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Deed made at _____ on _____ 2014

Parties **Western Sydney Parklands Trust** a ("WSPT")

Sydney Zoo Pty Limited ACN 168 970 090 of
2024("Developer")

[Independent Certifier] ABN [] of [] ("Independent Certifier")

Recitals

- A. The Developer and WSPT have entered, or will enter, into, among other agreements the Agreement for Lease under which the Developer will procure the carrying out of the Works.
- B. The Developer has engaged, or will engage, the Builder to carry out the Works on the terms of the Building Contract.
- C. The Developer has obtained, or will obtain, financial accommodation from the Financier to assist the Developer in satisfying its obligations under the Agreement for Lease.
- D. The parties, other than the Independent Certifier, have financial and other interests in determining when the Works reach Practical Completion as that event will cause the relevant parties to commence the Lease.
- E. By this deed, the Developer appoints the Independent Certifier to, among other things, certify Practical Completion of the Works.
- F. The Independent Certifier accepts its appointment and agrees to perform its functions on the terms of this deed.

Operative Provisions

1. Definitions and interpretation

1.1 Definitions

These meanings apply unless the contrary intention appears:

"Agreement for Lease" means the Agreement for Lease for Bungarribee Park Sydney Zoo between WSPT, the Developer and the Guarantor in relation to the Development.

"Builder" means *[Insert]*.

"Certificate of Practical Completion" means the certificate to be provided by the Independent Certifier under the Agreement for Lease stating that Practical Completion has occurred in relation to the Works and the date on which Practical Completion occurred.

"Certifier Default" means an event so described in clause 12.1.

"Defects Liability Period" means the period of 12 months after the Date of Practical Completion.

"Final Certificate" means a certificate issued by the Independent Certifier to the Parties stating that any rectification works required to be carried out by the Developer under clause 12.6 of the Agreement for Lease have been completed.

"Financier" means *[insert]*.

"Insurances" means the insurances required to be effected and maintained under clause 11, and **"Insurance"** means each one of the insurances, the details of which are specified in schedule 1 of this deed.

"Obligations" means the obligations and duties of the Independent Certifier to the Developer and WSPT under or in connection with this deed.

"Principal Default" means an event so described in clause 12.2.

"Related Entity" has the meaning ascribed to it in section 9 of the Corporations Act.

"Replacement Certifier" means the successor of the Independent Certifier appointed under clause 12.5 of this deed.

"Transaction Documents" means:

- (a) the Final Plans and Specifications;
- (b) the building contract between the Developer and the Builder and any other documents between the Developer, WSPT and/or the Builder in relation to the Development;
- (c) the Agreement for Lease; and
- (d) any document which WSPT and the Developer acknowledge in writing to be a Transaction Document.

2. Interpretation

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

- (a) a group of persons is a reference to any two or more of them jointly and to each of them individually;
- (b) an agreement, representation or warranty in favour of two or more persons is for the benefit of them jointly and each of them individually;
- (c) an agreement, representation or warranty by two or more persons binds them jointly and each of them individually;
- (d) anything (including an amount) is a reference to the whole and each part of it;
- (e) a document (including this deed) includes any variation or replacement of it;
- (f) an accounting term is a reference to that term as it is used in accounting standards under the Corporations Act, or, if not inconsistent with those standards, in accounting principles and practices generally accepted in Australia;
- (g) Australian dollars, dollars, \$ or A\$ is a reference to the lawful currency of Australia;
- (h) a time of day is a reference to Sydney time;
- (i) the word "person" includes an individual, a firm, a body corporate, an unincorporated association and an authority;
- (j) a particular person includes a reference to the person's executors, administrators, successors, substitutes (including persons taking by novation) and assigns;

- (k) the words "including", "for example" or "such as" when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; and
- (l) an exhibit, annexure or schedule is a reference to an exhibit, annexure or schedule to this deed.

2.2 Number

The singular includes the plural and vice versa.

2.3 Headings

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

2.4 Agreement for Lease definitions

A term which has a defined meaning in the Agreement for Lease has the same meaning when used in this deed unless it is expressly defined in this deed, in which case the meaning given to it in this deed will prevail.

3. Appointment of Independent Certifier

3.1 Terms of appointment

- (a) The Developer appoints the Independent Certifier to perform the Obligations.
- (b) The Independent Certifier's appointment commences on the date of this deed and terminates on the date determined pursuant to clause 4.
- (c) Each of WSPT and the Developer confirms and approves the appointment of the Independent Certifier as the independent certifier for the purposes of the Agreement for Lease to do those things provided in this deed.

3.2 Consent

The Independent Certifier accepts its appointment under clause 3.1 and agrees that it will perform the Obligations.

3.3 Receipt of Documents

The Independent Certifier acknowledges:

- (a) receipt of copies of each of the Transaction Documents; and
- (b) confirms that it has read and will be deemed to have informed itself fully of:
 - (i) the requirements of the Transaction Documents;
 - (ii) the nature of the work necessary for the performance of the Obligations;
 - (iii) the accuracy and completeness of description of the Obligations;
 - (iv) the fees payable to it which are to cover completely the Costs of complying with the Obligations; and
 - (v) all matters and things necessary or ancillary to the due and proper performance of the Obligation.

4. Term of appointment

The Developer's and WSPT's rights under this deed to require the Independent Certifier to perform the Obligations remain in effect until the later of:

- (a) the date of the expiry of the defects liability period provided for in the Agreement for Lease; or
- (b) the date of the Final Certificate,

in respect of the Works, unless that appointment is terminated at an earlier date in accordance with clause 12.

5. Relationship

5.1 Nature of relationship

- (a) The Independent Certifier is an independent contractor and is not an employee or agent of either WSPT or the Developer.
- (b) The Independent Certifier's employees, contractors, consultants and agents are not the employees, contractors, consultants or agents of any of WSPT or the Developer. The Independent Certifier assumes full responsibility for the acts and omissions of each of its employees and agents.

5.2 Independence

The Developer, WSPT and the Independent Certifier agree that the Independent Certifier will act independently of all parties in connection with the performance of the Obligations.

5.3 Co-operation and assistance

- (a) The Developer and WSPT will co-operate with each other and the Independent Certifier and use their reasonable endeavours (without being obliged to pay money) to assist the Independent Certifier to enable it to satisfy the Obligations.
- (b) Subject to any law or duty of confidentiality and without limiting clause 5.3(a), each WSPT and the Developer will provide to the Independent Certifier any information reasonably necessary to enable the Independent Certifier to satisfy the Obligations and agrees to provide the Independent Certifier with any information within the time required by this deed or any Transaction Documents.
- (c) The Independent Certifier will co-operate with the Developer and WSPT and any agent, consultant, contractor or employee of the Developer and WSPT in relation to the Works and will co-ordinate the performance of the Obligations with the activities being performed by those parties under the Transaction Documents.

5.4 Information provided to Independent Certifier

The Independent Certifier is entitled to rely on information provided to it by the Developer and WSPT as being true and correct in all material respects unless:

- (a) such information is:
 - (i) manifestly incorrect;
 - (ii) provided on a qualified basis; or

- (iii) actually known or ought to have been known by the Independent Certifier to be untrue or incorrect; or
- (b) either the Developer or WSPT subsequently informs the Independent Certifier of any change to the information provided to it.

5.5 Authority to act

The Independent Certifier has no authority:

- (a) other than expressly provided in this deed, to give directions to the Developer or WSPT or any of their officers, employees, contractors, consultants or agents;
- (b) to waive or alter any terms of the Transaction Documents; or
- (c) to discharge or release a party from any of its obligations pursuant to the Transaction Documents.

5.6 Standard of performance

- (a) In performing the Obligations, the Independent Certifier agrees:
 - (i) to act in good faith, impartially, diligently, reasonably and with a high degree of professional care, knowledge, experience and skill which may be reasonably expected of and in accordance with the standards applicable to a practising firm of project management consultants experienced in the performance of the same or similar services; and
 - (ii) to perform all its Obligations within the specified times provided in the Transaction Documents.
- (b) The Independent Certifier warrants that it has the capability, expertise and experience to perform the Obligations.

5.7 No conflict of interest

The Independent Certifier acknowledges and warrants that:

- (a) it owes a duty of care and professional responsibility to each of the Developer and WSPT in connection with the performance of the Obligations;
- (b) each of the Developer and WSPT are relying on its independence; and
- (c) it has no conflict of interest with respect to the carrying out of the Obligations and that it will not accept any role in relation to the Development other than expressly set out in this deed.

5.8 Reliance

The Independent Certifier acknowledges and agrees that:

- (a) it will perform the Obligations in accordance with this deed for the benefit of WSPT and the Developer and that each WSPT and the Developer will be relying on the performance of the Obligations as if the Independent Certifier were separately performing them for each of WSPT and the Developer directly; and
- (b) the Developer and WSPT are entitled to and will rely on its certification in accordance with the provisions of this deed and for the purposes of the Transaction Documents.

5.9 Certification final and binding

WSPT and the Developer acknowledge and agree that each of:

- (a) the Certificate of Practical Completion;
- (b) the Final Certificate; and
- (c) the determinations, certifications and confirmations referred to in clause 6.1,

given by the Independent Certifier pursuant to this deed and each Transaction Document, in the absence of manifest error of fact or law, is final and binding on the Developer and WSPT under this deed and the Transaction Documents.

6. Obligations of Independent Certifier

6.1 Obligations relating to Practical Completion

- (a) 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 6.1 (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 6.1(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 6.1 have taken place but the Independent Certifier has not yet issued a certificate under clause 6.1(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.

6.2 Prerequisites for Certificate of Practical Completion

A Certificate of Practical Completion may not issue unless and until the following conditions have been satisfied, (apart from minor omissions and defects):

- (a) the Works are completed except for minor omissions and defects:
 - (i) which do not prevent the Premises from being reasonably capable of being used for their intended purpose;
 - (ii) in relation to which the Developer has reasonable grounds for not promptly rectifying them; and
 - (iii) rectification of which will not prejudice the convenient and safe use of the Works; and.
- (b) the Independent Certifier is satisfied the Works have been completed in accordance with the Works Plan approved by WSPT in accordance with clause 9.3 of the Agreement for Lease, except for minor defects and omissions referred to in paragraph (a)(i); and
- (c) the Works are in accordance with all Approvals, Development Consents, Construction Certificates and the Final Plans and Specifications.

6.3 Defects Liability and Final Certificate

- (a) At any time during the Defects Liability Period, WSPT may inspect the Works and if necessary, issue a notice to the Developer and the Independent Certifier of any material defects or other material problems in the Works.
- (b) The Developer must promptly make good the material defects or other material problems specified in any notice given by WSPT under paragraph (a).
- (c) The provisions of clause 6.1 apply, the necessary changes being made, to the issue of the Final Certificate as if the reference in those clauses to:
 - (i) the Certificate of Practical Completion was a reference to the Final Certificate; and
 - (ii) the reference to Practical Completion was a reference to Final Completion.

6.4 Other Obligations relating to the Agreement for Lease

In addition to all obligations of the Independent Certifier under this deed, the Independent Certifier must perform all the obligations of the Independent Certifier specified in the Agreement for Lease.

6.5 Independent Certifier's right to enter and inspect

- (a) The Independent Certifier may:

- (i) after having given the Developer at least 2 Business Days notice (except in the case of an emergency where no notice is required) inspect the Works;
- (ii) inspect and test materials used in connection with the Works;
- (iii) require the Developer to produce any evidence of tests which may reasonably be required by the Independent Certifier with respect to the Works; and
- (iv) reject any materials or workmanship materially inconsistent with:
 - A. the Final Plans and Specifications (as amended pursuant to this deed); or
 - B. to the standard required under this deed and the Agreement for Lease.

7. Independent Certifier's personnel

7.1 Properly qualified

The Independent Certifier must at all times provide adequately competent, experienced and qualified personnel to perform the Obligations.

7.2 List of personnel

Upon the request at any time by WSPT or the Developer, the Independent Certifier must promptly provide a list of the personnel which it will use or will be using to perform the obligations and detailing the qualifications and experience of each person.

7.3 Removal of personnel

If at any time during the term of this deed, either WSPT or the Developer considers that the conduct of the Independent Certifier's personnel is prejudicial to the interest of the Development or that the Independent Certifier has not engaged personnel who are sufficiently competent, experienced and qualified to perform the Obligations, then either WSPT or the Developer (as applicable) may, after consultation with the Independent Certifier, by written notice to the Independent Certifier require the removal of that person from any involvement in the Development. The Independent Certifier shall within 10 Business Days replace the person named in that notice with the person approved by the WSPT and the Developer.

8. Notifications

The Independent Certifier agrees to promptly notify the WSPT and the Developer if it becomes aware in the course of performing the Obligations:

- (a) that any matter stated or certified by the Builder or certificate provided under any Transaction Document is not correct as at the date stated or certified; and
- (b) of any matter or circumstance which in its reasonable opinion:
 - (i) may materially or adversely affect the Builder's ability to achieve Practical Completion by the Date for Practical Completion;
 - (ii) it considers to be, in the context of the Development, of material interest to WSPT or the Developer;

- (iii) may involve a material breach of any Transaction Document; or
- (iv) may involve a material dispute between any party to any Transaction Document or any other person in relation to a Transaction Document or the Development.

9. Fees

9.1 Payment by Developer

The Developer agrees to pay to the Independent Certifier, such fees as separately agreed between the Developer and the Independent Certifier.

9.2 WSPT not to pay

WSPT is not required to pay fees to the Independent Certifier for work carried out under this deed or any Transaction Document.

10. Representations and Warranties

10.1 Representations and warranties

The Independent Certifier represents and warrants that:

- (a) it has been incorporated as a company limited by shares in accordance with the laws of its place of incorporation, is validly existing under those laws and has power and authority to carry on its business as it is now being conducted;
- (b) it has power to enter into this deed and the Transaction Documents to which it is a party and comply with its obligations under each of it;
- (c) this deed and the transactions under it which involve it do not contravene its constituent documents (if any) or any law or obligation by which it is bound or to which any of its assets are subject or cause a limitation on its powers (or, to the extent applicable, the powers of its directors) to be exceeded;
- (d) it has in full force and effect the authorisations necessary for it to enter into this deed, to comply with the Obligations and exercise its rights under it, and allow it to be enforced;
- (e) the Obligations are valid and binding and are enforceable against it in accordance with its terms;
- (f) it benefits by entering into this deed;
- (g) there are no reasonable grounds to suspect that it is unable to pay its debts as and when they become due and payable;
- (h) unless stated in this deed, it does not enter into this deed as trustee;
- (i) there is no pending or threatened proceeding affecting it or any of assets before a court, governmental agency, commission or arbitrator except those in which a decision against it would be insignificant;
- (j) it does not have immunity from the jurisdiction of a court or from legal process;
- (k) it has the appropriate qualifications to undertake all of the certification requirements forming part of the Obligations; and

- (l) it and all its representatives, employees, agents, contactors and consultants engaged in the performance of the Obligations possesses, and will continue to possess, the appropriate experience, skill, qualifications and resources which are required to properly perform the Obligation.
-

11. Insurance

11.1 Own Risk

The Independent Certifier undertakes to carry out the Obligations entirely at its own risk.

11.2 Undertakings

The Independent Certifier undertakes as follows:

- (a) it will obtain and maintain the Insurances;
- (b) it will obtain and maintain such additional insurances, and make such variations to existing Insurances, as may reasonably be requested by the Developer and WSPT, promptly after that request;
- (c) each Insurance policy will comply with the following requirements:
 - (i) the policy must contain provisions which are reasonably standard in the market for insurance of the type covered by the policy;
 - (ii) the insurers must be reputable, and approved by the Developer and WSPT;
 - (iii) the named insured on the policy must be the Developer and WSPT and such other persons as the Developer or WSPT reasonably require; and
 - (iv) the Insurance must at all times cover liability for an amount stated in schedule 1, and
- (d) each insurance policy must contain the following:
 - (i) the insurer must waive its right to set-off or reduce by way of counterclaim, or make any deduction or withholding, in relation to any payment to be made by it under any Insurances;
 - (ii) the insurer must waive its right to claim from the Developer or WSPT any insurance premiums, fees, commissions or the like;
 - (iii) the Insurances must continue unaltered in relation to each named insured, despite any act, omission, breach or misrepresentation by any other named insured or person;
 - (iv) each named insured may pay premiums not paid when due (in satisfaction of the premium due), but only the Independent Certifier has an obligation to do so;
 - (v) each named insured must have rights which are of the same nature and extent as they would have had had a separate policy been individually taken out by that named insured (subject to limits on liability);
 - (vi) the insurer must undertake to promptly notify the Developer and WSPT:
 - A. cancellation of any Insurances; or

- B. any change whatsoever of a restrictive nature which affects any Insurances; or
 - C. any act or omission or any event which might invalidate an Insurance policy or render it unenforceable; or
 - D. any failure to pay an amount on account of premiums when due;
- (vii) the insurer must undertake to notify each named insured of non-receipt of any renewal instructions no later than 5 Business Days prior to the due date for expiry of any Insurance;
 - (viii) despite the occurrence of an event referred to in sub-paragraphs (vi) or (vii) above, the Insurances must continue unaltered for the benefit of the Developer and WSPT for a period of at least of 20 Business Days after notice is given to the Developer and WSPT under either of those sub-paragraphs;
 - (ix) there must be no reduction of limits or coverage without the prior consent of the Developer and WSPT; and
 - (x) the insurer's obligations must be primary obligations, without right of contribution in respect of any other indemnity or insurance cap.
- (e) it will provide the Developer and WSPT with:
 - (i) a true and complete copy of each Insurance policy, promptly after receipt of the policy by or on behalf of the Independent Certifier;
 - (ii) certificates of currency evidencing the maintenance of the Insurances, or a component of the Insurances, promptly after the Insurances (or a component) is or are renewed or extended;
 - (iii) it will give the Developer and WSPT a copy of any notice received by the Independent Certifier from any insurer in respect of Insurances, promptly after receipt; and
 - (iv) such other details in respect of Insurances as the Developer or WSPT may from time to time reasonably request, promptly after the request;
 - (f) it will pay when due all premiums, commissions, stamp duties, charges and other expenses incurred or payable in relation to Insurances, and give evidence of that payment to the Developer and WSPT;
 - (g) it will do all things necessary or desirable to maintain the Insurances in full force;
 - (h) not, without the Developer's and WSPT's consent, vary, cancel or allow to lapse any Insurances;
 - (i) it will do all things reasonably necessary or desirable to permit or facilitate the collection or recovery of any moneys payable by the insurers under Insurances;
 - (j) it will not, without the consent of the Developer and WSPT do (or omit to do) anything which does or might (or the omission of which does or might) adversely affect the nature or extent of the rights of any named insured under Insurances, or extinguish, qualify or limit any obligations of the insurer in respect of any Insurances;

- (k) it will immediately rectify anything which may have an adverse effect on the Insurances and reinstate any of the Insurances if it lapses;
- (l) it will not, without the consent of the Developer and WSPT, do, or take any steps to, cancel, materially change or reduce the amount of coverage of any Insurances;
- (m) it will not, without the consent of the Developer and WSPT:
 - (i) consent to any reduction in limits or coverage; or
 - (ii) enforce, conduct, settle or compromise any claims,in respect of any Insurances, whether or not any of them cover other property; and
- (n) it will notify the Developer and WSPT immediately when:
 - (i) an event occurs which gives rise or might give rise to a claim under or which could adversely affect any one of the Insurances; or
 - (ii) any one of the Insurances is cancelled.

12. Default

12.1 Certifier Default

- (a) The Independent Certifier must ensure that no Certifier Default occurs.
- (b) Each of the following is a Certifier Default:
 - (i) the Independent Certifier does not comply with or perform any of the Obligations;
 - (ii) the Independent Certifier becomes the subject of an Event of Insolvency;
 - (iii) distress is levied or a judgment, order or Encumbrance is in force or becomes enforceable, against any property of the Independent Certifier for amounts totalling more than \$50,000;
 - (iv) a representation or warranty made by or for the Independent Certifier in connection with this deed or a Transaction Document is found to have been incorrect or misleading when made;
 - (v) the Independent Certifier ceases to carry on its business or material part of it; or
 - (vi) a person is appointed under legislation to manage any part of the affairs of the Independent Certifier.

12.2 Principal Default

- (a) The Developer must ensure that no Principal Default occurs.
- (b) A Principal Default occurs when the Developer does not pay to the Independent Certifier any amount due and payable by it under this deed, within 10 Business Days of the Independent Certifier giving written notice demanding payment, unless there is a dispute between the Developer and the Independent Certifier regarding the amount or the subject of the amount to be paid.

12.3 Right to terminate

- (a) Subject to clause 12.3(c), if a Certifier Default occurs and the default is not remedied by the Independent Certifier within 10 Business Days of notice of that default being given by either the Developer or WSPT to the Independent Certifier, the Developer or WSPT may terminate the appointment of the Independent Certifier by giving not less than 10 Business Days' notice in writing to the Independent Certifier and the Developer's and WSPT's obligations under this deed are terminated.
- (b) If a Principal Default occurs and the default is not remedied within 10 Business Days of notice being given by the Independent Certifier to each of WSPT and the Developer, the Independent Certifier may terminate this deed by giving not less than 10 Business Days' notice in writing to each of WSPT and the Developer.
- (c) The Developer or WSPT may, without giving advance notice, terminate this deed by giving notice in writing to the Independent Certifier if an event described in clause 12.1(b)(ii) occurs.
- (d) If the Agreement for Lease is terminated for the default of the Developer, WSPT may elect in writing to the Developer and the Independent Certifier either to terminate this deed or to continue with it (and if it has not made an election within one month of the date of termination of the Agreement for Lease, is taken to have elected to terminate this deed).
- (e) If pursuant to clause 12.3(d) WSPT:
 - (i) elects to terminate this deed, that termination does not disturb any existing rights of the parties arising prior to the date of termination; and
 - (ii) elects to continue with this deed, it does so on the basis that it accepts the obligation to pay the Independent Certifier for work done after the date of the election pursuant to this deed.

12.4 Rights on termination

If the appointment of the Independent Certifier is terminated pursuant to:

- (a) clauses 12.3(a) or 12.3(d), the Independent Certifier will only be entitled to payment from the Developer of all amounts due to it under clause 9, up to and including the date of termination; and
- (b) clause 12.3(b), then the Independent Certifier will also be entitled to receive from the Developer its reasonable Costs arising from that termination.

12.5 Appointment of successor

- (a) The termination of the appointment of the Independent Certifier under clause 12.3 above will not be effective until the successor to the Independent Certifier is appointed by the Developer in accordance with this clause 12.5.
- (b) Prior to any termination of the appointment of the Independent Certifier taking effect under clause 12.3(a), the Developer must appoint a Replacement Certifier as the successor to the Independent Certifier.
- (c) The Replacement Certifier must:
 - (i) be acceptable to the Developer and WSPT (acting reasonably);

- (ii) enter into a deed with the Developer and WSPT in substantially the same terms and conditions as this deed; and
 - (iii) is a person who is able, in the reasonable opinion of the Developer and WSPT, to observe the Obligations under this deed.
- (d) The Developer and WSPT agree to enter into the deed with the Replacement Certifier contemplated under clause 12.5(c)(ii).
- (e) In the event that the Developer and WSPT do not agree on the identify of the Replacement Certifier within 5 Business Days of the decision to terminate the appointment of the Independent Certifier, the Replacement Certifier will be such other certifier nominated by the Developer and approved by WSPT in accordance with the Agreement for Lease.

12.6 Return of records

- (a) Within 10 Business Days of the termination of its appointment, the Independent Certifier must:
- (i) deliver to either WSPT or the Developer (as applicable) or, at the direction of WSPT or the Developer, to the Replacement Certifier, all copies of Transaction Documents, all books, records, plans, specifications and other documents relating to the Obligations or the Development in the possession or control of the Independent Certifier (with the Independent Certifier being entitled to retain copies but only for insurance purposes); and
 - (ii) use its reasonable endeavours to ensure the representative of the Independent Certifier, its agents and sub contractors deliver such material to either WSPT or the Developer or, at the direction of WSPT or the Developer, to the Replacement Certifier. The Independent Certifier may not exercise any lien against any of the documentation referred to in this clause.
- (b) In the event that its appointment is terminated, the Independent Certifier agrees that it will co-operate with and assist the Replacement Certifier to ensure an effective and smooth transition of its duties and obligations under this deed to the Replacement Certifier.

13. Costs

13.1 What the Independent Certifier agrees to pay

The Independent Certifier agrees to pay or reimburse the Developer and WSPT on demand for their Costs in making, enforcing and doing anything in connection with this deed, including legal Costs in accordance with any written agreement as to legal Costs or, if no agreement, on whichever is the higher of a full indemnity basis or solicitor or own client basis.

13.2 Payment for WSPT's and the Developer's costs

WSPT and the Developer each agree to pay for anything that it agrees to do under this deed.

14. Dealing with interests

Each of the Developer and WSPT may assign or otherwise deal with its rights under this deed in any way it considers appropriate. If the Developer or WSPT do this, the Independent Certifier may not claim against any assignee (or any other person who has an interest in this

deed) any right of set-off or other rights the Independent Certifier has against the Developer or WSPT.

15. **No assignment by Independent Certifier**

Without the prior written consent of the Developer and WSPT, the Independent Certifier may not:

- (a) assign, deal with or part with possession of any interest in this deed or rights or benefits in connection with this deed; or
- (b) create or allow to come into existence any Encumbrance which affects the interests of the Independent Certifier under this deed.

16. **Notices**

16.1 **Form**

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

WSPT

Name: Western Sydney Parklands Trust
Address: Level 7, 10 Valentine Avenue, Parramatta NSW 2150
Telephone No:
Facsimile No: (02) 9895 7580
Attention: Suellen Fitzgerald

Developer

Name: Sydney Zoo Pty Limited
Address:
Facsimile No:
Attention: Jake Burgess
Facsimile No:
Attention:

Independent Certifier

Name:

Address:

Telephone No:

Facsimile No:

Attention:

16.2 Delivery

Notices must be:

- (a) left at the addresses referred to in clause 16.1; or
- (b) sent by prepaid post (airmail, if appropriate) to the addresses referred to in clause 16.1; or
- (c) sent by fax to the fax number referred to in clause 16.1.

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

16.3 When effective

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

16.4 Receipt - postal

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

16.5 Receipt - fax

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

16.6 Waiver of notice period

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

17. General

17.1 Prompt performance

If this deed specifies when the Independent Certifier agrees to perform an obligation, the Independent Certifier agrees to perform it by the time specified. The Independent Certifier agrees to perform all other obligations promptly.

17.2 Consents

The Independent Certifier agrees to comply with all conditions in any consent the Developer or WSPT give in connection with this deed.

17.3 Certificates

The Developer or WSPT may give the Independent Certifier a certificate about an amount payable or other matter in connection with this deed. The certificate is sufficient evidence of the amount or matter, unless it is proved to be incorrect.

17.4 Set-off

The Developer or WSPT may set off any amount due for payment by the Developer or WSPT to the Independent Certifier against any amount due for payment by the Independent Certifier to the Developer or WSPT under this deed.

17.5 Discretion in exercising rights

The Developer and WSPT may exercise a right or remedy or give or refuse its consent in any way it considers appropriate (including by imposing conditions), unless this deed expressly states otherwise.

17.6 Partial exercising of rights

If the Developer or WSPT do not exercise a right or remedy fully or at a given time, the Developer or WSPT may still exercise it later.

17.7 No liability for loss

The Developer and WSPT are not liable for loss caused by the exercise or attempted exercise of, failure to exercise, or delay in exercising, a right or remedy except to the extent of any negligence or fraud by either the Developer or WSPT.

17.8 Conflict of interest

The Developer's and WSPT's rights and remedies under this deed may be exercised even if this involves a conflict of duty or the Developer and WSPT have a personal interest in their exercise.

17.9 Remedies cumulative

The Developer's and WSPT's rights and remedies under this deed are in addition to other rights and remedies given by law independently of this deed.

17.10 Other Encumbrances or judgments

- (a) This deed does not merge with or adversely affect, and is not adversely affected by, any of the following:
 - (i) any encumbrance or other right or remedy to which the Developer or WSPT are entitled; or
 - (ii) a judgment which the Developer or WSPT obtain against the Independent Certifier in connection with this deed.
- (b) Notwithstanding clause 17.10(a), the Developer or WSPT may still exercise their rights under this deed as well as under the judgment, the encumbrance or the right or remedy.

17.11 Inconsistent law

To the extent permitted by any law, this deed prevails to the extent it is inconsistent with any law.

17.12 Supervening legislation

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

17.13 Variation and waiver

Unless this deed expressly states otherwise, a provision of this deed, or right created under it, may not be waived or varied except in writing signed by the party or parties to be bound.

17.14 Confidentiality

Each party agrees not to disclose information provided by any other party that is not publicly available except:

- (a) in connection with any person exercising rights or dealing with rights or obligations under this deed (including in connection with preparatory steps such as negotiating with any potential assignee of the Developer's or WSPT's rights or other person who is considering contracting with the Developer and WSPT in connection with this deed);
- (b) to officers, employees, legal and other advisers and auditors of the Developer and WSPT or the Independent Certifier or its officers, employees, legal and other advisers and auditors;
- (c) to any party to this deed or any Related Entity of any party to this deed, provided the recipient agrees to act consistently with this clause;
- (d) with the consent of the party who provided the information (such consent not to be unreasonably withheld); or
- (e) as required by any law or any Transaction Document.

Each party consents to disclosures made in accordance with this clause.

17.15 Further steps

The Independent Certifier agrees to do anything the Developer or WSPT ask (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed):

- (a) to bind the Independent Certifier and any other person intended to be bound under this deed; or
- (b) to show whether the Independent Certifier is complying with this deed.

17.16 Each signatory bound

This deed binds each person who signs as a party described in this deed even if another person who was intended to sign does not sign it or is not bound by it.

17.17 Counterparts

This deed may consist of a number of copies, each signed by one or more parties to this deed. If so, the signed copies are treated as making up the one document.

17.18 Inconsistency

To the extent that there is any inconsistency between the terms of this deed and the terms of the Agreement for Lease, the terms of the Agreement for Lease will prevail.

17.19 Applicable Law

This deed is governed by the Law in force in New South Wales. The Independent Certifier, the Developer and WSPT submit to the non-exclusive jurisdiction of the courts of New South Wales.

18. GST

18.1 Definitions and interpretation

In this clause 18:

"**Agreed Price**" means the amount the Recipient is required to pay under any provision of this deed (except this clause 18) for a supply or so far as the consideration for the supply is not expressed as an amount of money, the GST exclusive market value of that consideration;

"**Recipient**" means a party who provides or is liable to provide consideration under this deed for a supply; and

"**Supplier**" means a party who makes a supply whether as agent or otherwise, and unless the context indicates a contrary intention:

- (a) a reference to a supply is a supply under this deed; and
- (b) words and phrases used that are also used in the *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as in that Act.

18.2 Payment

Despite the other provisions of this deed, if the Supplier is or becomes liable to pay GST in respect of any supply:

- (a) the Agreed Price for that supply is exclusive of GST;
- (b) the Recipient must pay an additional amount for GST, as reasonably calculated by the Supplier, at the same time and in the same way as the Recipient must pay the Agreed Price; and
- (c) the Supplier must issue a tax invoice to the Recipient in respect of that supply within 10 Business Days after the Supplier receives a payment in respect of that supply.

18.3 Reimbursements

Subject to clause 18.2, if the Recipient must reimburse the Supplier for any amount paid by the Supplier to a third person, the Recipient must reimburse the Supplier that amount less the amount of any input tax credits the Supplier is entitled to in respect of any acquisition to which that amount relates.

18.4 Variation

If the amount the Supplier recovers from the Recipient on account of GST on a supply differs for any reason from the amount of GST paid or payable by the Supplier on that supply, then the Recipient must pay to the Supplier on demand (or the Supplier must credit the Recipient

with) the amount of that difference. If any adjustment event occurs in relation to a supply, the Supplier must give the Recipient an adjustment note within 10 Business Days after the date of the adjustment event.

18.5 Penalties

If the Recipient does not comply with its obligations under this deed or with its obligations under the GST law in connection with this deed and because of this the Supplier becomes subject to penalties or interest for late payment of GST, then the Recipient must pay the Supplier on demand an amount equal to the amount of the penalties and interest.

1. **Third Party Legal Liability**

Coverage: The legal liabilities of the Independent Certifier, the Developer and WSPT and their employees and agents to third parties for bodily injury and property damage and resulting loss of use arising from the or in connection with the Independent Certifier's Obligations under this deed and as other obligations under the Transaction Documents.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of this deed until the issue of the Final Certificate.

Limit: A minimum of \$50,000,000 for any one occurrence, (unlimited in any period of insurance) arising out of or in the course of or caused by the execution of the Works.

2. **Professional Indemnity**

Coverage: The professional activities and duties of the Independent Certifier and its employees and agents in respect of its Obligations.

The policy must permit the making of claims both during and at any time after the expiration of the Insurance Term.

Insurance Term: From the date of this deed until 6 years from the issue of the Final Certificate.

Limit: A minimum of \$20,000,000 for any one occurrence and in the aggregate subject to an automatic reinstatement.

3. **Workers' Compensation Insurance**

Coverage: A suitable policy against any liability, loss, claim, demand, suit or proceeding, Costs and expenses arising at common law or under any statute (including the *Workers Compensation Act 1987* (NSW)) or other legislative provision relating to workers compensation, as a result of personal injury or death of any person employed or taken to be employed by the Independent Certifier.

Insurance Term: From the date of this deed until the issue of the Final Certificate.

4. **Other Insurances**

Such other insurances as may be reasonably required by both of the Developer and WSPT from time to time which are obtainable with a reasonable premium (having regard to the nature of the risk to be insured against).

Insurance Term: From the date of this deed until the issue of the Final Certificate.

Executed as a deed.

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

Signature of witness

Name of witness in full

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

Executed by **Sydney Zoo Pty Limited ACN**
168 970 090 in accordance with section 127 of
the Corporations Act 2001 (Cth):

Signature of director

Full name of director

Signature of company secretary/director

Full name of company secretary/director

[Insert execution clause for Independent Certifier]