management than persons with direct responsibility for the administration of the operative effects of this Agreement, and

- (ii) if, for any reason whatsoever, after five (5) days of the receipt of the Notice, the Dispute has not been resolved either Party may notify the other that it desires the assistance of an independent person, or persons, to assist in the resolution of the Dispute, in which case, the parties must endeavour in good faith to resolve the Dispute expeditiously by using assisted informal dispute resolution techniques such as mediation, conciliation, neutral evaluation or binding or non-binding expert determination or similar techniques agreed by them.
- (d) If the parties do not agree within seven (7) days of receipt of the Notice (or such further period as agreed in writing by them) as to:
 - (i) the dispute resolution technique and procedures to be adopted:
 - (ii) the selection and compensation of the independent person or persons required for such technique,

the parties must mediate the Dispute in accordance with the Mediation Rules of the Law Society of New South Wales and the President of the Law Society of New South Wales or the President's nominee will select the independent person, or persons, to conduct the mediation, and determine their remuneration and terms of engagement.

- (e) All communications concerning negotiations made by the parties arising out of and in connection with this clause 23.1 are confidential, and, to the extent possible shall be treated as "Without prejudice" compromise and settlement negotiations for the purpose of applicable rules of evidence. In the event that the Dispute is not resolved a Party may prove objective facts, whether or not confidential, by direct evidence in any court proceedings in respect of the Dispute.
- (f) Each Party shall continue to perform its obligations under this Agreement until final resolution of the Dispute unless to do so would be impossible or impracticable in the circumstances.
- (g) This clause does not merge on completion.

24. RIGHTS ON EXPIRY

24.1 Developer to Vacate Premises

The Developer must at the termination of this Agreement, Make Good, vacate the Premises and must provide to WSPT all keys and access devices in relation to the Premises.

25. RIGHTS RESERVED BY WSPT

25.1 Further rights

WSPT reserves the right to enter the Premises with all necessary material and equipment at all reasonable times provided WSPT is accompanied by the Developer or the Developer's Agents (except in the case of an emergency in which case WSPT may enter at any time):

Bungarribee Park Agreement for Lease

- (a) to carry out repairs or other works to the Premises or any services in the Premises which WSPT is required to carry out in accordance with this Agreement; or
- (b) for the purpose of complying with the terms of any Law affecting the Premises or of any notice served on WSPT or the Developer by any Authority.

26. CONSTRUCTION BANK GUARANTEE

- (a) In this Agreement, Construction Bank Guarantee means:
 - (i) an unconditional undertaking to pay to WSPT on demand an amount not less than the amount specified in Item 9 or such other amount as may be provided for in this clause 26;
 - (ii) issued by an Australian trading bank acceptable to WSPT, acting reasonably.
- (b) Within twenty (20) Business Days after WSPT notifies the Developer under clause 6.3 of acceptance of the Development Consent but in any event prior to the Developer undertaking the Works the Developer must provide the Construction Bank Guarantee to WSPT.
- (c) If WSPT calls on all or part of the Construction Bank Guarantee provided under this clause 26, the Developer must give WSPT an additional or replacement Construction Bank Guarantee so that the amount of the Construction Bank Guarantee held by WSPT is equal to at least the amount specified in Item 9.
- (d) If a Construction Bank Guarantee provided under this clause 26 has an expiry date, the Developer must provide a replacement Construction Bank Guarantee not later than 10 Business Days before the expiry date of the Construction Bank Guarantee which is to be replaced. WSPT must return the previous Construction Bank Guarantee provided under this clause 26 on receipt of the replacement Construction Bank Guarantee.
- (e) If the Developer fails to provide a replacement Construction Bank Guarantee as required by this clause 26, WSPT may after giving 5 Business Days' written notice to the Developer, call on the existing Construction Bank Guarantee and hold the amount received in lieu of the Construction Bank Guarantee and the provisions of this clause 26 will apply in relation to such amount as if such amount was the Construction Bank Guarantee. When the Developer provides the replacement the Construction Bank Guarantee, WSPT must return the amount received from its call of the previous Construction Bank Guarantee to the Developer.
- (f) WSPT must return any Construction Bank Guarantee provided under this clause 26 within 10 Business Days after the later of:
 - (i) the date when there is no unresolved Claim or dispute between the parties in relation to any failure of the Developer to perform or observe the provisions of this Agreement; and
 - (ii) the date that is 12 months after the Date of Practical Completion unless WSPT has given notice to the Developer under clause 12.6 requiring rectification of defects or other material problems in which case it is the date on which the defects or material problems are rectified in accordance with this Agreement; and

- (iii) the Developer has given notice in writing to WSPT requesting return of the Construction Bank Guarantee.
- (g) The Construction Bank Guarantee is to be provided to WSPT to secure WSPT against any failure of the Developer to perform or observe the provisions of this Agreement.
- (h) If in the reasonable opinion of WSPT a failure described in paragraph (b) occurs, WSPT must provide notice to the Developer and a 10 Business Day period to remedy the breach before WSPT can call upon the Construction Bank Guarantee. If the Developer does not remedy the breach within such 10 Business Day period, WSPT can call upon the Construction Bank Guarantee, wholly or in part, and apply any money paid under the Construction Bank Guarantee to any loss or damage sustained by or to WSPT arising from the relevant breach without prejudice to WSPT's rights of reimbursement from the Developer for any loss or damage sustained and WSPT's rights to claim payment for any deficiencies.

27. REPRESENTATIONS NEGATIVED

27.1 Representation warranty or undertaking

- (a) The Developer acknowledges and agrees that no representation, warranty or undertaking has been given by WSPT relating to:
 - (i) the suitability of the Premises for the Permitted Use, or any other uses;
 - (ii) the condition or state of repair of the Premises;
 - (iii) the Premises and amenities found in the Premises;
 - (iv) the suitability of the services available at the Premises; or
 - (v) whether the Permitted Use are uses which may lawfully be made of the Premises.
- (b) The Developer will make its own enquiries in relation to the matters referred to in this clause 27 and all other matters relating to the Premises generally and this Developer.

28. NOTICES

28.1 Service of Notice on Developer

Any notice served by WSPT on the Developer must be in writing and will be sufficiently served if served personally or left addressed or forwarded by prepaid post or facsimile machine to the Developer at the address stated in Item 10 or such other address as the Developer notifies in writing to WSPT.

28.2 Service of Notice on WSPT

Any notice served by the Developer on WSPT must be in writing and will be sufficiently served if served personally or left addressed or forwarded by prepaid post or facsimile machine to WSPT at the address stated in Item 11 or such other address as WSPT notifies in writing to the Developer.

28.3 Notices

Bungarrabee Park Agreement for Lease

- (a) Any notice served by a Party under this Agreement will be effective if signed by the Party personally if an individual a director or secretary or the solicitors for the Party giving the notice or any other person or persons nominated in writing from time to time respectively by WSPT or by the Developer to the other. In addition, any notice may be signed on behalf of WSPT by any officer for the time being of WSPT.
- (b) Any notice sent by prepaid post will be deemed to be served at the expiration of 2 Business Days after the date of posting.
- (c) Any notice sent by facsimile machine will be deemed to be served on the first Business Day after the date of transmission (provided that the sending Party receives a facsimile machine verification report indicating that the notice has been transmitted).

29. EXPENSES AND STAMP DUTIES

29.1 Liability for Expenses – Agreement

- (a) The Developer must indemnify WSPT against, and must pay to WSPT on demand within 15 Business Days of the later of the Effective Date and the date that the Developer receives a tax invoice from WSPT, WSPT's reasonable legal costs and expenses capped at the amount of \$60,000.00, incurred in connection with the negotiation, preparation and execution of the heads of agreement prepared prior to the execution of this Agreement, this Agreement and the Lease, and registration of the Lease.
- (b) If this Agreement is terminated under clause 2.4(d), paragraph (a) will apply and payment must be made within 15 Business Days of the later of the date of termination and the date that the Developer receives a tax invoice from WSPT. For the avoidance of doubt, paragraph (a) will not apply if this Agreement is terminated under clause 2.3(b).

29.2 Liability for Expenses – Other Matters

- (a) The Developer must indemnify WSPT against, and must pay to WSPT on demand the amount of all costs and expenses incurred in connection with:
 - (i) any assignment, licence, mortgage, charge or other encumbrance referred to in clause 21; or
 - (ii) any amendment to, or waiver of or under, or surrender of, this Agreement.

29.3 Stamp Duties

The Developer must pay all stamp duties and similar taxes, including fines and penalties, which may be payable to or required to be paid by any appropriate authority or determined to be payable in connection with the execution, performance or enforcement of this Agreement.

30. GOODS AND SERVICES TAX

- (a) For the purposes of this Agreement, "GST", "taxable supply", "consideration" and "tax invoice" have the meanings given to those terms in *A New Tax System (Goods and Services Tax) Act 1999*.

- (b) Subject to paragraph (d), all payments to be made or other consideration to be provided under this Agreement are GST exclusive unless otherwise expressly stated. If any payment or consideration to be made or provided by either Party is for a taxable supply under this Agreement that payment or consideration must be increased by the amount equal to GST imposed on that taxable supply and GST will be payable at the same time and in the same manner as the consideration for that taxable supply.
- (c) Subject to paragraph (d), if a clause of this Agreement requires a Party to reimburse, indemnify or otherwise pay another Party for any expense, loss or outgoing (reimbursable expense), the amount required to be paid by the first party will be the amount of the reimbursable expense inclusive of any GST paid when the expense, loss or outgoing was incurred less the amount of any input tax credits (if any) to which the other party is entitled in respect of a reimbursable expense.
- (d) A Party is not obliged to pay any amount under paragraphs (b) or (c) unless a tax invoice is first provided.
- (e) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount must not include any amount incurred in respect of penalty or interest or any other amounts payable by a Party as a result of default by that Party in complying with the GST Law.
- (f) Each separate or periodic component of a taxable supply as referred to in section 156-5 of the GST Law is taken to be a separate taxable supply.
- (g) This clause 30 will continue to apply after expiration or termination of this Agreement.

31. MISCELLANEOUS

31.1 No Moratorium

Any present or future legislation which operates to vary obligations between the Developer and WSPT, is to the extent permitted by law excluded from this Agreement.

31.2 No Waiver

No waiver by a Party of any breach of any covenant obligation or provision in this Agreement either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Agreement contained or implied. None of the provisions of this Agreement shall be taken either at law or in equity to have been varied, waived, discharged or released by a Party unless by express consent in writing.

31.3 No Merger

Nothing in this Agreement merges, postpones, extinguishes, lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Agreement or under any other agreement.

31.4 Contact Person

WSPT and the Developer each must nominate a person to contact about matters arising under this Agreement. The person so nominated is the person referred to in Items 10 and

11 of or such other person as WSPT nominates in writing to the Developer and the Developer nominates in writing to WSPT from time to time.

31.5 Applicable Law

This Agreement shall be construed and interpreted in accordance with the law of New South Wales.

31.6 No Holding Out

The Developer will not in connection with the Premises or otherwise directly or indirectly hold out or permit to be held out to any member of the public by any statement, act, deed, matter or thing that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by WSPT nor shall the Developer act as or represent itself to be the servant or agent of WSPT.

31.7 Whole Agreement

- (a) The provisions contained in this Agreement and the Lease expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
- (b) No further or other provisions whether in respect of the Premises or otherwise will be deemed to be implied in this Agreement or to arise between the Parties hereto by way of collateral or other agreement by reason or any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Agreement.
- (c) The existence of any such implication or collateral or other agreement is hereby negated.

31.8 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

31.9 Essential Terms of Agreement

WSPT and the Developer agree that the clauses specified in Item 12 are essential conditions of this Agreement. Other provisions of this Agreement may also be essential conditions.

31.10 Confidentiality

- (a) Both parties must keep confidential and not allow, make or cause any public announcement or other disclosure of or in relation to the terms of this Agreement (including any written or oral agreements, negotiations or information in relation to this Agreement) without the prior written consent (which cannot be unreasonably withheld or delayed) of the other Party. The obligation not to make any disclosure or announcement without the other Party's consent does not apply to disclosures or announcements to the extent that the disclosure or announcement is required:
 - (i) by Law;
 - (ii) by the listing rules of the Australian Stock Exchange or any other recognised stock exchange; or

(iii) for either Party to perform its obligations under this Agreement.

31.11 Counterparts

- (a) A Party may execute this Agreement by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

31.12 Further assurances

Each Party must do everything necessary to give full effect to this Agreement.

31.13 Relationship of WSPT and Developer

Nothing contained or implied in this Agreement will be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between WSPT and the Developer. Specifically, the Parties understand and agree that neither the method of computation of Rent, nor any other provision, nor any acts of the Developer and WSPT or either of them will be deemed to create any relationship between them other than the relationship of WSPT and Developer upon the terms and conditions only as provided in this Agreement.

31.14 Caveat

- (a) WSPT consents to the Developer lodging a caveat with the Registrar-General at Land and Property Information NSW in relation to the Developer's interest in the Premises under this Agreement. WSPT will provide all necessary assistance to enable the Developer to register the caveat, including signing any consent form and endorsing its consent on the caveat, if required.
- (b) Subject to the other rights and obligations of the Parties under this Agreement, the Developer will within 5 Business Days of receipt of a written request from WSPT arrange for any consent to be provided to register any dealing on the title to the Premises, other than an equitable or legal leasehold interest.

31.15 Change of Landlord

- (a) WSPT must not assign its rights and obligations in whole or part under this Agreement, to a purchaser of the Premises or any interest in the Premises, unless the consent of the Developer is first obtained, such consent not to be unreasonably withheld or delayed.
- (b) If the Developer consents to the assignment, WSPT, the Developer and the incoming purchaser must enter into a deed pursuant to which the incoming purchaser and the Developer covenant to comply with the terms of this Agreement and the Developer must provide caveator's consent in relation to any such dealing if requested by WSPT to do so.

REFERENCE SCHEDULE

1. **Premises (clause 1.1)**

Part of Lot 101, Deposited Plan 1195067 being the lot in the Subdivision Plan which corresponds with the lot numbered 11 in the Draft Subdivision Plan, subject to any differences between the Subdivision Plan as registered and the Draft Subdivision Plan.

2. **Not used**

3. **Minimum Agreed Works Costs**

The lesser of:

- (a) 90% of the estimated cost of the Works as set out in the Works Plan; and
- (b)

4. **Works Program Dates**

Event	Months from Effective Date
Due Diligence Exclusivity	3 months
DGRs Lodgement	4 months
Development Application Lodgement	8 months
Development Consent	13 months
Event	Months from DA Approval Date
Construction Licence Commencement	2 months
Practical Completion	20 months
Lease Commencement	20 months
Subdivision Plan Registration	20 months

5. **Sunset Dates**

Event	Months from Effective Date
Due Diligence Exclusivity	3 months
DGRs Lodgement	4 months
Development Application Lodgement	13 months
Development Consent	18 months

Subdivision Plan Registration	25 months
Event	Months from Development Consent Date
Construction Licence Commencement	5 months
Practical Completion	25 months
Lease Commencement	25 months

6. **Final Lease Commencement Regardless of Circumstances**

Final Lease Commencement Sunset Date (Regardless of Circumstance)	31 September 2018
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7. **Public Liability Insurance (clause 19.1)**

\$50,000,000

8. **Other Insurance (clause 19.2 and 19.3)**

Other insurance required under clauses 19.2 and 19.3 including contents insurance for operations equipment and perishables and Developer's Plant.

9. **Construction Bank Guarantee (clause 26)**

\$1,200,000

10. **Developer's address for Service of Notices (clause 28.1)**

11. **WSPT's address for Service of Notices (clause 28.1)**

Level 7, 10 Valentine Avenue, Parramatta NSW 2150

12. **Essential Terms**

The Developer's obligations under the following clauses:

clause 5	Development Application
clause 6	Development Consent
clause 7	Works
clause 14	Rights to Terminate for Non-Achievement of Works Program
clause 15	Developer Payments
clause 17.2	Prohibited Acts
clause 17.5	Developer to Comply with Environmental Laws
clause 19.1	Public Liability Insurance
clause 21	Assignment, Subleasing and Parting with Possession
clause 26	Construction Bank Guarantee
clause 30	Goods and Services Tax

Schedule 1

MINISTER'S CONSENT FORM

RECOMMENDATION

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

- (a) the Agreement for Lease dated [] between Western Sydney Parklands Trust and Sydney Zoo Pty Limited, a copy of which was provided to you: and
- (b) the Lease from Western Sydney Parklands Trust to Sydney Zoo Pty Limited provided for in the Agreement for Lease.

Suellen Fitzgerald

Parklands Director

[2014]

0422 009 220

1) Chief Executive

2) Minister

Schedule 2

PART 1

DEVELOPER EOT EVENTS

Prior to the Construction Commencement Date

- Any delay, after the date of this Agreement, caused by the Consent Authority or any Authority including delay or failure to give any necessary determination or consent (other than delay or failure caused directly or indirectly by the Developer or the time allowed to the Consent Authority or Authority by Law for the giving of the relevant determination or consent).
- Any delay in obtaining a Development Consent following lodgement of a Development Application (other than delay caused directly or indirectly by the Developer or the time allowed to the Consent Authority by Law for the giving of the relevant Development Consent).
- Delay or default, act or omission under this Agreement by WSPT, including breach of this Agreement.
- Proceedings commenced in a court of competent jurisdiction (other than proceedings brought by or against the Developer as a result of the fault or default of the Developer or the failure of the Developer to comply with its obligations under this Agreement or the requirements of an Authority).
- A suspension directed by WSPT (other than where occasioned by a default or omission under this Agreement by the Developer).
- Any other act, matter or event beyond the control of the Developer.

After the Construction Commencement Date

- Inclement weather or conditions which reasonably delay the relevant Works from reaching Practical Completion on the relevant Date for Practical Completion.
- Civil commotion, strike or overtime ban not caused by the Developer.
- Acts of God (including lightning, storm or tempest, action of the elements, epidemics, landslides, earthquakes, cyclones, floods, fires and wash after natural disasters).
- Any delay, after the date of this Agreement, caused by any Authority including delay or failure to give any necessary determination or consent (other than delay or failure caused directly or indirectly by the Developer or the time allowed to the Consent Authority or Authority by Law for the giving of the relevant determination or consent).
- Acts of the public enemy, including wars which are either declared or undeclared, blockades, riots, insurrections and terrorist activity.
- Malicious damage, sabotage and civil disturbances.
- Orders of military authorities.
- Proceedings commenced in a court of competent jurisdiction which reasonably necessitate a cessation of the Works (other than proceedings brought by or against the Developer as a result of the fault or default of the Developer or the failure of the Developer to comply with its obligations under this Agreement or the requirements of any Authority).

Bungarribee Park Agreement for Lease

- Delay or default, act or omission under this Agreement by WSPT, including breach of this Agreement.
- A suspension directed by WSPT (other than where occasioned by a default or omission under this Agreement by the Developer)
- Alteration to the Works Program required by WSPT.
- Variation of the Works required by WSPT.
- Damage or destruction to the Works (and the making good of such damage or destruction).
- The discovery of a relic for the purposes of clause 16.
- Contamination remediation.
- Any other act, matter or event beyond the control of the Developer.

PART 2

WSPT EOT EVENTS

- Any delay, after the date of this Agreement, caused by the Consent Authority or any Authority including delay or failure to give any necessary determination or consent (other than delay or failure caused directly or indirectly by WSPT or the time allowed to the Consent Authority or Authority by Law for the giving of the relevant determination or consent).
- Delay or default, act or omission under this Agreement by the Developer, including breach of this Agreement.
- Proceedings commenced in a court of competent jurisdiction (other than proceedings brought by or against WSPT as a result of the fault or default of WSPT or the failure of WSPT to comply with its obligations under this Agreement or the requirements of an Authority).
- Inclement weather or conditions which reasonably delay the relevant Works.
- Civil commotion, strike or overtime ban not caused by WSPT.
- Acts of God (including lightning, storm or tempest, action of the elements, epidemics, landslides, earthquakes, cyclones, floods, fires and wash after natural disasters).
- Any delay, after the date of this Agreement, caused by any Authority including delay or failure to give any necessary determination or consent (other than delay or failure caused directly or indirectly by WSPT or the time allowed to the Consent Authority or Authority by Law for the giving of the relevant determination or consent).
- Acts of the public enemy, including wars which are either declared or undeclared, blockades, riots, insurrections and terrorist activity.
- Malicious damage, sabotage and civil disturbances.
- Orders of military authorities.
- Damage or destruction to Works (and the making good of such damage or destruction).

- The discovery of a relic for the purposes of clause 16.
- Contamination remediation.
- Any other act, matter or event beyond the control of WSPT.

Schedule 3

WSPT'S UNUSUAL CONSENT CONDITIONS

- The permitted use under the Development Consent is inconsistent with the Permitted Use.
- Approval for residential use, except for the use of a caretaker's residence for after hours security.
- Any condition of the Development Consent that would require WSPT to incur costs of more than \$200,000.
- Any condition of the Development Consent or Subdivision Approval that would materially adversely affect the WSPT's ability to develop any other land in Bungarrabee Park as contemplated in the Bungarrabee Draft Master Plan as at the date of this Agreement.
- The Development Consent does not satisfy all of the following requirements:
 - (i) all permitted uses and conditions, are to be in conformity with the provisions of the:
 - (I) *Western Sydney Parklands Act (2006)*;
 - (II) *State Environmental Planning Policy (Western Parklands) 2009*;
 - (III) any Plan of Management or Precinct Plan for the Premises under the *Western Sydney Parklands Act (2006)*; and
 - (ii) without limitation, must satisfy the requirements of and not conflict with, the matters set out in:
 - (I) sections 16(4)(a) - (c) inclusive of the *Western Sydney Parklands Act (2006)*; and
 - (II) clause 12(a) – (n) inclusive of the *State Environmental Planning Policy (Western Parklands) 2009*.

DEVELOPER'S UNUSUAL CONSENT CONDITIONS

- The permitted use under the Development Consent is inconsistent with the Permitted Use.
- The Development Consent limits the area of the Premises that can be used for the Permitted Use to 90% or less.
- Compliance with the conditions of the Development Consent or the Subdivision Approval (including onerous conditions for any further approvals required by the EPA or any other relevant authority or any approvals in relation to Exhibited Animals) which would result in an increase in the cost of construction of the Works by more than \$2 million.
- The Development Consent conditions do not permit the Development to be carried out substantially in accordance with the Development Application.
- The Development Consent contains onerous conditions that materially adversely impact on the Developer's Proposal and the Concept Plan.
- Compliance with the conditions of the Development Consent causes or would cause the Developer to be unable to comply with the terms of this Agreement or the Lease.

Schedule 4

DRAFT SUBDIVISION PLAN

Bungarribee Park Agreement for Lease

46756641 - 131803 (NSH)

75

46797711 - 131803 (CAM)

Schedule 5

CONCEPT PLAN

Schedule 6

Not used

Schedule 7

WORKS

The estimated budget of the proposed Works, as required under clause 9, is as detailed below:

Item	Works Description	Estimated total capital required (\$m)	Estimated phase 1 capital requirement	Estimated phase 2 capital requirement
1	Building			
2	Civil Works			
3	Enclosures			
4	Public Space			
5	Landscaping			
6	Car Park			
7	Services			
8	Preliminaries			
9	Consultants			
10	Pre-Opening Costs			
11	Graphics Program			
12	Contingencies			
	Total			

Schedule 8

CERTIFIER DEED

Schedule 9

LEASE

Schedule 10

CONSENT DEED

EXECUTED as a deed

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

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: Director

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

Corporation: Sydney Zoo Pty Ltd

Authority: s 127 of the Corporations Act 2001

Signature of Director:

Signature of Director/Company
Secretary:

Name of Director:

Name of Director/Company
Secretary:

Office held:

Office held:

Bungarribee Park Agreement for Lease