

St Marys Development Agreement

Dated: 13 December 2002

The Minister for Planning
Roads and Traffic Authority of New South Wales
The Council of the City of Blacktown
The Council of the City of Penrith
St Marys Land Limited
Lend Lease Development Pty Limited
ComLand Limited
Lend Lease Corporation Limited

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Deed of Agreement St Marys Development Agreement

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Please note for electronic version, annexures are provided as separate files.

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PART 1 – Formal matters

Parties

THE MINISTER FOR PLANNING of Level 31 Governor Macquarie Tower, 1 Farrer Place, Sydney, New South Wales ("**Minister**");

ROADS AND TRAFFIC AUTHORITY OF NEW SOUTH WALES, a statutory corporation constituted by the *Transport Administration Act 1988* of Centennial Plaza, 260 Elizabeth Street, Surry Hills, New South Wales ("**RTA**");

THE COUNCIL OF THE CITY OF BLACKTOWN, of 62 Flushcombe Road, Blacktown, New South Wales ("**Blacktown Council**");

THE COUNCIL OF THE CITY OF PENRITH, of Civic Centre, 601 High Street, Penrith, New South Wales ("**Penrith Council**");

ST MARYS LAND LIMITED (ABN 32 088 278 602) of Level 1, 15 Torrens Street, Braddon, Australian Capital Territory ("**Landowner**");

LEND LEASE DEVELOPMENT PTY LIMITED (ABN 33 000 311 277) of Level 13, Tower Building, Australia Square, 264 George Street, Sydney, New South Wales ("**LLD**");

COMLAND LIMITED (ABN 85 088 278 451) of Level 1, 15 Torrens Street, Braddon, Australian Capital Territory ("**ComLand**"); and

LEND LEASE CORPORATION LIMITED (ABN 32 000 226 228) of Level 46, Tower Building, Australia Square, 264 George Street, Sydney, New South Wales ("**LLC**").

Recitals

- A. In 1993 the Land was identified for inclusion in the Urban Release Program of the Department of Urban Affairs and Planning.
- B. In 1994 planning studies commenced which culminated in the preparation and exhibition (in 1995) of a draft Regional Environmental Study for the Land.
- C. The planning studies and the Regional Environmental Study identified the environmental qualities of the Land and the environmental planning issues (and in particular the infrastructure and other public amenities and services that would need to be provided) which would need to be further addressed if development of the Land was to proceed.
- D. In December 1999, a draft REP and EPS were placed on public exhibition.
- E. The REP was published in the Government Gazette on 19 January 2001.

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- F. The REP, the EPS and relevant provisions of the Act will (without limiting any other Law) provide the structure to deal with the environmental planning issues associated with the development of the Land.
- G. In recognition of:
- (a) the special circumstances relating to the provision of infrastructure and other public services and amenities required for a development of the magnitude proposed for the Land under the REP;
 - (b) the role of government in providing infrastructure and other services for existing development;
 - (c) the dedications, contributions and works which the Landowner and the Joint Venture would be expected, as at the date of this deed, by Law (including the Act) to make to carry out the Development;
 - (d) the preparedness of the Landowner and the Joint Venture to make the dedications and contributions and to carry out the other works ("**Excess Works**") which are not required by Law (including the Act) all as contained in this deed;
 - (e) the wish to co-ordinate the infrastructure and other services to be provided by the State, the Landowner and the Joint Venture;
 - (f) the fact that the agreement of the Landowner and the Joint Venture to do the Excess Works, has been determined having regard to what is required by Law (including the Act) as at the date of this deed; and
 - (g) the obligations going beyond what would otherwise have been required under section 94 of the Act,

the Parties have agreed to enter into this deed.

1. Definitions and interpretation

Dictionary

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

"**Act**" means the *Environmental Planning & Assessment Act 1979*.

"**Affordable Housing**" has the same meaning as in the Act.

"**Authority**" means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body with relevant power or authority.

"**Balance Road Works**" means the State road works required for the Development, other than the Eastern Precinct Road Works, as provided for under clause 16.7.

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"BBSW Rate" means the average mid rate for bills which have a tenor of 90 days which average rate is displayed on the page of the Reuters Monitor System designated "BBSW" on the day on which interest is payable under this deed or, if there is a manifest error in the calculation of that average rate or that average rate is not displayed by 10.30am (Sydney time) on that date, the rate specified in good faith by the Commonwealth Bank of Australia at or around that time on that date having regard, to the extent possible, to the rates otherwise bid and offered for bills of that tenor at or around that time (including, without limitation, the sets of bid and offer rates for bills of that tenor displayed on that page "BBSW" at that time on that date) and if such rate does not exist then the prescribed rate of interest set by the *Supreme Court Act, 1970* and any applicable rules with respect to interest on debts due under a judgment or order.

"Business Day" means any day except for Saturday or Sunday or a day which is a public holiday in Sydney.

"Central Precinct" means the precinct so identified in the REP (as generally shown on the Map).

"Central Regional Open Space" means part of the land zoned regional open space in the REP (as generally shown on the Map).

"Commencement Date" means the date established under clause 5.1.

"Confidential Information" means any information and all other knowledge at any time disclosed (whether in writing or orally) by the Parties to each other, or acquired by the Parties in relation to the other's activities or services which is not already in the public domain and which:

- (a) is by its nature confidential;
- (b) is designated, or marked, or stipulated by either Party as confidential (whether in writing or otherwise);
- (c) any Party knows or ought to know is confidential; or
- (d) is information which may reasonably be considered to be of a confidential nature.

"Control" or **"Controlled"** in respect of an entity includes the possession, directly or indirectly, of the power, whether or not having statutory, legal or equitable force, and whether or not based on statutory, legal or equitable rights, directly or indirectly, to control the membership of the board of directors of the entity or to otherwise, directly or indirectly, direct or influence the direction of the management and policies of that entity whether by means of trusts, agreements, arrangements, understandings, practices, the ownership of any interest in shares or stock or units or other interests of that entity or otherwise.

"CPI" means Consumer Price Index (Sydney - All Groups).

"Councils" means both Blacktown Council and Penrith Council.

"Crown" means the Crown in right of New South Wales.

"Default Notice" has the meaning given in clause 7.1.

"Department" means the Department of Planning.

"Developer" means all or any of the Landowner, LLD, the Joint Venture and, if assignment is permitted under clause 9, the relevant successor of the Relevant Developer.

"Development" means the development of the Land in accordance with the REP.

"Discretion" is defined in clause 1.2.

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“**Document**” includes agreement, deed, instrument, memorandum, note and the like.

“**Dunheved North Precinct**” means the precinct identified as such in the REP (as generally shown on the Map).

“**Dunheved Precincts**” means Dunheved North Precinct and Dunheved South Precinct.

“**Dunheved South Precinct**” means the precinct identified as such in the REP (as generally shown on the Map).

“**Eastern Precinct**” means the precinct identified as such in the REP (as generally shown on the Map).

“**Eastern Precinct Road Works**” means the State road works required for the Eastern Precinct of the Development as set out in the Eastern Precinct Road Works Schedule forming Annexure F.

“**Eastern Precinct Regional Park**” means that part of the Regional Park located to the east of the Eastern Precinct (as generally shown on the Map).

“**Eastern Regional Open Space**” means part of the land zoned regional open space in the REP (as generally shown on the Map.)

“**EDS**” means Employment Development Strategy referred to in clause 18.3.

“**EDS Committee**” means the committee referred to in clauses 18.11, 18.12, 18.13 and 18.14.

“**EPS**” means *St Marys Environmental Planning Strategy 2000*.

“**force majeure**” means any physical or material restraint beyond the reasonable control of the Party claiming force majeure.

“**First Subdivisional Works Date**” means the date of entry into a contract or arrangement by or on behalf of the Joint Venture, or either party to the Joint Venture, for the construction of Subdivisional Works in connection with the creation of the first Residential Allotments in the relevant Precinct or commencement of construction of those works, whichever is the earlier. For the avoidance of doubt, those works do not include works undertaken by or on behalf of the Landowner under clause 15.

“**Guaranteed Obligations**” has the meaning given in Part 4.

“**Guaranteed Party**” has the meaning given in Part 4.

“**Guarantor**” is defined in Part 4.

“**Human Services Infrastructure Co-ordination Group**” has the meaning given in clause 2.6.

“**Index**” means the CPI, but if that Index ceases to be published, such other index as the Minister and the Joint Venture may agree or, failing agreement, as determined under clause 8.

“**Insolvency Event**” means the happening of any of these events:

- (a) an application is made to a court for an order that a body corporate be wound up which is not withdrawn within 28 days (or not contested) or an order is made that a body corporate be wound up; or
- (b) an application is made to a court for an order which is not withdrawn within 28 days (or not contested) appointing a liquidator or provisional liquidator in respect of a body corporate, or one of them is appointed, whether or not under an order; or

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- (c) except to reconstruct or amalgamate while solvent, a body corporate enters into, or resolves to enter into, a scheme of arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any of them; or
- (d) a body corporate resolves to wind itself up, or otherwise dissolve itself, or gives notice of intention to do so, except to reconstruct or amalgamate while solvent or is otherwise wound up or dissolved; or
- (e) a body corporate is or states that it is insolvent; or
- (f) as a result of the operation of section 459F(1) of the *Corporations Act*, a body corporate is taken to have failed to comply with a statutory demand; or
- (g) a body corporate is the subject of an event described in section 459C(2)(b) or section 585 of the *Corporations Act*; or
- (h) a body corporate takes any step to obtain protection or is granted protection from its creditors, under any applicable legislation or an administrator is appointed to a body corporate; or
- (i) a person becomes an insolvent under administration as defined in section 9 of the *Corporations Act* or action is taken which could directly result in that event; or
- (j) anything analogous or having a substantially similar effect to any of the events specified above happens under the Law of any applicable jurisdiction.

“**Joint Venture**” means the Landowner and LLD, severally each for a one half share only of the joint venture interests (including rights and obligations) under this deed.

“**Land**” means the Land to which the REP applies as described in clause 2 of the REP together with the Special Uses Corridor.

“**Law**” means the relevant requirements of all statutes, rules, ordinances, codes, policies, regulations, proclamations, by-laws or consents issued by an Authority, present or future.

“**LEADR**” means the body known as LEADR being Lawyers Engaged in Alternative Dispute Resolution or any body which substantially replaces it;

“**Licensed Lands**” means the land subject to the following licences:

- (a) Deed of Licence dated 30 May 2001 made between the Landowner as licensor and ADI Limited as licensee commencing on 1 February 2001 and expiring on 31 December 2005 over the radar range as shown on the Map; and
- (b) Deed of Licence dated 30 May 2001 made between the Landowner as licensor and ADI Limited as licensee commencing on 1 August 2000 and expiring on 31 December 2005 over the wire stretching facility as shown on the Map.

“**Map**” means the map marked “Map of Development Agreement Land St Marys” forming Annexure A.

“**Minister**” means the Minister for the time being administering the Act.

“**NPW Minister**” means the Minister for the time being administering the *National Parks and Wildlife Act 1974*.

“**Parent**” of an entity means the person who Controls that entity.

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“Part” means a Part of this deed.

“Party” generally means a party to this deed but in Part 2, **“Party”** means either the Minister, the RTA, the Landowner or the Joint Venture and in Part 3, **“Party”** means either the Relevant Council (or both Councils), the Landowner or the Joint Venture and for the purpose of the dispute resolution provisions in clause 8, **“Party”** means a party to the relevant dispute. **“Parties”** has a corresponding meaning.

“Performance Objectives” means the Performance Objectives set out in Part 5 of the REP.

“Plan of Management” has the meaning given in clause 11.11.

“Precinct” has the meaning given to **“Precinct”** in the REP.

“Precinct Plan” has the meaning given to **“Precinct Plan”** in the REP.

“Public Facilities” means public works, services, facilities and amenities and includes measures, strategies, promotions and other undertakings intended to benefit members of the public.

“QEL Area” means the area marked “QEL” on Annexure E.

“Regional Open Spaces” means the Eastern Regional Open Space and the Central Regional Open Space.

“Regional Park” means the land comprising the land in the Regional Park zone under the REP and the RNE Land (other than the Residual RNE Land) (as generally shown on the Map) and comprises:

- (a) Part A of the Regional Park being those parts of the Regional Park which are not Licensed Lands; and
- (b) Part B of the Regional Park being those parts of the Regional Park which are Licensed Lands.

“Related Entity” of an entity means another entity which is related to the first within the meaning of section 50 of the *Corporations Act* or is in any economic entity (as defined in the approved accounting standard) which contains the first or is an entity which is Controlled by that other entity or is Controlled by a person or persons who also has or have Control of that other entity.

“Release Area” means land declared to be a release area by the Minister under the REP.

“Relevant Council” means either Blacktown Council or Penrith Council depending on whether the relevant right, issue or obligation affects land in the Blacktown city area or the Penrith city area.

“Relevant Developer” means any Developer which seeks to either assign or novate its rights or obligations under this deed or whose Parent seeks to change the person which exercises Control over it under clause 9.

“Relevant Percentage” means:

- (a) 4%; but reducing to
- (b) 3% once 60 Residential Allotments have been offered for transfer to the Minister in accordance with clause 17.3.

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“**REP**” means *Sydney Regional Environmental Plan No 30 – St Marys* made by the Minister under section 51 of the Act.

“**Residential Allotment**” means a lot created by a subdivision of the Land having an area of less than 1,200 square metres:

- (a) on which not more than one free standing residential dwelling may be constructed (ie which is not capable of further subdivision into smaller Residential Allotments) with or without development consent or a complying development certificate; or
- (b) which the Joint Venture certifies to the Minister is being developed and marketed as a large building block for a single free standing residential dwelling.

“**Residual RNE Areas**” means those parts of the RNE Land which are generally shown on the Map.

“**RNE Land**” means that part of the Land which is contained on the Register of the National Estate under the *Australian Heritage Commission Act 1975*.

“**Ropes Creek Precinct**” means the precinct so identified in the REP (as shown generally on the Map).

“**RW Land**” means land in Forrester Road zoned Road and Road Widening in the REP as generally shown on the Map.

“**Security Interest**” includes any mortgage, pledge, lien or charge or any security or preferential interest or arrangement of any kind or any other right of or arrangement with, any creditor to have its claims satisfied in priority to other creditors with, or from the proceeds of any asset. It includes retention of title other than in the ordinary course of day-to-day trading and a deposit of money by way of security but it excludes a charge or lien arising in favour of an Authority by operation of any Law unless there is default in payment of moneys secured by that charge or lien.

“**Special Uses Corridor**” means land as generally shown as such on the Map.

“**State**” means the State of New South Wales and, where the context permits, includes a public authority as defined in section 4(1) of the Act.

“**State Government**” means the government of the State including its elected and appointed representatives.

“**State Party**” means the relevant Party of the Minister or the RTA, as the case requires.

“**Subdivisional Works**” means construction of any works required under or contemplated by a relevant development consent for subdivision of a relevant part of the Land being the construction of roads, drainage, footpaths or similar works, but excludes demolition or clearing works.

“**Super-lot**” means a lot in a subdivision of the Land but which is not:

- (a) a Residential Allotment;
- (b) a “**balance lot**” or “**residue lot**” set aside for future subdivision being a lot or lots remaining after subdivision of part of the Land into smaller lots;
- (c) a lot created or used for management or administrative purposes (including marketing and sales) to facilitate future subdivision;

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- (d) a lot which the Landowner has agreed or is intending to transfer to an Authority; or
- (e) a lot which is approved under any relevant development consent for a use other than residential purposes.

“**Western Precinct**” means the precinct so identified in the REP (as generally shown on the Map).

“**Zone**” means a zone established by Part 6 of the REP.

Deed does not fetter government

1.2 This deed is not intended to operate to fetter, in any unlawful manner:

- (a) the sovereignty of the Parliament of the State to make any Law;
- (b) the power of the Executive Government of the State to make any statutory rule; or
- (c) the exercise of any statutory power or discretion of any minister of the State or any Authority,

(all referred to in this deed as a “**Discretion**”)

1.3 No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the Parties agree:

- (a) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause is substantially satisfied; and
- (b) in the event that clause 1.3(a) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect; and
- (c) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this deed which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgement.

1.4 Where a Law permits a relevant Authority or a minister of the State to contract out of a provision of that Law or gives the Authority or the minister of the State power to exercise a Discretion, then if a relevant Authority or the minister of the State has in this deed contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with that Law.

Interpretation Act 1987

1.5 Subject to clauses 1.2 to 1.3 of this deed, section 3, Part 2, and sections 36, 38 and 76 of the *Interpretation Act 1987* govern the interpretation of this deed to the extent to which they are applicable as if a reference in that Act to an “**Act**” or “**instrument**” is a reference to this deed and with such other modifications or adaptations as may be necessary for that governing purpose.

Annexures, headings and textual notes

1.6 The Annexures form part of this deed.

1.7 The headings and any textual notes in this deed do not form part of the operative provisions of this deed but are provided merely for the assistance of the reader.

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Subject to applicable laws

1.8 This deed is to be read and performed subject to:

- (a) any Law or statutory rule; and
- (b) any lawful decision, direction, requirement or the like of any organ of the State,

which relates to the subject matter of this deed, and any act, matter or thing which is required or forbidden to be done by such a Law, statutory rule, decision, direction, or requirement does not constitute a breach of this deed even if it is contrary to this deed.

1.9 The Minister acknowledges that obligations of the Landowner and the Joint Venture under this deed may include the contribution to or provision of public amenities and public services which must be taken into account by any consent Authority in determining any condition to be imposed under section 94 of the Act in accordance with section 94(2) and (9) of the Act.

Compliance with New Laws

1.10 If a Law is changed or a new Law comes into force (both referred to as "**New Law**") and the Landowner or the Joint Venture is obliged by the New Law to do something or pay an amount which it is already contractually obliged to do or pay under this deed then, to the extent only that the relevant obligation is required under both the New Law and this deed, compliance with the New Law will constitute compliance with the relevant obligation under this deed.

Conflicting interpretations

1.11 If a provision of this deed is genuinely capable of different interpretations, the interpretation which:

- (a) is consistent with clauses 1.2 to 1.3;
- (b) best meets the purposes of this deed; and
- (c) promotes the aims of the REP and the Performance Objectives,

is to be preferred.

Severance of invalid provisions

1.12 Subject to clause 1.3, if a provision of this deed is declared to be invalid by a court, the remainder of this deed will, to the fullest extent possible, be read and performed as if the invalid provision did not form part of this deed.

Several liability

1.13 The Landowner and LLD are severally liable each for a one half share only of the Joint Venture interests (including rights and obligations) under this deed.

Approvals and consents

1.14 Where this deeds calls for a Party to give its consent or approval, that consent or approval may be given or withheld, or given subject to conditions, in the absolute discretion of the Party, except where otherwise provided in this deed.

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Indexation of amounts payable by the Parties

1.15 All amounts payable by a Party under this deed (except those payable under clause 16) are to be increased (with the calculation to be made as from the date any such amount is due to be paid under this deed) in accordance with increases in the Index in accordance with the following formula:

$$A = B \times \frac{C}{D}$$

where:

- A** = the indexed amount to be paid by the Party at the time the relevant payment is to be made;
- B** = the relevant amount to be paid by the Party as set out in this deed;
- C** = the Index most recently published before the date that the relevant payment is to be made; and
- D** = the Index most recently published before the date of this deed.

1.16 For the avoidance of doubt, if A is less than B, then the relevant amount will not change.

1.17 All amounts payable by a Party under clause 16 of this Deed are to be increased (with the calculation to be made as at the date any such amount is due to be paid under this deed) in accordance with the following procedure:-

- (a) Multiply the amount to be paid by the Cost Adjustment Factor ascertained in accordance with clause 1.18.
- (b) If the net Cost Adjustment Factor is positive, add the result to the amount to be paid.
- (c) If the net Cost Adjustment Factor is negative, then no change to the amount is to be made.

1.18 The Cost Adjustment Factor is determined by the following formula:-

$$C = r \left(\frac{L_n - L_o}{L_o} + \frac{L_n}{L_o} \times \frac{X_n - X_o}{100 + X_o} + \frac{L_n}{L_o} \times \frac{Y_n - Y_o}{100 + Y_o} \right) + s \left(\frac{M_n - M_o}{M_o} \right)$$

where:-

- C** = Cost Adjustment Factor
- r** = Labour costs proportion of the amount to be paid, which for the purposes of this clause is 0.350.
- s** = Materials costs proportion of the amount to be paid, which for the purposes of this clause is 0.500.
- L_n** = Current Labour Cost Index Number, which is the Index of Total Hourly Rates of Pay (excluding bonuses), for the Construction Industry Group, Private, in the Wage Cost Index as published by the Australian Bureau of Statistics (Reference No 6345.0) applicable at the date the amount is due to be paid.

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- Lo** = Base Labour Index Number, which is the Index of Total Hourly Rates of Pay (excluding bonuses), for the Construction Industry Group, Private, in the Wage Cost Index as published by the Australian Bureau of Statistics (Reference No 6345.0) applicable at the date of this deed.
- Mn** = Current Materials Index Number, which is the Price Index of Materials used in Building other than House Building, Special Combination Index: All groups excluding electrical materials and mechanical services, for Sydney as published by the Australian Bureau of Statistics (Reference No. 6407.0) applicable at the date the amount is due to be paid.
- Mo** = Base Materials Index Number, which is the Price Index of Materials used in Building other than House Building, Special Combination Index: All groups excluding electrical materials and mechanical services, for Sydney as published by the Australian Bureau of Statistics (Reference No. 6407.0) applicable at the date of this deed.
- Xn** = Current Payroll Tax Rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable at the date the amount is due to be paid.
- Xo** = Base Payroll Tax Rate, which is the rate per centum payable on wages under New South Wales legislation imposing payroll tax applicable at the date of this deed.
- Yn** = Current Workers' Compensation Premium Rate, which is the basic rate of premium under the *Workers' Compensation Act 1987*, for the Classification of Bridge, Road and Bituminous Surfacing Contracts (Tariff 850) for bridge construction, roadworks, earthworks and drainage contracts applicable at the date the amount is due to be paid.
- Yo** = Base Workers' Compensation Premium Rate, which is the basic rate of premium under the *Workers' Compensation Act 1987*, for the Classification of Bridge, Road and Bituminous Surfacing Contracts (Tariff 850) for bridge construction, roadworks, earthworks and drainage contracts applicable at the date of this deed.

NOTE 1: As the rates published by Australian Bureau of Statistics are for quarterly periods, the rate will be the rate for the quarter ending immediately before the relevant date.

NOTE 2: If an index referred to in this clause ceases to be published, the Parties will substitute such other index as the Minister and the Joint Venture may agree most closely reflects the discontinued index (with any appropriate adjustment for different bases) or, failing agreement, as determined under clause 8.

Interest for late payment

- 1.19 In addition to any other remedy available to a Party for late payment, a Party must pay interest on any amount payable by it under this deed from when it becomes due for payment, during the period that it remains unpaid, on demand or at times notified by the person to whom the payment is due, calculated on daily balances. The rate to be applied to each daily balance is the rate equal to 3% per annum above the BBSW Rate. The person to whom the payment is due may notify a different rate for each day during the period. Interest which is not paid when due for payment may be capitalised by the person to whom the payment is due on the first day of each month. Interest is payable on capitalised interest at the rate and in the manner referred to in this clause 1.19. The Party's obligation to pay the outstanding amount on the date it becomes due for payment is not affected by this clause 1.19.

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Joint Venture to notify Minister and Councils of the First Subdivisional Works Date

- 1.20 The Joint Venture must notify the Minister, the RTA and the Councils of the First Subdivisional Works Date for each Precinct by not later than 14 days after that First Subdivisional Works Date.
- 1.21 If requested by the Minister, the RTA or the Councils, the Joint Venture must:
- (a) advise when they expect that the First Subdivisional Works Date for a Precinct will occur; and
 - (b) provide evidence reasonably satisfactory to the Party requesting the information to confirm the validity of a First Subdivisional Works Date notified under clause 1.20.

2. Background

Ownership of the Land

- 2.1 The Landowner is the legal owner of the Land. The Landowner warrants that, as at the date of this deed, no other person has any estate or interest, whether legal or equitable, in the Land other than:
- (a) as registered as at the date of this deed and shown on the plans forming Annexure J;
 - (b) as set out in this deed;
 - (c) under the licences of the Licensed Lands and other licences and leases of parts of the Land which do not affect the ability of the Landowner or the Joint Venture to perform its obligations under this deed; or
 - (d) the Trustees of the Roman Catholic Church for the Diocese of Parramatta which has entered into a contract for sale of land with the Landowner to purchase a part of the Land in the north west corner of the Land in the location described as Educational Establishment on the Structure Plan attached to the REP.

REP

- 2.2 The REP provides a framework for the sustainable development and management of the Land and to achieve the other aims expressed in the REP.
- 2.3 The REP contemplates the making of a development agreement. This deed is a development agreement within the meaning of the REP.

Guarantee by Guarantor

- 2.4 ComLand has agreed to guarantee the Guaranteed Obligations of the Landowner under this deed in accordance with the terms set out in Part 4.
- 2.5 LLC has agreed to guarantee the Guaranteed Obligations of LLD under this deed in accordance with the terms set out in Part 4.

Human Services Infrastructure Co-ordination Group

- 2.6 The Minister agrees to convene a committee to co-ordinate an Infrastructure Co-ordination Group ("**Human Services Infrastructure Co-ordination Group**") comprising representatives of senior management from each of the following:-
- (a) Blacktown Council;
 - (b) Penrith Council;
 - (c) the Department;
 - (d) LLD;

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- (e) the Landowner;
 - (f) Premiers Department; and
 - (g) Senior officers from the relevant State Government human services agencies whose area of responsibility includes the Land.
- 2.7 Representation from parties referred to in paragraphs (a), (b), (c), (f) and (g) of clause 2.6 may revert to one person or body when the agencies have established a regional plan and a set of regional priorities for their combined agencies in Western Sydney.
- 2.8 The Human Services Infrastructure Co-ordination Group will be convened when the need arises to provide input into Precinct Plans, funding changes or other issues identified below. It will be responsible for coordinating inputs from the Councils, various State Government agencies and the Joint Venture and for drawing in Commonwealth agency involvement. The key responsibilities of the Human Services Infrastructure Co-ordination Group are:
- (a) to recommend variations in planned funding;
 - (b) ensure integration of social and physical planning;
 - (c) monitor the achievement of performance objectives;
 - (d) facilitate the provision of human service on the Land;
 - (e) ensure sufficient lead time is given for forward planning within government;
 - (f) coordinate activities of the various stakeholders;
 - (g) to manage the integration of the social, human service and open space planning for the Land;
 - (h) to resolve the final selection, location and scope of human services and community facilities for the Land where possible;
 - (i) to ensure community planning maintains flexibility and responds to the changing needs of the local community;
 - (j) to consider the provision of services for the Land in the context of the provision of services to residents of Western Sydney as a whole and to ensure sufficient time is given for forward planning within State Government;
 - (k) to ensure the equitable distribution of services and facilities across the Land over time;
 - (l) to address constraints within the Councils or State Government agencies to the implementation of new service and/or funding initiatives;
 - (m) to achieve the timely provision of human services and community facilities and, where appropriate, facilitate the accelerated provision of infrastructure;
 - (n) to achieve and support ongoing service integration where beneficial to the local community;
 - (o) to foster cooperation between services;
 - (p) to focus development of services on the achievement of the social outcomes prescribed for the development; and
 - (q) to monitor, evaluate and report on the effectiveness and efficiency of the human services and open space facilities available to residents of the Land.

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Miscellaneous

- 2.9 The Minister acknowledges the need to progressively provide facilities and services to support the additional population that will be living on the Land. The facilities and services anticipated to be required are identified in the annexure headed "State Government Services and Facilities" forming Annexure L. Human service priorities will be monitored and recommendations will be made for revision through the Human Services Infrastructure Co-ordination Group.
- 2.10 Neither the Landowner, the Joint Venture nor either Council has any interest in and may not take any action to enforce clause 2.9.

3. Structure and application of this deed

Parts

- 3.1 This deed is divided into 4 Parts.
- 3.2 Part 1 contains provisions which apply to all Parts of this document and all Parties.
- 3.3 Part 2 contains rights and obligations as between the Minister and either the Landowner or the Joint Venture or the RTA and either the Landowner or the Joint Venture. Part 2 may be varied by agreement between the relevant State Party, the Landowner, the Joint Venture and the Guarantors without reference to the Councils. The Councils may not take any action in relation to any right or obligation of any Party under Part 2 (as varied).
- 3.4 Part 3 contains the rights and obligations as between the Councils and either the Landowner or the Joint Venture. Part 3 may be varied by agreement between the Councils, the Landowner, the Joint Venture and the Guarantors without reference to the State Parties. A State Party may not take any action in relation to any right or obligation of any Party under Part 3 (as varied).
- 3.5 Part 4 contains the terms of the guarantee by each Guarantor and is for the benefit of a State Party in respect of the obligations of the Landowner and the Joint Venture under Part 2.
- 3.6 The rights of Blacktown Council and Penrith Council under this deed are several and not joint and may only be exercised by the Relevant Council in so far as a right relates to the performance of an obligation of the Landowner or the Joint Venture about that part of the Land which is in the local authority area of the Relevant Council. For the avoidance of doubt, a Relevant Council is not entitled to enforce an obligation of a State Party or of the Landowner or Joint Venture to the other Council or a State Party and it is not necessary for it to be a party to a decision or dispute or to give consent to any action taken by that other Council or a State Party by or with the Landowner or the Joint Venture.

Consequences of non-execution by either or both Councils

- 3.7 If neither Council has executed this deed and joined itself as a Party on or before the date of this deed, Part 3 will have no effect, but all other Parts of this deed will still take effect and will be enforceable as between the relevant State Parties, the Landowner, the Joint Venture and the relevant Guarantor.
- 3.8 If only one Council has executed this deed and joined itself as a Party on or before the date of this deed, all references to "**Councils**" will be taken to be references to the one Council which executes this deed and the other Council will have no rights or obligations under this deed.
- 3.9 The Parties acknowledge that if the Councils do not execute this deed, it is the intention of the Joint Venture to negotiate with each Council to reach agreement for the provision of human services and local open space for the Development in accordance with the REP and the EPS.

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- 3.10 It is further intended that the terms of any agreement reached with a Council be the subject of a development deed substantially in the same terms as this deed except Parts 2 and 4 and consequential changes to Part 1.
- 3.11 The parties agree that:
- (a) if the Joint Venture enters into an agreement with a Council as contemplated by clauses 3.9 and 3.10, this deed and each such agreement shall be read together and treated as part of this deed;
 - (b) without affecting paragraph (a), if requested by the Joint Venture, the Parties must promptly execute a conformed copy of this deed which comprises the terms of this deed as originally signed together with the terms of any agreement entered into between the Joint Venture and a Council as contemplated by clauses 3.9 and 3.10 with the relevant agreement with the Council, if such agreement is reached, appearing in Part 3; and
 - (c) until paragraph (a) is satisfied, the Parties agree that any Council which has not executed this deed may take the benefit of any provision of this deed which relates to that Council and may sue, and shall be entitled to all rights and remedies, in respect of this deed in accordance with section 36C of the *Conveyancing Act 1919*.

Acknowledgments as to Minister's rights and damages

- 3.12 The Parties acknowledge and agree that:
- (a) The Minister enters into this deed for and on behalf of the State Government and for the benefit of the State Government as a juristic entity.
 - (b) In consequence therefore, any damage sustained (as a result of breach of Part 2 of this deed) by one or more of:
 - (i) the NPW Minister, the Minister or any minister of State succeeding to the responsibilities of either of those ministers;
 - (ii) the Crown in right of the State; and
 - (iii) any other person or Authority to whom an obligation is expressed to be owed either by the Landowner or the Joint Venture under Part 2 of this deed,(the persons referred to in paragraphs (i) to (iii) collectively referred to as the "**Benefactor**") whether or not that Benefactor is a Party to this deed, will be taken to be damage sustained by the Minister.
 - (c) The Minister shall be entitled to bring and prosecute any demand, claim, action or suit (referred to generally as a "**Claim**"):
 - (i) for damages, whether legal or equitable; or
 - (ii) for any statutory or equitable relief, including without limitation, for a declaration, specific performance and for any injunction;in any case with respect to any damage sustained by any Benefactor under Part 2 of this deed by reason of, or arising from, failure or anticipated failure of the Landowner or the Joint Venture to comply with an obligation under Part 2, and irrespective of whether or not damage is sustained by the Minister (provided the relevant damage is sustained by a Benefactor).

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- (d) Each of the Landowner and the Joint Venture agrees that it shall not, in respect of any Claim, raise any claim or argument, make any submission, or otherwise contend that or to the effect that:
 - (i) any Claim is improperly or inadequately constituted simply because of paragraphs (iii) or (iv) of this subclause;
 - (ii) the Minister is barred from seeking equitable relief or should in the exercise of the relevant judicial body's discretion be denied such relief simply because of paragraphs (iii) or (iv) of this subclause;
 - (iii) the Minister (as distinct from any other person or entity) cannot or should not recover damages or compensation, whether legal or equitable, on the basis that the Minister is not the person sustaining the damage the subject of the Claim, or that the proper plaintiff with respect to such damage is another person or entity; or
 - (iv) any other person or entity should, in addition to the Minister, be joined as a party to any Claim or should be entitled to any relief or to the proceeds or part of the proceeds of any judgment.

4. Performance Objectives and purposes of this deed

Overall purpose of deed

4.1 The overall purposes of this deed are:

- (a) to make provision for public facilities and services to meet certain of the demands created by the Development and to ensure existing communities which may be affected by the environmental, social and economic impacts of the Development do not bear the cost of those public facilities and services;
- (b) to establish a governing framework for the provision of those public facilities and services which reflects and implements the co-operative approach by the Parties to the provision of those facilities; and
- (c) to assist in achieving the Performance Objectives.

Specific purposes

4.2 The specific purposes of this deed are:

- (a) to identify the public facilities and services that are required to meet certain of the demands created by the Development;
- (b) to specify which Party is responsible for providing specific public facilities and services or funds to meet certain of the demands created by the Development; and
- (c) to identify when specific public facilities and services or funds will be required to meet certain of the demands created by the Development and how they will be provided.

5. Commencement and term of this deed

Commencement of this deed

5.1 This deed commences on the day the Minister declares the Eastern Precinct to be a Release Area as contemplated by clause 7(1) of the REP ("**Commencement Date**"). For the avoidance of doubt, no Party has any obligation under this deed until the Commencement Date other than the obligation for the Joint Venture to pay the Minister's legal costs under clause 22.

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Term of this deed

- 5.2 This deed will remain in force until:
- (a) it is terminated by operation of Law; or
 - (b) all obligations are performed or satisfied.

6. Confidentiality and public announcements

This deed not confidential

- 6.1 The terms of this deed are not confidential and this deed may be treated as a public document and exhibited or reported without restriction by any Party.

Other information confidential

- 6.2 The Parties acknowledge that:
- (a) Confidential Information has been supplied to some or all of the Parties in the negotiations leading up to the making of this deed; and
 - (b) the Parties may disclose to each other further Confidential Information in connection with the subject matter of this deed.
- 6.3 Subject to clauses 6.4 and 6.5, each Party agrees:
- (a) not to disclose any Confidential Information received before or after the making of this deed to any person without the prior written consent of the Party who supplied the Confidential Information; and
 - (b) to take all reasonable steps to ensure all Confidential Information received before or after the making of this deed is kept confidential and protected against unauthorised use and access.
- 6.4 A Party may disclose Confidential Information in the following circumstances:
- (a) in order to comply with the Law, State Government policy or local government policy or any listing rule; or
 - (b) to any of their employees or consultants to whom it is considered necessary to disclose the information, if the employee or consultant undertakes to keep the information confidential.
- 6.5 The obligations of confidentiality under this clause do not extend to information:
- (a) which the Joint Venture is required to give the Minister under clause 20 or any information which the Minister produces as a result of considering the information so provided; or
 - (b) which is public knowledge other than as a result of a breach of this clause.

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7. **Default**

Notice of default

7.1 In the event a Party considers another Party has failed to perform and fulfil an obligation under this deed, it may give notice in writing to that Party ("**Default Notice**") giving full particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 21 days.

Reasonable time

7.2 In determining a reasonable time, regard must be had to both the nature of the default and the work or other action required to remedy it, the weather, availability of labour, plant and/or equipment, strikes and whether or not the continuation of the default constitutes or causes a public nuisance or raises other circumstances of urgency or emergency.

Suspension of time – dispute

7.3 If a Party, as it is entitled to do, refers the Default Notice to dispute resolution, clause 8.2 will apply.

State Party may act in public interest

7.4 Despite clause 8.2, the State Party or the Relevant Council (as the case may be) may, if in its reasonable opinion circumstances involving a significant threat to or significant interference with public safety so warrant, carry out (at its initial cost) the obligations of the Landowner or the Joint Venture under this deed as it alleges is that Party's responsibility and as is necessary to remedy the threat or interference, in which event such reasonable costs incurred by the State Party or the Relevant Council (as the case may be) as relate to those obligations (which are ultimately found under clause 8 to be that Party's responsibility) in accordance with a notice given by the State Party or the Relevant Councils may be recovered from the Landowner or the Joint Venture (as appropriate).

State Party's remedies

7.5 If the Landowner or the Joint Venture fails to perform and fulfil an obligation as specified in a Default Notice (or any Default Notice amended after dispute resolution), the State Party or the Relevant Council (as the case may be) may recover upon demand from the Landowner or the Joint Venture (as the case may be) the following amounts:

- (a) the whole of the moneys then due to the State Party or the Relevant Council and not paid by the Landowner or the Joint Venture;
- (b) such reasonable sum as the State Party or the Relevant Council (acting reasonably) certifies as representing the estimated cost of:
 - (i) performing the obligations of the Landowner or the Joint Venture not performed or completed by the Landowner or the Joint Venture or altering or amending any completed work not constructed in a good and workmanlike manner (all of which are referred to as "**Incomplete Works**"); and
 - (ii) carrying out such other work or development as the State Party or the Relevant Council may reasonably consider necessary to mitigate the effects of any Incomplete Works; and
 - (iii) the State Party's or the Relevant Council's reasonable charges for supervision, interest, administration costs, legal costs and overheads.

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However, if the issue of whether or not the Landowner or Joint Venture is in default in relation to the relevant matter in the Default Notice has been referred for determination under clause 8, then the State Party may only exercise its rights under this clause once the matter is determined and in accordance with that determination.

State Party's Rights of Recovery

- 7.6 If the sum or sums at any time or times received or recovered by the State Party or the Relevant Council under clause 7.5 are insufficient to complete the carrying out or altering or amending the work required by this deed, the State Party or the Relevant Council may at its election:
- (a) carry out, alter or amend such work at its discretion so far as the moneys received will, in the opinion of the State Party or the Relevant Council, reasonably allow; or
 - (b) complete the carrying out, altering or amending of such work as required by this deed and recover the difference between the reasonable costs actually incurred by it in so doing and the sums received or recovered under clause 7.5 from the Landowner or the Joint Venture (as the case may be).

No waiver

- 7.7 Any time or other indulgence which is given by the State Party or the Relevant Council, to the Landowner or the Joint Venture to enable them to perform this deed does not in any way amount to a waiver of any of the rights or remedies of the State Party or the Relevant Council under this deed.

8. Dispute resolution

Notice of dispute

- 8.1 If a dispute or lack of certainty between the Parties arises in connection with this deed or its subject matter ("**a dispute**") then either Party must give to the other a notice of dispute in writing adequately identifying and providing details of the dispute.

Conduct pending resolution

- 8.2 The Parties must continue to perform their respective obligations under this deed if there is a dispute but will not be required to complete the matter the subject of the dispute, unless the appropriate Party indemnifies the other relevant Parties against costs, damages and all losses suffered in completing the disputed matter if the dispute is not resolved in favour of the indemnifying Party.

Further steps required before proceedings

- 8.3 Subject to clause 8.22, any dispute between the Parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation or determination by an expert under clause 8.4, first be the subject of mediation by a mediator agreed by the Parties and, if the Parties cannot agree within 14 days, then by a mediator appointed by LEADR.

Disputes for expert determination

- 8.4 If the mediation referred to in clause 8.3 has not resulted in settlement of the dispute and has been terminated, either Party may by notice in writing require the matter to be determined by expert determination in accordance with clause 8.5.

Choice of expert

- 8.5 A dispute to be determined in accordance with clause 8.4 must be determined by an independent expert in the relevant field:
- (a) agreed between and appointed jointly by the Parties; or

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- (b) in the absence of agreement within 14 days after the date of the notice under clause 8.4, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- 8.6 If the Parties fail to agree as to the relevant field within 14 days after the date of the notice under clause 8.4, either Party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.
- 8.7 The expert appointed to determine a dispute:
 - (a) must have a technical understanding of the issues in dispute;
 - (b) must not have a significantly greater understanding of one Party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (c) must inform the Parties before being appointed of the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- 8.8 The Parties must promptly enter into an agreement with the expert appointed under clause 8.5 setting out the terms of the expert's determination and the fees payable to the expert.

Directions to expert

- 8.9 In reaching a determination in respect of a dispute under clause 8.4, the independent expert must give effect to the intent of the Parties entering into this deed and the purposes of this deed.
- 8.10 The expert must:
 - (a) act as an expert and not as an arbitrator; and
 - (b) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence; and
 - (c) not accept verbal submissions unless both Parties are present; and
 - (d) on receipt of a written submission from one Party, ensure that a copy of that submission is given promptly to the other Party; and
 - (e) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute; and
 - (f) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes); and
 - (g) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each Party 14 days to make further submissions; and
 - (h) issue a final certificate stating the expert's determination (together with written reasons); and
 - (i) act with expedition with a view to issuing the final certificate as soon as practicable.
- 8.11 The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within a time period specified by the expert, give the expert:

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- (a) a short statement of facts; and
- (b) a description of the dispute; and
- (c) any other documents, records or information which the expert requests.

Expert may commission reports

- 8.12 The expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination. The Parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 8.8 of this deed.

Expert may convene meetings

- 8.13 The expert must hold a meeting with all of the Parties present to discuss the dispute. The meeting must be conducted in a manner which the expert considers appropriate. The meeting may be adjourned to, and resumed at, a later time in the expert's discretion.
- 8.14 The Parties agree that a meeting under clause 8.13 is not a hearing and is not an arbitration.

Other courses of action

- 8.15 If the mediation referred to in clause 8.3 has not resulted in settlement of the dispute and has been terminated, and a Party has failed to refer the matter to expert determination in accordance with clause 8.4 within 21 days after termination of the mediation, either Party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

Confidentiality of information provided in dispute resolution process

- 8.16 The Parties agree, and must procure that the mediator and the expert agrees as a condition of his or her appointment:
- (a) subject to paragraph (b), to keep confidential all documents, information and other material, disclosed to them during or in relation to the mediation or expert determination; and
 - (b) not to disclose any confidential documents, information and other material except:
 - (i) to a Party or adviser or consultant who has signed a confidentiality undertaking; or
 - (ii) if required by Law to do so or State Government policy or local government policy or any listing rule; and
 - (c) not to use confidential documents, information or other material disclosed to them during or in relation to the mediation or expert determination, for a purpose other than the mediation or expert determination.
- 8.17 The Parties must keep confidential and must not disclose or rely upon or make the subject of a subpoena to give evidence or produce documents in any arbitral, judicial or other proceedings:
- (a) views expressed or proposals or suggestions made by a Party or the mediator or the expert during the expert determination or mediation relating to a possible settlement of the dispute; and
 - (b) admissions or concessions made by a Party during the mediation or expert determination in relation to the dispute; and

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- (c) information, documents or other material concerning the dispute which are disclosed by a Party during the mediation or expert determination unless such information, documents or facts would be discoverable in judicial or arbitral proceedings.

Final determination of expert

- 8.18 The Parties agree that the final determination by an expert will be final and binding upon them except in the case of fraud or misfeasance by the expert.

Costs

- 8.19 If any independent expert does not award costs, each Party must contribute equally to the expert's costs in making the determination.

Urgent relief

- 8.20 This clause 8 does not prevent a party from seeking urgent injunctive or declaratory relief.

9. Transfer of obligations

- 9.1 It is acknowledged that the Joint Venture comprises two corporations that are subsidiaries of, respectively, a corporation owned by the Commonwealth of Australia and LLC, one of the largest listed corporations in Australia. The State Parties and the Councils have entered into this deed on the basis of the confidence which the State Parties and the Councils have in the ability of the Developer (as guaranteed by the Guarantors) to perform their obligations under this deed. Accordingly, the State Parties will only permit assignment or a novation (which, for the avoidance of doubt, includes a change in the respective interests of the Landowner and LLD in the joint venture arrangements involving the Joint Venture) of the rights and obligations of a Relevant Developer under this deed if:

- (a) the State Parties are satisfied (acting reasonably) that the proposed incoming entity or the Joint Venture as constituted following the change in interests as the case may be ("**new entity**") has (or would following that change have) the capability, experience and expertise to carry out the Development and to satisfy the obligations of the assignor/outgoing entity under this deed in a manner and to an extent comparable with the assignor/outgoing entity;
- (b) the State Parties are satisfied (acting reasonably) by the provision of security or otherwise (which may involve a guarantee and indemnity from persons who the State Parties reasonably accept have sufficient financial resources to properly secure the obligations to the State Parties of the new entity under this deed) that the proposed new entity is financially capable of performing the obligations to be undertaken and supporting the promises given under this deed;
- (c) the proposed new entity has executed a deed in favour of the State Parties and the Councils (if applicable) whereby the new entity becomes contractually bound to perform the obligations of the assignor/outgoing entity under this deed; and
- (d) if the assignor/outgoing entity is, or includes, the Landowner, the new entity, or if there is more than one of them, at least one of the parties comprising the new entity, is taking a transfer of the whole of the Land then remaining which has not been transferred to the Minister (or his nominee), the NPW Minister or third parties.

- 9.2 Within 42 days after receipt of a copy of the deed proposed to be executed by a new entity and a copy of any proposed security (as reasonably required by the State Parties) together with sufficient information from the Joint Venture to satisfy the State Parties (acting reasonably) under

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clauses 9.1(a) and 9.1(b), the Minister must advise the Joint Venture whether the State Parties consent to or reject the request to assign or novate.

- 9.3 If the State Parties consent to the assignment or novation of the obligations of the assignor/outgoing entity under this deed, the assignor/outgoing entity will no longer be liable for the performance of the obligations assigned to the new entity other than those which arose before the date of the relevant assignment or novation.
- 9.4 The consent of the Minister under clause 9.2 is binding upon the Councils to the same extent as if given by the Councils.

No change in Control of Relevant Developer

- 9.5 A person may become or cease to be a Parent of a Relevant Developer without the State Parties' consent:
- (a) to the extent the Parent is a publicly listed company or a trustee or custodian/responsible entity of a publicly listed trust; or
 - (b) if the Relevant Developer is a publicly listed company or a trustee or custodian/responsible entity of a publicly listed trust.

Otherwise, the Landowner and the Joint Venture agree that, subject to clause 9.6, no person may become or cease to become a Parent of a Relevant Developer.

Permitted change of Control of Relevant Developer

- 9.6 Subject to clause 9.5, a person may become or cease to be a Parent of the Relevant Developer if, before the proposed event occurs:
- (a) the State Parties are satisfied (acting reasonably) that the Relevant Developer, as Controlled by the new Parent, will have the capability, experience and expertise to carry out the Development and to satisfy the obligations of the Relevant Developer under this deed in a manner and to an extent comparable with the Relevant Developer under its existing Control structure;
 - (b) the State Parties are satisfied (acting reasonably) by the provision of security or otherwise (which may involve a guarantee and indemnity from persons who the State Parties reasonably accept have sufficient financial resources to properly comply with the obligations to the State Parties of the Relevant Developer under this deed) that the Relevant Developer, as Controlled by the new Parent, would be financially capable of performing the obligations to be undertaken and supporting the promises given under this deed; and
 - (c) the proposed new Parent (or if the new Parent is not an ultimate holding company, the ultimate holding company of the proposed new Parent) executes a deed in favour of the State Parties and the Councils (if applicable) under which it guarantees the Guaranteed Obligations in the relevant terms of Part 4 in which case the relevant guarantee of the outgoing Parent (in the first instance LLC or ComLand) will be released.
- 9.7 Within 42 days after receipt of a copy of the deed proposed to be executed by the proposed new Parent (or if the new Parent is not an ultimate holding company, the ultimate holding company of the proposed new Parent) and a copy of any proposed security together with sufficient information from the Relevant Developer to satisfy the State Parties (acting reasonably) under clauses 9.6(a) and 9.6(b), the Minister must advise the Relevant Developer whether the State

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Parties consent to or reject the request for a person to become or cease to be a Parent of the Relevant Developer.

- 9.8 The consent of the Minister under clause 9.7 is binding upon the Councils to the same extent as if given by the Councils.

Costs

- 9.9 The Relevant Developer must pay within 30 days after demand by the Minister (made after the Minister receives notification from the Relevant Developer relating to a proposed assignment or novation or change of Control under this clause 9) an amount reasonably estimated by the Minister as being the amount which will become payable in connection with the State Parties considering the proposed assignment or novation or change of Control whether or not (for any reason) the proposed assignment or novation or change of Control takes place. The portion of such amount which is not incurred by the State Parties must be refunded to the Relevant Developer and if the State Parties' costs exceed the amount of the estimate, the Relevant Developer must pay the shortfall (to the extent that the relevant costs are reasonable) within 20 days after demand by the Minister.

10. Miscellaneous

Choice of Law

- 10.1 The Laws of New South Wales as in force from time to time govern this deed.

Authority to bind the Crown

- 10.2 The Minister enters into this deed for and on behalf of the State Government and warrants that he has full power and authority to bind the State Government by entering into this deed.

Further assurance

- 10.3 Each Party to this deed must sign and execute all documents and do all things as may be reasonably required to be done by the Party to give effect to this deed.

GST

- 10.4 In this deed:

- (a) "**Adjustment**" has the meaning given to that term in the GST law.
- (b) "**Adjustment Event**" has the meaning given to that term in the GST law.
- (c) "**Adjustment Note**" has the meaning given to that term in the GST law.
- (d) "**GST**" or "**goods and services tax**" means a tax, duty, levy, charge or deduction, imposed by or under a GST law together with any related interest, penalties, fines or other charges.
- (e) "**GST Amount**" means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply calculated on the basis that the Value of the Taxable Supply is the consideration payable or provided for the Taxable Supply excluding any further amount payable under clause 10.7.
- (f) "**GST Group**" has the meaning given to that term in the GST law.
- (g) "**GST law**" has the meaning given to the term in *A New Tax System (Goods and Services Tax) Act 1999*, or if that Act does not exist for any reason, means any Act imposing or relating to the imposition or administration of a goods and services tax in Australia any regulation made under that Act.

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- (h) “**Input Tax Credit**” has the meaning given to that term by the GST law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party, but to which another member of the same GST Group is entitled under the GST law.
 - (i) “**Invoice**” has the meaning given to that term in the GST law.
 - (j) “**ITC Amount**” means in relation to an acquisition of a Taxable Supply the amount of the Input Tax Credit or Reduced Input Tax Credit to which the recipient is entitled under the GST law.
 - (k) “**Payment**” means any amount payable under, by reference to, or in connection with this deed including, any amount payable by way of indemnity, reimbursement or otherwise and includes the provision of any non-monetary consideration and any amount dealt with by way of set off.
 - (l) “**Reduced Input Tax Credit**” means an Input Tax Credit arising in accordance with the operation of Division 70 of the *A New Tax System (Goods and Services Tax) Act 1999*.
 - (m) “**Representative Member**” has the meaning given to that term by the GST law.
 - (n) “**Running Balance Account**” has the meaning given to that term in Part IIB of the *Taxation Administration Act*.
 - (o) “**Tax Invoice**” means a tax invoice under the GST law.
 - (p) “**Taxable Supply**” has the meaning given to that term by the GST law.
 - (q) “**Value**” has the meaning given to it by the GST law.
- 10.5 Unless the Parties otherwise agree in writing or it is stated otherwise in this deed, all Payments under the deed are exclusive of GST.
- 10.6 Each Party warrants that for the duration of this deed they are registered under the GST law. If a Party requests written evidence of registration, the Party claiming to be registered will promptly produce evidence satisfactory to the Party seeking such evidence.
- 10.7 (a) If the whole or any part of any Payment is the consideration for a Taxable Supply by LLC, LLD, the Landowner, ComLand or the Joint Venture (each a “**Non Government Entity**”), the payer must pay to the payee in cash an additional amount equal to the ITC Amount (if any) and must make the payment upon the recipient of the Taxable Supply obtaining the benefit of any Input Tax Credit or Reduced Input Tax Credit in respect of the acquisition of the Taxable Supply. The recipient of the Taxable Supply shall be treated as obtaining the benefit of any Input Tax Credit or Reduced Input Tax Credit:
- (i) upon the credit of the ITC Amount or any part to the Running Balance Account of the recipient or other payment of the ITC Amount or any part to the recipient; or
 - (ii) where no part of the ITC Amount would be so credited or otherwise paid, upon the lodgement by the recipient of its Business Activity Statement for the tax period of the recipient to which the Input Tax Credit or Reduced Input Tax Credit is attributable.

Each entity other than a Non Government Entity undertakes that when it is a recipient for the purposes of this clause it will use reasonable endeavours to obtain the benefit of any Input Tax Credit or Reduced Input Tax Credit and will do so in a timely manner, subject

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to the recipient having been issued with a valid Tax Invoice for the supply to which the Input Tax Credit or Reduced Input Tax Credit relates.

References in this clause to the "**recipient**" include the Representative Member of any GST Group of which the recipient is a member.

- (b) If the whole or any part of any Payment is the consideration for a Taxable Supply by an entity other than a Non Government Entity, the payer must pay to the payee an additional amount equal to the GST Amount, in cash. Unless otherwise agreed in writing, such additional amount is to be paid on the earlier of:
- (i) the date on which the first Payment in relation to the Taxable Supply becomes payable; and
 - (ii) the date 5 Business Days after the date on which an Invoice is issued in relation to the Taxable Supply,

and at that time the payee will also issue a valid Tax Invoice.

- 10.8 Any reference in the calculation of consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of the Party in relation to the relevant cost, expense or other liability.
- 10.9 If in relation to a Taxable Supply an Adjustment Event occurs that gives rise to an Adjustment, then the GST Amount or ITC Amount will be adjusted accordingly and where necessary a payment will be made to reflect the change in the GST Amount or ITC Amount (by the payer to the payee in respect of an increase in the GST Amount or ITC Amount and by the payee to the payer in respect of a decrease in the GST Amount or ITC Amount). If a payment is required, it will be made within 5 Business Days of the issue of an Adjustment Note by the payee (who must issue an Adjustment Note immediately upon becoming aware of an Adjustment Event).
- 10.10 If there is a change in the GST law or its interpretation which has an adverse impact on this deed or any Party to this deed, the Parties to this deed must negotiate in good faith to endeavour to agree on any reasonable and appropriate amendments to this deed so that either:
- (a) the financial position of the Parties with respect to the imposition of GST after the change does not differ in effect to the financial position of the Parties with respect to the imposition of GST before the change; or
 - (b) a Party is not unreasonably financially disadvantaged with respect to the imposition of GST after the change by comparison with the position of that Party in relation to that matter prior to the change.

Force Majeure

- 10.11 (a) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under this deed (other than an obligation to make a payment), it must give to the other Party prompt notice of the force majeure with reasonably full particulars.
- (b) The obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (c) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.

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- (d) The Parties agree that this force majeure provision does not apply to an obligation of a Party to transfer land or to pay money.
- (e) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under clause 8.

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PART 2 - Rights and obligations of the Landowner, the Joint Venture and the Minister

11. Regional Park

Landowner works in the Regional Park

11.1 Within 6 months after the Commencement Date, the Landowner must:

- (a) erect a stock proof fence consisting of at least three strands of barbed wire along the northern boundary of the Regional Park immediately west of Palmyra Road shown as the Griffin Boundary on the Map. The existing person proof fence within the Regional Park in that vicinity is to remain; and
- (b) construct along the boundary between the Eastern Precinct and the Eastern Precinct Regional Park as shown on the Map:
 - (i) if the site auditor's written confirmation to the NPW Minister following the remedial works under clause 15.2 certifies that the Eastern Precinct Regional Park is suitable for use as a park, recreational open space and playing field, a fence designed to discourage unfettered vehicular access to the Eastern Precinct Regional Park; or
 - (ii) otherwise a 1.8 metre high mesh fence.

11.2 The Minister warrants that the NPW Minister is aware that buildings numbered S43 and S44 (as shown generally on the Map) in the Regional Park will not be demolished and the Minister warrants that the NPW Minister will accept them in their condition as at the date of the transfer of the Regional Park to the NPW Minister.

Transfer of Part A of the Regional Park

11.3 As soon as possible after the Commencement Date, the Landowner must prepare and register a plan of subdivision to create a separate lot or lots for the Regional Park and the Licensed Lands and then deliver to the NPW Minister:

- (a) a form of transfer in respect of the land comprising Part A of the Regional Park in favour of the NPW Minister and specifying a consideration of \$1 executed by the Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
- (b) the certificate or certificates of title for Part A of the Regional Park,

and must take any other necessary action (other than paying stamp duty and effecting registration of the transfer) to give effect to the transfer of the title of Part A of the Regional Park to the NPW Minister free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except as registered as at the date of this deed or as referred to in this deed or those envisaged by clause 11.7 or those which the NPW Minister has consented to in writing.

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Transfer of Part B of the Regional Park

- 11.4 As soon as practicable after 31 December 2005, the Landowner must deliver to the NPW Minister:
- (a) a form of transfer in respect of the land comprising Part B of the Regional Park in favour of the NPW Minister and specifying a consideration of \$1 executed by the Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - (b) the certificate or certificates of title for Part B of the Regional Park,
- and must take any other necessary action (other than paying stamp duty and effecting registration of the transfer) to give effect to the transfer of the title to the NPW Minister free of all encumbrances and affectations (including any charge or liability for rates, taxes and charges) except as may be registered as at the date of this deed or as referred to in this deed or those envisaged by clause 11.7 or those which the NPW Minister has consented to in writing.

RNE Land

- 11.5 (a) The Parties acknowledge the listing of the RNE Land on the Register of the National Estate and that the Landowner is required to ensure that any development undertaken by the Landowner on the Land should be based on protecting the listed values of all of the RNE Land.
- (b) In relation to the Residual RNE Land, the Landowner and the Minister agree (and the Minister warrants that the NPW Minister will ensure) that the Residual RNE Land will be studied in the drafting of the Plan of Management to assess appropriate park management options for that land, and the Plan of Management will identify the options and requirements for the protection of the listed values of the Residual RNE Land.
- (c) If the appropriate park management option for the Residual RNE Land is determined to be regional park, the Minister warrants that the NPW Minister will:
- (i) procure that the Residual RNE Land is declared as part of the regional park under clause 11.18; and
 - (ii) manage the Residual RNE Land in accordance with the Plan of Management.
- (d) If the appropriate park management option for the Residual RNE Land is determined to be other than regional park, the Landowner must ensure that any such option protects the listed values of the Residual RNE Land in accordance with a plan of management.

Transfer of Residual RNE Land

- 11.6 If the appropriate park management option for the Residual RNE Land is determined to be regional park, the Landowner must deliver to the NPW Minister:
- (a) a form of transfer in respect of the Residual RNE Land in favour of the NPW Minister and specifying a consideration of \$1 executed by the Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - (b) the certificate or certificates of title for the Residual RNE Land,
- and must take any other necessary action (other than paying stamp duty and effecting registration of the transfer) to give effect to the transfer of the title to the NPW Minister free of all

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encumbrances and affectations (including any charge or liability for rates, taxes and charges) except as may be registered as at the date of this deed or as referred to in this deed or those envisaged by clause 11.7 or those which the NPW Minister has consented to in writing.

- 11.7 The Minister warrants that the NPW Minister acknowledges that the Regional Park will need to be burdened with easements for the following purposes:
- (a) the purposes described generally on the plan forming Annexure J in the locations shown generally on that plan; and
 - (b) for other purposes which:
 - (i) are consistent with the *National Parks and Wildlife Act 1974* and the Plan of Management;
 - (ii) do not materially interfere with the intended use of the Regional Park; and
 - (iii) in the reasonable opinion of the NPW Minister, are reasonably required by the Joint Venture for the purposes of the Development or the use of adjoining land or the Land;

and warrants that the NPW Minister will:

- (c) accept the transfer of the Regional Park subject to those easements which are in existence at the date of the transfer as shown on any of the plans forming Annexure J; and
- (d) not unreasonably withhold or delay its approval to those easements which are required after the date of the transfer (including those shown in Plan 2 or Plan 3 of Annexure J) where the rights created by those easements:
 - (i) are consistent with the *National Parks and Wildlife Act 1974* and the Plan of Management;
 - (ii) do not materially interfere with the intended use of the Regional Park; and
 - (iii) in the reasonable opinion of the NPW Minister, are reasonably required by the Joint Venture for the purposes of the Development or the use of adjoining land or the Land.

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Commonwealth indemnity

- 11.8 (a) Site contamination of the Land resulting from the prior munitions production and storage activities was progressively remediated by the Landowner from 1993 to 1997. Site audit statements have been issued under the provisions of the *Contaminated Land Management Act 1997* in relation to the Land. Copies of the site audit statements are included in the Stage 2 Decontamination Audit of the ADI St Marys Munition Factory, AGC Woodward Clyde (1999). The Commonwealth has issued a policy dated 19 May 1999 on the management of land affected by unexploded ordnance (which relates to land affected by prior munitions production and storage activity). The Landowner has commissioned the preparation of a remediation action plan and proposes to implement additional remediation works to achieve the objectives detailed in clause 15.6.
- (b) Having regard to the provisions of paragraph (a), the Landowner must use its best endeavours to:
- (i) procure in favour of the NPW Minister an indemnity from the Commonwealth government in relation to the Regional Park in accordance with the Commonwealth policy dated 19 May 1999 on the management of land affected by unexploded ordnance (which relates to land affected by prior munitions production and storage activity); and
 - (ii) procure that indemnity before any part of the Regional Park is transferred to the NPW Minister; or
 - (iii) procure that indemnity as soon as possible after any part of the Regional Park is transferred to the NPW Minister where it has not been able to satisfy paragraph (ii).

Whole agreement

- 11.9 The Minister acknowledges and agrees that:
- (a) this clause 11 contains the entire agreement between the Parties about the transfer of the Regional Park;
 - (b) neither the Minister nor the NPW Minister rely upon any statement, representation, warranty, condition or promise made or given by the Landowner or the Joint Venture by or on behalf of the Landowner about the Regional Park; and
 - (c) the Minister relies and warrants that the NPW Minister will rely on their own enquiries about the Regional Park and are satisfied about the nature, state and condition of the Regional Park and the purposes for which it may lawfully be used.

Management of Regional Park

- 11.10 Following transfer of the Regional Park to the NPW Minister, the Minister warrants that the NPW Minister or other relevant Authority charged with management of the Regional Park will manage the Regional Park as a regional park under the *National Parks and Wildlife Act 1974* in accordance with that Act and the Plan of Management.
- 11.11 As soon as reasonably practicable following the Commencement Date, the Minister warrants that the NPW Minister will:
- (a) establish an advisory group ("**Advisory Group**") which includes a representative of each member of the Joint Venture (who may elect to remain a member of the Advisory Group

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until the payment of the final instalment of the Contribution (under clause 11.21)) to assist the Director-General of National Parks and Wildlife to prepare and implement a plan of management under the *National Parks and Wildlife Act 1974* for the Regional Park ("**Plan of Management**") in connection with the ongoing management of the Regional Park following the adoption of the Plan of Management; and

- (b) in consultation with the Joint Venture prepare a statement of management intent in connection with the ongoing management of the Regional Park prior to the adoption of the Plan of Management ("**Statement of Management Intent**").

11.12 The Minister warrants that the Plan of Management will be prepared and adopted at the earliest opportunity, but in any event:

- (a) will be made available for community consultation within 12 months of the Commencement Date; and
- (b) will be adopted as soon as practicable after the conclusion of the community consultation process.

11.13 The Minister warrants that the Statement of Management Intent and the Plan of Management will provide for the following:

- (a) make reasonable provision for the co-ordination of the provision of capital works in the Regional Park with the development of the Land;
- (b) make reasonable provision for public access to the Regional Park, which will include consideration of access from the Regional Park to parts of the Land which are not Release Areas; and
- (c) for the Regional Park to be managed in accordance with the following principles (as contained in proposed s30H of the *National Parks and Wildlife Act 1974*):
 - (i) the provision of opportunities, in an outdoor setting, for recreation and enjoyment in natural or modified landscapes;
 - (ii) the identification, interpretation, management and conservation of the Regional Park so as to maintain and enhance significant landscape values;
 - (iii) the conservation of natural and cultural values;
 - (iv) the promotion of public appreciation and understanding of the Regional Park's natural and cultural values;
 - (v) provision for sustainable visitor use and enjoyment that is compatible with the conservation of the Regional Park's natural and cultural values; and
 - (vi) provision for the sustainable use (including adaptive reuse) of any buildings or structures or modified natural areas having regard to the conservation of the Regional Park's natural and cultural values.

11.14 Without limiting the provisions of clause 11.13 or the provisions of the *National Parks and Wildlife Act 1974*, the Minister warrants that the Advisory Group will give due consideration to the inclusion of the following principles in the objectives of the Statement of Management Intent and the Plan of Management:

- (a) the principle of environmental sustainability, which will involve:

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- (i) the preservation, protection and rehabilitation of remnant bushland;
 - (ii) the preservation, protection and improvement (where practicable) of the biodiversity values of the Regional Park, recognising the importance of the Regional Park to the local area, including the Land; and
 - (iii) the retention of fauna and flora, recognising that sections of the Regional Park may be used for macro fauna conservation in accordance with a macro fauna management plan to be prepared and implemented by the Joint Venture;
- (b) the principle of economic sustainability, which will involve:
- (i) the development of the Regional Park to minimise capital and maintenance costs;
 - (ii) the making of capital improvements to maximise employment and training opportunities;
 - (iii) maximising the opportunities to access external funding and grants for the Regional Park; and
 - (iv) the identification of appropriate revenue generating opportunities relating to the Regional Park and the use of that revenue to offset the capital and maintenance costs of the Regional Park; and
- (c) the principle of social/community sustainability, which will involve:
- (i) maximising educational opportunities for school and community groups;
 - (ii) highlighting aboriginal heritage at appropriate locations within the Regional Park;
 - (iii) involving community groups in the rehabilitation and maintenance of the Regional Park; and
 - (iv) maximising the opportunities for community interaction and passive recreation within the Regional Park.

11.15 The Minister warrants that the Advisory Group will use its best endeavours to assist the Director-General of National Parks and Wildlife to prepare a Plan of Management which:

- (a) identifies a set of clear management objectives which reflect the principles in clauses 11.13(c) and 11.14 and the social and economic context of the Regional Park;
- (b) identifies a set of priority works which are essential to the achievement of the objectives of the Plan of Management; and
- (c) is accompanied by a realistic and pragmatic budget and timeframes to undertake those works.

11.16 Until the Plan of Management is prepared, the Minister warrants that the Director-General of National Parks and Wildlife will:

- (a) manage the Regional Park in accordance with the Statement of Management Intent; and
- (b) consult with the Joint Venture about preparation of the Plan of Management and the management of the Regional Park in accordance with the proposed objectives of the Plan of Management in accordance with the principles outlined in clauses 11.13(c) and 11.14.

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- 11.17 Until the Plan of Management is prepared, the Minister warrants that the Director-General of National Parks and Wildlife may permit the Joint Venture to carry out any Capital Improvements (as defined in clause 11.21) or other works which are contemplated to form part of the Plan of Management, subject to the following conditions:
- (a) the Director-General of National Parks and Wildlife must give its prior consent (which must not be unreasonably withheld);
 - (b) the Capital Improvements or other works must be consistent with the Statement of Management Intent;
 - (c) the Capital Improvements or other works must be carried out by a person with the necessary expertise, competence and skills;
 - (d) the Capital Improvements or other works must be carried out in accordance with the design approved by and to the standards of the National Parks and Wildlife Service, which standards are to be reasonably determined by the Director-General of National Parks and Wildlife but to standards which are no greater than those which apply in other regional parks;
 - (e) the value of the Capital Improvements or other works for the purpose of determining the extent to which the Joint Venture has satisfied its obligation to contribute to the Capital Improvements referred to in Table 1 will be the lesser of:
 - (i) the actual cost of carrying out the Capital Improvements or other works, including costs associated with the assessment of the environmental impact of the works, costs properly paid to third parties, design and contractor's fees, fees for approvals and supervision costs (but not costs of the Joint Venture or any Related Entity except to the extent those costs are approved (as being reasonable costs) by the Director-General of National Parks and Wildlife); or
 - (ii) the value of the Capital Improvements or other works determined by a quantity surveyor appointed by the Joint Venture and approved by the Director-General of National Parks and Wildlife (acting reasonably); and
 - (f) prior to the works commencing they must be approved by the Director-General of National Parks and Wildlife (acting reasonably) in accordance with the requirements of the Act.
- 11.18 The Minister warrants that the NPW Minister will procure that the Regional Park is declared as a Regional Park under the *National Parks and Wildlife Act 1974* as soon as reasonably practical after transfer of each part of the Regional Park.
- 11.19 Until the transfer of the Regional Park to the NPW Minister, the Landowner must continue to manage the Regional Park in accordance with its then current management practices as set out in Annexure B and must maintain all existing external perimeter fences.
- 11.20 Until the ownership of access roads within the Land is transferred to the Relevant Council, the Landowner will, in consultation with the Director-General of National Parks and Wildlife, make arrangements for access to be provided to the Regional Park for park management purposes.

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Contributions by Joint Venture

11.21 The Joint Venture must contribute a total of \$6,900,000 (“**Contribution**”) towards Capital Improvements which are identified in the Plan of Management by paying the amounts set out in column 1 of Table 1 to the Director-General of National Parks and Wildlife, at the times set out in column 2 of Table 1. The Minister warrants that these monies are to be used solely for the purpose set out in column 3 of Table 1 and will be spent in accordance with the objectives of the Plan of Management. For the avoidance of doubt, “**Capital Improvements**” means fixed improvements to the Regional Park such as roads, paths, retaining walls, fences, boardwalks, landscaping, bush regeneration, weed and pest species control, revegetation, drainage, signs, lighting, car parks and buildings, Aboriginal site conservation works, soil erosion controls, water quality controls and includes fees paid to consultants for design and monies paid to contractors and suppliers of material and costs associated with the assessment of the environmental impact of the works.

Amount	Time	Purpose
1. \$100,000	28 days after the Commencement Date.	Preparation of the Statement of Management Intent and the Plan of Management for the Regional Park.
2. \$100,000	28 days after the Commencement Date.	Advisory Group.
3. \$375,000	28 days after the First Subdivisional Works Date for the Eastern Precinct.	Establishment of the Regional Park
4. \$375,000	28 days after the first anniversary of the First Subdivisional Works Date for the Eastern Precinct.	Establishment of the Regional Park.
5. \$1,099,413	By 5 equal instalments, the first of which is to be paid on the later of the date on which the Plan of Management is adopted and the date which is 28 days after the First Subdivisional Works Date for the Eastern Precinct and the remaining instalments are to be paid on each anniversary of the due date for payment of the first instalment until all instalments have been paid.	Capital improvements to the Regional Park in accordance with the Statement of Management Intent and the Plan of Management.
6(a) \$80,000	28 days after the First Subdivisional Works Date for the Western Precinct.	Capital Improvements to the Regional Park in accordance with the Plan of Management, in the event that the Residual RNE Land in the Western Precinct forms part of the Regional Park.

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Table 1		
Amount	Time	Purpose
6(b) \$750,000	28 days after the First Subdivisional Works Date for the Western Precinct.	Capital improvements to the Regional Park in accordance with the Plan of Management.
7. \$1,245,060	By 6 equal instalments, the first of which is to be paid on the later of the date on which the Plan of Management is adopted and the date which is 28 days after the First Subdivisional Works Date for the Western Precinct and the remaining instalments are to be paid on each anniversary of the due date for payment of the first instalment until all instalments have been paid.	Capital improvements to the Regional Park in accordance with the Plan of Management.
8(a) \$120,000	28 days after the First Subdivisional Works Date for the Central Precinct.	Capital Improvements to the Regional Park in accordance with the Plan of Management, in the event that the Residual RNE Land in the Central Precinct forms part of the Regional Park.
8(b) \$750,000	28 days after the First Subdivisional Works Date for the Central Precinct.	Capital improvements to the Regional Park in accordance with the Plan of Management.
9. \$955,527	By 4 equal instalments, the first of which is to be paid on the later of the date on which the Plan of Management is adopted and the date which is 28 days after the First Subdivisional Works Date for the Central Precinct and the remaining instalments are to be paid on each anniversary of the due date for payment of the first instalment until all instalments have been paid.	Capital improvements to the Regional Park in accordance with the Plan of Management.
10. \$950,000	12 months after the last instalment for the Central Precinct.	Capital improvements to the Regional Park in accordance with the Plan of Management.

11.22 The Minister warrants that each payment made by the Joint Venture numbered 5, 6, 7, 8, 9 and 10 and specified in column 1 of Table 1 will be expended by the Director-General of National Parks and Wildlife on Capital Improvements to the Regional Park in accordance with the Plan of Management on or before the next instalment for a Precinct is due to be paid.

11.23 If the Joint Venture nominates any particular Capital Improvements to which it would like any part of the Contribution to be allocated, the Minister warrants that the Director-General of National

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Parks and Wildlife will make that allocation, so long as the nominated Capital Improvements are in accordance with the Statement of Management Intent or the Plan of Management.

- 11.24 The Minister warrants that the Director-General of National Parks and Wildlife will provide evidence satisfactory to the Joint Venture that the money has been expended as required by Clauses 11.22 and 11.23 or that binding contracts have been entered into for the expenditure of the amount at least 28 days before the next instalment for a Precinct is due.
- 11.25 In the event the Joint Venture does not receive or is not satisfied with the evidence provided by the Director-General of National Parks and Wildlife under clause 11.24, a dispute arises and, if not sooner resolved by negotiation, the Joint Venture must give a notice of dispute as contemplated by clause 8.1 within 14 days of the date for receipt or receipt by the Joint Venture of the evidence from the Director-General of National Parks and Wildlife. Upon the giving of a notice of dispute, the obligation of the Joint Venture to make payment of the instalment then due is suspended until 14 days after resolution of the dispute under clause 8.

The capital payments

- 11.26 The payments for Capital Improvements or other amounts referred to in Table 1 may, at the election of the Joint Venture, be made by either or a combination of the following:
- (a) payment to the Director-General of National Parks and Wildlife of money;
 - (b) the carrying out of Capital Improvements within the Regional Park; or
 - (c) the provision of services, information or works relating to the Regional Park.
- 11.27 If the Joint Venture elects to carry out Capital Improvements within the Regional Park under clause 11.26(b), the following conditions apply:
- (a) the Capital Improvements must be of works identified in the Plan of Management or consistent with the Statement of Management Intent;
 - (b) the Capital Improvements must be carried out by a person with the necessary expertise, competence and skills;
 - (c) the Capital Improvements must be carried out in accordance with the design approved by and to the standards of the National Parks and Wildlife Service, which standards are to be reasonably determined by the Director-General of National Parks and Wildlife but to standards which are no greater than those which apply in other regional parks;
 - (d) the value of the Capital Improvements for the purpose of determining the extent to which the Joint Venture has satisfied its obligation to contribute to the Capital Improvements referred to in Table 1 will be the lesser of:
 - (i) the actual cost of carrying out the Capital Improvements, including costs associated with the assessment of the environmental impact of the works, costs properly paid to third parties, design and contractor's fees, fees for approvals and supervision costs (but not costs of the Joint Venture or any Related Entity except to the extent those costs are approved (as being reasonable costs) by the Director-General of National Parks and Wildlife); or
 - (ii) the value of the Capital Improvements determined by a quantity surveyor appointed by the Joint Venture and approved by the Director-General of National Parks and Wildlife (acting reasonably);

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- (e) the Joint Venture must provide to the Director-General of National Parks and Wildlife reasonable evidence of the actual cost of carrying out the Capital Improvements; and
 - (f) prior to the works commencing they must be approved by the Director-General of National Parks and Wildlife (acting reasonably) in accordance with the requirements of the Act.
- 11.28 If the Joint Venture elects to provide services, information or works relating to the Regional Park under clause 11.26(c), the following conditions apply:
- (a) the services, information or works must be services, information or works identified in the Plan of Management or consistent with the Statement of Management Intent;
 - (b) the services, information or works must be carried out by a person with the necessary expertise, competence and skills;
 - (c) the services, information or works must be provided in accordance with the requirements of the National Parks and Wildlife Service, which requirements are to be reasonably determined by the Director-General of National Parks and Wildlife but to requirements which are no greater than those which apply in other regional parks;
 - (d) the value of the services, information or works for the purpose of determining the extent to which the Joint Venture has satisfied its obligation to contribute to the services, information or works referred to in Table 1 will be the lesser of:
 - (i) the actual cost of providing the services, information or works, including costs associated with the assessment of the environmental impact of the services, information or works, costs properly paid to third parties, design and contractor's fees, fees for approvals and supervision costs (but not costs of the Joint Venture or any Related Entity except to the extent those costs are approved (as being reasonable costs) by the Director-General of National Parks and Wildlife); or
 - (ii) the value of the services, information or works determined by a quantity surveyor appointed by the Joint Venture and approved by the Director-General of National Parks and Wildlife (acting reasonably);
 - (e) the Joint Venture must provide to the Director-General of National Parks and Wildlife reasonable evidence of the actual cost of providing the services, information or works; and
 - (f) prior to the commencement of the provision of the services, information or works they must be approved by the Director-General of National Parks and Wildlife (acting reasonably) in accordance with the requirements of the Act, to the extent relevant.

12. Regional Open Spaces and Special Uses Corridor

- 12.1 In addition to the contributions set out in clause 11.21, the Joint Venture must pay the Minister \$100,000 within 28 days after the Commencement Date for the purpose of preparation of the Open Space Plan of Management (as defined in clause 12.2) for areas including the Regional Open Spaces, Special Uses Corridor and other contiguous open space areas.
- 12.2 As soon as reasonably practicable following the Commencement Date, the Minister will establish an advisory committee ("**Open Space Advisory Committee**") which includes a representative of each member of the Joint Venture to assist in the preparation and implementation of a plan of

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management (“**Open Space Plan of Management**”) in connection with the ongoing management of the Regional Open Spaces, Special Uses Corridor and other contiguous open space areas following the adoption of the Open Space Plan of Management.

- 12.3 The Minister warrants that the Open Space Plan of Management will:
- (a) maximise opportunities for integration of the Regional Open Space into the Development, including applicable elements of external cycleways contemplated under clause 16; and
 - (b) examine options for inclusion of relevant parts of the Regional Open Space within the Western Sydney Regional Parklands as described in *Sydney Regional Environmental Plan No. 31 – Regional Parklands*.
- 12.4 The Minister warrants that the payment made by the Joint Venture under clause 12.1 will be expended on the preparation of the Open Space Plan of Management within 18 months of the Commencement Date.

Transfer of Eastern Regional Open Space

- 12.5 If the Precinct Plan for the Eastern Precinct is approved then, as soon as practicable after such approval, the Landowner must prepare and register a plan of subdivision to create a separate lot or lots for the Eastern Regional Open Space and then deliver to the Minister:
- (a) a form of transfer in respect of the land comprising the Eastern Regional Open Space in favour of the Minister or his nominee and specifying a consideration of \$1 executed by the Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - (b) the certificate or certificates of title for the Eastern Regional Open Space,
- and must take any other necessary action (other than paying stamp duty and effecting registration of the transfer) to give effect to the transfer of the title to the Eastern Regional Open Space to the Minister or his nominee free of all encumbrances and affectations except as registered as at the date of this deed or as referred to in this deed or those envisaged by clause 12.8 or those which the Minister has consented to in writing.
- 12.6 Within 90 days after the later of the date of the transfer of the Eastern Regional Open Space to the Minister or his nominee and the date that the relevant payment is able to be calculated, the Minister warrants that the Minister or his nominee will pay to the Landowner the sum of money equal to the rates, water, sewerage, drainage service and usage charges, land tax and all other periodic outgoings (if any) paid by the Landowner in respect of the Eastern Regional Open Space for the period commencing on the date of the transfer of the Eastern Regional Open Space to the Minister or his nominee.
- 12.7 For the purpose of calculating the payment (if any) to be made for land tax under clause 12.6, the Parties must adjust land tax for the year current at the date of transfer of the Eastern Regional Open Space:
- (a) using the taxable value of the Eastern Regional Open Space by itself and that tax scale which is applicable to the Land and the Landowner that gives the least amount; and
 - (b) if the Eastern Regional Open Space has no separate taxable value, by calculating its taxable value on a proportional area basis,

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and if any other amount forming part of the payment to be made under clause 12.6 relates partly to the Eastern Regional Open Space and partly to other parts of the Land, the amount must be adjusted on a proportional area basis.

Easements over Eastern Regional Open Space

- 12.8 The Minister warrants that the Minister or his nominee acknowledges that the Eastern Regional Open Space will need to be burdened with easements for the following purposes:
- (a) the purposes described generally on the plan forming Annexure J in the locations shown generally on that plan; and
 - (b) for other purposes which:
 - (i) are consistent with the Open Space Plan of Management;
 - (ii) do not materially interfere with the intended use of the Eastern Regional Open Space; and
 - (iii) in the reasonable opinion of the Minister, are reasonably required by the Joint Venture for the purposes of the Development or the use of adjoining land or the Land;

and warrants that the Minister or his nominee will:

- (c) accept the transfer of the Eastern Regional Open Space subject to those easements which are in existence at the date of the transfer as shown on any of the plans forming Annexure J; and
- (d) not unreasonably withhold or delay its approval to those easements which are required after the date of the transfer (including those shown in Plan 2 or Plan 3 of Annexure J) where the rights created by those easements:
 - (i) are consistent with the Open Space Plan of Management;
 - (ii) do not materially interfere with the intended use of the Eastern Regional Open Space; and
 - (iii) in the reasonable opinion of the Minister, are reasonably required by the Joint Venture for the purposes of the Development or the use of adjoining land or the Land.

Transfer of Central Regional Open Space

- 12.9 If the Precinct Plan for the Central Precinct is approved, then as soon as practicable after such approval, the Landowner must prepare and register a plan of subdivision to create a separate lot or lots for the Central Regional Open Space and then deliver to the Minister:
- (a) a form of transfer in respect of the land comprising the Central Regional Open Space in favour of the Minister or his nominee and specifying a consideration of \$1 executed by the Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
 - (b) the certificate or certificates of title for the Central Regional Open Space,
- and must take any other necessary action (other than paying stamp duty and effecting registration of the transfer) to give effect to the transfer of the title to the Central Regional Open Space to the Minister or his nominee free of all encumbrances and affectations except as registered as at the date of this deed or referred to in this deed or those envisaged by clause

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12.12 or those which the Minister has consented to in writing and must also demolish building X1 shown on the Map to ground level and remove all resultant material within 90 days of a request to do so, which request must be in writing and made at any time following transfer of the Central Regional Open Space (subject to Relevant Council approval which the Joint Venture must use all reasonable endeavours to obtain without delay).

12.10 Within 90 days after the later of the date of the transfer of the Central Regional Open Space to the Minister or his nominee and the date that the relevant payment is able to be calculated, the Minister warrants that the Minister or his nominee will pay to the Landowner the sum of money equal to the rates, water, sewerage, drainage service and usage charges, land tax and all other periodic outgoings (if any) paid by the Landowner in respect of the Central Regional Open Space for the period commencing on the date of the transfer of the Central Regional Open Space to the Minister or his nominee.

12.11 For the purpose of calculating the payment (if any) to be made for land tax under clause 12.10, the Parties must adjust land tax for the year current at the date of transfer of the Central Regional Open Space:

- (a) using the taxable value of the Central Regional Open Space by itself and that tax scale which is applicable to the Land and the Landowner that gives the least amount; and
- (b) if the Central Regional Open Space has no separate taxable value, by calculating its taxable value on a proportional area basis,

and if any other amount forming part of the payment to be made under clause 12.10 relates partly to the Central Regional Open Space and partly to other parts of the Land, the amount must be adjusted on a proportional area basis.

Easements over Central Regional Open Space

12.12 The Minister warrants that the Minister or his nominee acknowledges that the Central Regional Open Space will need to be burdened with easements for the following purposes:

- (a) the purposes described generally on the plan forming Annexure J in the locations shown generally on that plan; and
- (b) for other purposes which:
 - (i) are consistent with the Open Space Plan of Management;
 - (ii) do not materially interfere with the intended use of the Central Regional Open Space; and
 - (iii) in the reasonable opinion of the Minister, are reasonably required by the Joint Venture for the purposes of the Development or the use of adjoining land or the Land;

and warrants that the Minister or his nominee will:

- (c) accept the transfer of the Central Regional Open Space subject to those easements which are in existence at the date of the transfer as shown on any of the plans forming Annexure J; and
- (d) not unreasonably withhold or delay its approval to those easements which are required after the date of the transfer (including those shown in Plan 2 or Plan 3 of Annexure J) where the rights created by those easements:

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- (i) are consistent with the Open Space Plan of Management;
- (ii) do not materially interfere with the intended use of the Central Regional Open Space; and
- (iii) in the reasonable opinion of the Minister, are reasonably required by the Joint Venture for the purposes of the Development or the use of adjoining land or the Land.

12.13 Despite clause 12.12, the Minister or his nominee warrants that the Minister or his nominee acknowledges that it is intended to relocate the Transmission Line Easement Nos DP 641320 and Y 228360 from its present location to a new location more or less as shown on the Map and consents for the purposes of clause 12.12 to the creation of a new easement for transmission line purposes more or less in that location. For the avoidance of doubt, this consent does not in any way fetter any environmental impact study or the Minister's role in relation to it.

Transfer of Special Uses Corridor

12.14 If the Precinct Plan for the Eastern Precinct is approved then, within 2 years after such approval, the Landowner must prepare and register a plan of subdivision to create a separate lot or lots for the Special Uses Corridor and then deliver to the Minister:

- (a) a form of transfer in respect of the land comprising the Special Uses Corridor in favour of the Minister or his nominee and specifying a consideration of \$1 executed by the Landowner and in registrable form except for acceptance by the transferee and marking by the Office of State Revenue; and
- (b) the certificate or certificates of title for the Special Uses Corridor,

and must take any other necessary action (other than paying stamp duty or effecting registration of the transfer) to give effect to the transfer of the title to the Special Uses Corridor to the Minister or his nominee free of all encumbrances and affectations except as registered as at the date of this deed or as referred to in this deed or those envisaged by clause 12.17 or those which the Minister has consented to in writing.

12.15 Within 90 days after the later of the date of the transfer of the Special Uses Corridor to the Minister or his nominee and the date that the relevant payment is able to be calculated, the Minister warrants that the Minister or his nominee will pay to the Landowner the sum of money equal to the rates, water, sewerage, drainage service and usage charges, land tax and all other periodic outgoings (if any) paid by the Landowner in respect of the Special Uses Corridor for the period commencing on the date of the transfer of the Special Uses Corridor to the Minister or his nominee.

12.16 For the purpose of calculating the payment (if any) to be made for land tax under clause 12.15, the Parties must adjust land tax for the year current at the date of transfer of the Special Uses Corridor:

- (a) using the taxable value of the Special Uses Corridor by itself and that tax scale which is applicable to the Land and the Landowner that gives the least amount; and
- (b) if the Special Uses Corridor has no separate taxable value, by calculating its taxable value on a proportional area basis,

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and if any other amount forming part of the payment to be made under clause 12.15 relates partly to the Special Uses Corridor and partly to other parts of the Land, the amount must be adjusted on a proportional area basis.

Easements over Special Uses Corridor

12.17 The Minister warrants that the Minister or his nominee acknowledges that the Special Uses Corridor will be burdened with easements for the provision of utility services (which are either constructed or to be constructed) to service the Development or adjoining land and warrants that the Minister or his nominee will accept a transfer of the Special Uses Corridor subject to those easements. Any easements for utility services to be constructed must be approved by the Minister, such approval not to be unreasonably withheld or delayed where the rights created by those easements do not materially interfere with the intended use of the Special Uses Corridor and, in the Minister's reasonable opinion, are reasonably required by the Joint Venture for the purposes of the Development or use of adjoining land or the Land.

Commonwealth indemnity

- 12.18 (a) Site contamination of the Land resulting from the prior munitions production and storage activities was progressively remediated by the Landowner from 1993 to 1997. Site audit statements have been issued under the provisions of the *Contaminated Land Management Act 1997* in relation to the Land. Copies of the site audit statements are included in the Stage 2 decontamination audit of the ADI St Marys Munition Factory, AGC Woodward Clyde (1999). The Commonwealth has issued a policy dated 19 May 1999 on the management of land affected by unexploded ordnance (which relates to land affected by prior munitions production and storage activity). The Landowner has commissioned the preparation of a remediation action plan and proposes to implement additional remediation works to achieve the objectives detailed in clause 15.6.
- (b) The Landowner must use its best endeavours to:
- (i) procure in favour of the Minister or his nominee an indemnity from the Commonwealth government in relation to the Regional Open Spaces in accordance with the Commonwealth policy dated 19 May 1999 on the management of land affected by unexploded ordnance (which relates to land affected by prior munitions production and storage activity); and
 - (ii) procure that indemnity before any part of the Regional Open Spaces is transferred to the Minister or his nominee; or
 - (iii) procure that indemnity as soon as possible after any part of the Regional Open Spaces is transferred to the Minister or his nominee where it has not been able to satisfy paragraph (ii).

13. Roads and Road Widening

- 13.1 If the Precinct Plan for the Eastern Precinct is approved, then as soon as practicable after such approval, the Landowner must prepare and register a plan of subdivision to create a separate lot or lots for the RW Land and then deliver to the RTA:
- (a) a form of transfer in respect of the land comprising the RW Land in favour of the RTA and specifying a consideration of \$1 executed by the Landowner and in registrable form except for acceptance by the RTA and marking by the Office of State Revenue; and

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(b) the certificate or certificates of title for the RW Land,

and must take any other necessary action (other than paying stamp duty and effecting registration of the transfer) to give effect to the transfer of the title to the RW Land to the RTA free of all encumbrances and affectations except as registered as at the date of this deed.

14. Agreement in relation to compulsory acquisition

14.1 In the event that the Landowner fails to comply with an obligation to transfer the Regional Park, the Residual RNE Land, either of the Regional Open Spaces, the RW Land, the Special Uses Corridor or any land which is required to be transferred under clause 16.21 or any one of them as required by this deed for whatever reason, including force majeure, then the Minister or any other Minister of the State or Authority nominated by the Minister may exercise powers to compulsorily acquire all or any of those areas.

14.2 The Parties agree that for the purposes of section 63 of the *Land Acquisition (Just Terms Compensation) Act 1991*, the amount of compensation which the Landowner is entitled to if the Regional Park, the Residual RNE Land, either of the Regional Open Spaces, the RW Land, the Special Uses Corridor or any land which is required to be transferred under clause 16.21 or any one of them (or any part of them) is acquired by compulsory process within 150 years after the date of this deed is \$1.00 for each of these areas.

15. Decontamination works

15.1 In this clause:

- (a) “**Existing Access Paths**” means the paths shown on the plan contained in Annexure C.
- (b) “**New Access Path**” means any paths to provide public access through the Eastern Precinct Regional Park which is not an Existing Access Path.
- (c) “**RP Statement**” means the Statement in Annexure D certifying that the Eastern Precinct Regional Park is suitable for use as a conservation reserve with restricted access by the public.
- (d) “**Statement**” means a site audit statement within the meaning of Part 4 of the *Contaminated Land Management Act 1997* and in accordance with Form 2 of the Regulations thereunder in the form set out in Annexure D .

Eastern Precinct Regional Park

15.2 Subject to appropriate consents being given for removal of any rare and threatened plant species and/or communities within those areas identified by the RP Statement to be remediated, the Landowner must prior to the transfer of the Regional Park, and subject to clause 15.3, carry out remedial works as identified as conditions in the RP Statement to render the Eastern Precinct Regional Park suitable for use as a conservation reserve with restricted access by the public to the Existing Access Paths and must use all reasonable endeavours to deliver to the NPW Minister written confirmation from an appropriately qualified site auditor that the conditions have been satisfied. The Minister warrants that conditions of the RP Statement which are to be continuously performed must, following transfer of the Regional Park to the NPW Minister, be complied with by the NPW Minister.

15.3 The Minister warrants that the NPW Minister acknowledges that the Landowner's responsibility for carrying out remedial works in respect of the access paths in the Eastern Precinct Regional

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Park is limited to the Existing Access Paths. If, prior to the commencement of the works under clause 15.2 for the Eastern Precinct Regional Park, the NPW Minister identifies that New Access Paths are to be constructed within the Eastern Precinct Regional Park, then the Minister warrants that the NPW Minister and the Landowner agree to consult with each other in good faith with the object of reaching agreement about the Landowner carrying out additional remedial works required to render the New Access Paths suitable for use as a conservation reserve with restricted public access on the basis that the NPW Minister is responsible for the costs of the remedial works in respect of the New Access Paths and the provision of a Statement for the New Access Paths or an extension of the RP Statement to cover the New Access Paths.

Special Uses Corridor

- 15.4 Subject to appropriate consents being given for removal of any rare and threatened plant species and/or communities, the Landowner must prior to the transfer of the Special Uses Corridor use all reasonable endeavours to procure delivery to the Minister of a Statement for the Special Uses Corridor. Conditions of the Statement which are to be continuously performed must, following the transfer of the Special Uses Corridor, be complied with by the Minister.
- 15.5 When carrying out any work required under this clause, the Landowner must consult with the Director-General of National Parks and Wildlife about the work and the manner in which it is to be undertaken and must abide by any reasonable directions of the Director-General of National Parks and Wildlife regarding the works to be undertaken. A direction of the Director-General of National Parks and Wildlife must not increase the scope of the Landowner's obligations under this clause 15 or relate to the means or manner in which the Landowner performs its obligations under this clause.
- 15.6 Notwithstanding the provisions of clauses 15.1 to 15.5, the Landowner has commissioned the preparation of a remediation action plan in relation to the Eastern Precinct Regional Park, Special Uses Corridor, the QEL Area and certain boundary anomalies identified in the plan forming Annexure E in order to achieve the following:
- (a) to ensure consistency between boundaries of the Regional Park, urban areas, the RNE Land and site audit statements relating to the Land;
 - (b) to ensure the site audit statement conditions reflect land use requirements;
 - (c) to provide for unfettered access to the Eastern Precinct Regional Park; and
 - (d) to remove the requirement for sampling for the QEL Area after final earthworks.
- 15.7 If the remediation action plan referred to in clause 15.6 is implemented and new Statements are issued, the provisions of clauses 15.1 to 15.5 will be modified to reflect the conditions of the new Statements

16. Transport

- 16.1 The Department in consultation with the RTA and the Joint Venture have investigated the demands which the Development may place on the State road network and how to improve public transport. The Parties have agreed that the works and contributions provided for in or anticipated by this clause 16 will address those demands and impacts as identified in the transport management study applying to the Development from time to time, resulting in an improved public transport outcome.

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- 16.2 Subject to clause 16.18(a)(ii), the RTA and the Joint Venture have agreed on the Eastern Precinct Road Works.
- 16.3 The Department in consultation with the RTA and the Joint Venture have agreed on the process for the assessment of the Balance Road Works which will be implemented in accordance with the transport management study applying to the Development from time to time.

Balance Road Works

- 16.4 The Department has commissioned a qualified transport consultant to undertake traffic modelling to reflect revised traffic and transport demand and impacts and prepare a report for a transport committee comprising representatives of the PlanningNSW, the Joint Venture, TransportNSW, the RTA, Blacktown Council and Penrith Council in relation to:
- (a) the upgrading of the local, regional and State road networks required as a result of the Development (the "**Required Works**");
 - (b) recommendations in relation to the Required Works;
 - (c) recommendations as to the estimated timing of the implementation of the Required Works which shall be consistent with the development of the relevant Precincts; and
 - (d) recommendations as to which of the parties referred to above should properly and reasonably be responsible for the estimated cost of the Required Works (or any part of the Required Works).
- 16.5 Subject to clause 16.7:
- (a) the Joint Venture will pay for that part of the Required Works which comprise transport infrastructure required within the Development; and
 - (b) the Required Works will satisfy the Performance Objectives and the EPS.
- 16.6 If, after receiving the report of the consultant referred to in clause 16.4, the parties referred to in clause 16.4 are unable to agree on:
- (a) the Required Works;
 - (b) which Party should properly and reasonably be responsible for the estimated cost of the Required Works (or any part of the Required Works); or
 - (c) any other recommendation made by the consultant in the report;
- they must negotiate in good faith to endeavour to reach agreement, having regard to:
- (d) the relevant provisions of the REP and the EPS;
 - (e) the transport management study applying to the Development from time to time;
 - (f) the impact of the Development;
 - (g) the impact of other developments; and
 - (h) the contributions by the Joint Venture to State and local roads and other traffic and transport initiatives.

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- 16.7 If agreement is reached by the parties referred to in clause 16.4 in relation to:
- (a) the Required Works;
 - (b) which Party should properly and reasonably be responsible for the estimated cost of the Required Works (or any part of the Required Works); and
 - (c) any other recommendation made by the consultant in the report;
- then:
- (d) that part of the Required Works which are agreed or determined to be the responsibility of the Joint Venture are the Balance Road Works; and
 - (e) the Parties will reduce to writing the agreement in relation to the Required Works, which will form an exhibit to and form part of this deed.
- 16.8 (a) The provisions of clauses 16.10 to 16.14 apply with respect to the Balance Road Works as if references in those clauses to:
- (i) the Eastern Precinct Road Works were references to the Balance Road Works; and
 - (ii) references to the Eastern Precinct were references to the timing of the Balance Road Works which is agreed by the parties referred to in clause 16.4.
- (b) Notwithstanding the determination of the Balance Road Works, the Parties acknowledge that the creation of a priority bus route and/or transitway to Penrith in association with development of the Western Precinct forms part of the transport performance objectives for the Western Precinct as identified in the EPS.

St Marys and Mt Druitt Bus Priority Works

16.9 Scope of Works

The works to be undertaken in respect of the St Marys and Mt Druitt bus priority routes are as follows:

- (a) construction of the bus priority works to Forrester Road from the Eastern Precinct to St Marys railway station described in Part A of Annexure G and generally as indicated on the plans in Part B of Annexure G ("**St Marys bus priority works**")
- (b) construction of the bus priority works to intersections between Forrester Road and the Mt Druitt rail station in accordance with the intersection upgrades shown in blue on the plans in Annexure H ("**Mt Druitt bus priority works**").

Obligations of Parties – St Marys and Mt Druitt Bus Priority Works

16.10 (a) Joint Venture

- (i) Provided the RTA has not given a notice under clause 16.17, the Joint Venture must at its cost construct the St Marys bus priority works and Mt Druitt bus priority works, including:
 - (A) the design;
 - (B) environmental impact assessment; and
 - (C) preparation, lodgment and prosecution of the planning approval.

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- (ii) The Joint Venture must arrange for a contract for the construction of these works to be entered into which provides for the commencement of construction no later than the later of:
 - (A) the day which is 1 year after the First Subdivisional Works Date for the Eastern Precinct; and
 - (B) the day which is 3 months after all required approvals for the works have been obtained from all relevant Authorities on terms and conditions which are reasonably acceptable to the Joint Venture.
- (b) **Minister**

The Minister must use reasonable endeavours (provided that the Minister is not obliged to pay money or otherwise provide compensation) to procure that the relevant Authority which owns or controls public land which is required for the Joint Venture to perform its obligations under this clause 16.10 will make that land available to the Joint Venture for that purpose.

Procedural Requirements for Approval and Construction of works

16.11 (a) **Development Approval**

The Joint Venture must at its cost prepare, lodge and prosecute on behalf of the RTA an application for any required planning approvals for the Eastern Precinct Road Works in accordance with the Act and the following provisions.

(b) **Design Standards to be provided by RTA**

Prior to commencing the preparation of design and engineering documentation to accompany the application for any required planning approval, the Joint Venture must request in writing from the RTA details of the standard of design and engineering documentation for the Eastern Precinct Road Works. The RTA will provide all the standards it requires the Joint Venture to comply with in carrying out the works within 60 days of the Joint Venture's written request, which standards must be consistent with the standards then adopted by the RTA for construction of similar works. If the RTA fails to provide the standards within this time, then the standards to be adopted by the Joint Venture must be consistent with standards then adopted by the RTA for construction of similar roads.

(c) **Preparation, Review and Approval of Application**

The Joint Venture must prepare the application for any required planning approvals and all associated documents and submit the application and documentation to the RTA for the review and approval of the RTA at least 90 days before it intends to submit the application to the consent or determining authority under the Act. The RTA will notify the Joint Venture within 60 days of receipt of the application of any matters which the RTA reasonably requires to be addressed in the documents. If the RTA so notifies the Joint Venture, the Joint Venture must address those issues in the application and then resubmit the application to the RTA for review and approval. RTA will notify the Joint Venture within 60 days of the Joint Venture resubmitting the application and documentation to the RTA whether or not it approves the application (acting reasonably) and what specific changes it requires in order to sign the application so as to allow the

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Joint Venture to lodge the application. Once the application and documentation has been agreed, the RTA must sign it.

(d) **Time for Making Application for Planning Approval**

The Joint Venture must lodge the application for any required planning approvals for the Eastern Precinct Road Works with the consent or determining authority no later than 90 days after lodging the Precinct Plan for the Eastern Precinct with the Relevant Council or within 90 days after the RTA has signed the application as provided in clause 16.11(c), whichever is the later.

Preparation, Review and Approval of Design for Construction of works

16.12 (a) **Approval of Design and Tender by RTA**

The Joint Venture must prepare any required design and engineering documentation for the Eastern Precinct Road Works and submit the documentation and proposed tender documents to the RTA for the review and approval of the RTA at least 60 days before it intends to call tenders for construction. The RTA will notify the Joint Venture within 60 days of receipt of the documents of any matters it reasonably requires to be addressed in the documents. The Joint Venture must comply with all reasonable requests notified to it by the RTA prior to the issue of the documents for the purpose of calling tenders. Despite the above, it is agreed by the Parties that the role of the RTA will not extend to ensuring the adequacy of the drawings and specifications prepared by the Joint Venture under this clause and the RTA will not have any responsibility in this regard.

(b) **Calling Tenders**

The Joint Venture must advertise and award a select tender for the construction of each stage of the Eastern Precinct Road Works which comprise the St Marys bus priority works and the Mt Druitt bus priority works in accordance with the documentation agreed under paragraph (a) and the tender and contract award procedures of the State at the time of tendering. The RTA must notify the Joint Venture of the then current tender and contract award procedures promptly following any request from the Joint Venture. The Joint Venture must provide to the RTA copies of all tenders received by the Joint Venture or, if agreed by the RTA, a schedule of the amounts quoted by each of the tenderers for the Eastern Precinct Road Works which comprise the St Marys bus priority works and the Mt Druitt bus priority works.

(c) **Acceptance of Tenders**

The Joint Venture may accept any tender submitted by a contractor for the Eastern Precinct Road Works which comprise the St Marys bus priority works and the Mt Druitt bus priority works.

Completion and Acceptance of Construction Works

16.13 (a) **Inspection of Work**

Prior to the practical completion of a stage of the construction of the Eastern Precinct Road Works which comprise the St Marys bus priority works and the Mt Druitt bus priority works, the RTA and the Joint Venture will jointly inspect the works for that stage. The RTA will promptly identify and notify to the Joint Venture any defects in the works within the scope of the construction contract so as to permit the Joint Venture to keep to its timetable for the stage as far as practicable.

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(b) **Rectification of Defects**

The Joint Venture must rectify or cause the contractor to rectify any defects within 12 months of practical completion of the Eastern Precinct Road Works which comprise the St Marys bus priority works and the Mt Druitt bus priority works.

(c) **Further Inspection of Works**

Prior to the completion of any defects liability period as provided for in the construction contract entered into under clause 16.12 for a practically completed stage, the RTA and the Joint Venture will again jointly inspect the works. The RTA will identify any remaining defects in the works within the scope of the construction contract entered into under clause 16.12.

(d) **Acceptance of Works**

When the Joint Venture has reasonably resolved all identified defects within the scope of the construction contract entered into under clause 16.12, the Joint Venture must notify the RTA of the final completion of the stage. The RTA will, within 60 days of the notification, advise the Joint Venture of whether it accepts the completed stage or requires further works to be done to resolve the identified defects. If the RTA fails to advise the Joint Venture within 60 days, then the Joint Venture is to be taken to have satisfied all its obligations in respect to that stage of the works and the RTA is taken to have accepted that stage of the works. If the RTA advises the Joint Venture that it requires further work to resolve the defects, the procedure in subclauses (b), (c) and (d) shall apply until the defects are resolved.

Access to Roads

16.14 The RTA warrants that the relevant Authority will give access to each classified road over which the RTA has control to the Joint Venture and its contractors, agents and servants (acting reasonably) for the purpose of constructing the Eastern Precinct Road Works.

Failure to Agree

16.15 If the RTA and the Joint Venture are unable to reach agreement on any issue raised by or resulting from clauses 16.9 to 16.14, a dispute will be taken to have arisen which must be resolved under clause 8.

16.16 If the dispute is referred to an expert under clause 8, the Parties agree the independent expert must be a qualified engineer appointed by the President of the Institution of Engineers (New South Wales) and the independent expert's decision will be conclusive and binding and the Parties must give effect to it.

Variation of Joint Venture Obligations by RTA

16.17 (a) **Notice not to undertake work**

The RTA may, within 28 days of the approval of the Precinct Plan for the Eastern Precinct, give notice in writing to the Joint Venture directing it not to undertake the construction of the Mt Druitt bus priority works.

(b) **Joint Venture Obligation on receipt of Notice**

If the Joint Venture receives a notice under paragraph (a) not to construct the Mt Druitt bus priority works, it must pay the sum of \$476,000 to the RTA on or before that day which is 1 year after the First Subdivisional Works Date for the Eastern Precinct.

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(c) **Use of Monies Paid to RTA**

The RTA warrants that any money paid to the RTA under clause 16.17(b) will be spent by the RTA or the relevant Authority on the provision of public transport facilities or road improvements directly related to achieving the Performance Objectives.

- (d) The RTA may, instead of receiving the monies payable by the Joint Venture under clause 16.17(b), direct the Joint Venture to expend those monies in or towards the provision of works specified by the RTA.

Miscellaneous Transport Contributions by Joint Venture

16.18 (a) **Mamre Road Intersection**

- (i) Subject to paragraph (ii), the Joint Venture must pay the sum of \$250,000 to the RTA as its contribution to the upgrade of the Mamre Road and Great Western Highway intersection on the day which is 1 year after the First Subdivisional Works Date for the Eastern Precinct.
- (ii) The Joint Venture and the RTA agree that the contribution referred to in paragraph (i) may be reassessed as part of the assessment of the Balance Road Works under clauses 16.4 to 16.8.

(b) **First Public Transport Contribution**

- (i) The Joint Venture must pay to the RTA the sum of \$150,000 as its contribution to the provision of public transport promotion, which amount is to be paid to the RTA on or before the day which is 2 years after the First Subdivisional Works Date for the Eastern Precinct.
- (ii) The Joint Venture agrees that the sum of \$150,000 may, with the consent of the RTA, be used to fund works in kind including the subsidisation of the cost of provision of an initial interim bus service to the Land prior to the commencement of a bus service operated under the terms of an agreement with the Transport Minister.

(c) **Second Public Transport Contribution**

- (i) On or before the date being 2 years after the First Subdivisional Works Date for the Western Precinct, the Joint Venture must pay to the RTA the sum of \$150,000 as its further contribution to the provision of public transport promotion.
- (ii) The \$150,000 may be spent by the Joint Venture on works in kind such as subsidies for the initial bus service to the Western Precinct with the consent of the RTA.

(d) **Feasibility Study – Bus Only Overpass**

- (i) The Minister warrants:
- (A) that the Department will commission an investigation in consultation with the Joint Venture, the RTA, relevant State agencies and the Councils as to the feasibility and need for a signalised single lane bus only overpass adjacent to the existing Glossop Street bridge to connect the proposed bus services to the existing bus/rail interchange south of the rail line and the St Marys business district as shown on Annexure I; and

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- (B) that the investigation will be completed as soon as practicable after the Commencement Date, but in any event will be completed before the approval of the Precinct Plan for the Eastern Precinct.
 - (ii) The Joint Venture must pay the reasonable cost of the investigation.
 - (iii) Within 60 days of receipt of the study on the investigation, the RTA may (acting reasonably) decide to proceed with the construction of the overpass. If the RTA decides to construct the overpass, then when the First Subdivisional Works Date for the Eastern Precinct has occurred, the Joint Venture must pay to the RTA 33% of the cost of:
 - (A) the design;
 - (B) environmental impact assessment;
 - (C) preparation, lodgement and prosecution of the planning approval;
 - (D) acquisition of private land; and
 - (E) construction,of the overpass which is to be paid within 28 days of the later of the date on which the RTA incurs the total of those costs or the First Subdivisional Works Date for the Eastern Precinct.
 - (iv) If the RTA determines not to proceed with the bus overpass, then the Joint Venture must pay to the RTA \$430,000 within 90 days of the later of the RTA's determination or the First Subdivisional Works Date for the Eastern Precinct. The RTA will spend this money or in the alternative, the Joint Venture acknowledges that the RTA may direct the Joint Venture to spend this money, on public transport or road improvements directly related to the achievement of the Performance Objectives.
- (e) **Contribution to Construction of External Cycleways**
- The Joint Venture must pay to the RTA the sum of \$430,000 as its contribution to the construction of cycleways external to the Land in 3 payments as follows:
- (i) \$250,000 within 3 years after the First Subdivisional Works Date for the Eastern Precinct;
 - (ii) \$100,000 within 3 years after the First Subdivisional Works Date for the Western Precinct; and
 - (iii) \$80,000 on or before the first anniversary of the payment in paragraph (ii) above.

General Obligations of Joint Venture

16.19 (a) **Compliance with Requirements**

The Joint Venture must carry out the construction works and traffic management works to be undertaken by it under this clause 16 in accordance with the following:

- (i) having due regard to the safety and rights of the public;
- (ii) the requirements of each Authority which has a right to impose a requirement or whose consent or approval is required with respect to the carrying out of any works under this clause 16;

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- (iii) only after giving at least 24 hours notice to the RTA before commencing any works under this clause 16;
- (iv) without interrupting or otherwise disturbing the traffic flow on any road without first obtaining the written consent of the RTA;
- (v) by first obtaining the approval of the RTA to any arrangements to modify traffic flow, divert or control traffic for the purposes of any construction work;
- (vi) signposting any works to ensure the safety of vehicular traffic and pedestrian movement and guidance. Signposting must not contain advertising material;
- (vii) permitting the RTA or any person authorised by the RTA to enter and inspect any construction work carried out or being carried out by the Joint Venture under this clause 16; and
- (viii) provide all information and material relevant to the performance of its obligations under this clause if requested in writing by the RTA, including information relating to traffic control, records and tests and services results for any construction works and any other relevant information held or received from time to time.

(b) **Remedial Protective and Urgent Repair**

The Joint Venture must, while carrying out construction works and traffic management works to be undertaken by it under this clause 16 and immediately on receipt of a notice from the RTA, carry out such reasonable remedial protective repair or other urgent work as may be necessary to prevent loss or damage to those construction works or adjacent property, or to prevent personal injury or death by or as a result of construction by the Joint Venture or its contractors.

(c) **Failure to Perform**

If the Joint Venture is unwilling or unable to perform the urgent work required in the notice issued under clause 16.19(b), then the RTA may do the urgent work and the cost of that work will be a debt due to the RTA.

(d) **Indemnity**

The Joint Venture is to indemnify the RTA from and against all actions, claims, costs, expenses and damages (including the cost of defending or settling any action or claim) in respect of loss of or damage to property (including the RTA's property) or personal injury (including death) to any person to the extent that the actions, claims, costs, expenses and damages arise out of or by reason of anything done or omitted intentionally or negligently by the Joint Venture and in respect of or flowing from any breach of this clause 16. For the avoidance of doubt, the Joint Venturer's liability under this paragraph (d) is reduced to the extent that the actions, claims, costs, expenses and damages arise out of or by reason of anything done or omitted intentionally or negligently by a person other than the Joint Venture.

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(e) **Insurance**

The Joint Venture must effect and maintain, during the currency of its undertaking any obligation under this clause 16, the following insurances in relation to the works for which it is responsible under this clause:

- (i) public liability (\$20 million), including subcontractors, naming the RTA as an additional named insured; and
- (ii) contract works to the value of the works for which the Joint Venture is responsible under this clause 16, including subcontractors, naming the RTA as an additional named insured; and
- (iii) workers compensation,

and the Joint Venture must provide proof of the insurance required under this subclause at any time upon request.

(f) **Provision of proceedings**

If the RTA receives or is served with any communication, notice, summons, complaint or any legal process from any person or entity in respect of which an indemnity is provided to the RTA by the Joint Venture under paragraph (d), then the RTA must promptly provide to the Joint Venture a copy of any such communication, notice, summons, complaint or legal process and all particulars of the same and full details of all the circumstances and events pertaining thereto. The RTA must not consent to any matter or thing contained or referred to in any such document or communication nor take any action in relation thereto without first obtaining the written consent of the Joint Venture.

(g) **Appearance in proceedings**

The Joint Venture, by its solicitors or counsel, shall be entitled at its cost to appear in and have the conduct of every such matter and proceedings referred to in paragraph (f) in the name and on behalf of the RTA and notwithstanding that the RTA may also appear in any such matter or proceedings. The Joint Venture may at its cost defend or prosecute and appeal against any decision of any court or other Authority in such manner as the Joint Venture in its discretion may think fit.

RTA as Proponent for Planning Approvals

16.20 The RTA will be the applicant or proponent for all planning approvals required under the Act for the Eastern Precinct Road Works and the Balance Road Works. This obligation does not require the RTA to prepare, lodge and prosecute an application for planning approval unless such an obligation is specifically contained in this clause.

Transit Corridor

- 16.21 (a) The Landowner owns the land between Christie Street and the Great Western Railway shown generally on Annexure K as the **Existing Rail Corridor**.
- (b) The RTA wishes to reserve the opportunity to develop a rapid bus transitway in the location shown generally on Annexure K as the **Proposed Transit Corridor**.
- (c) The Landowner is proposing to sell the Existing Rail Corridor and to acquire the Proposed Transit Corridor.

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- (d) If the Landowner acquires the Proposed Transit Corridor, it must transfer the Proposed Transit Corridor to the RTA for a consideration of \$1.
- (e) If the Landowner does not acquire the Proposed Transit Corridor by the date of lodgement with the Relevant Council by the Joint Venture of the Precinct Plan for the Central Precinct, it must transfer an equivalent 12 metre wide strip of land within the Existing Rail Corridor to the RTA for a consideration of \$1.
- (f) The Landowner does not own the land shaded on Annexure K and is not required to acquire it or to transfer it to the RTA.

17. Affordable Housing

Introduction

- 17.1 Subject to the provisions of this clause 17, the Joint Venture has agreed to provide to the Minister 3% of all Residential Allotments developed for the purpose of providing Affordable Housing on the terms set out in this clause 17.

First contribution when 500 Residential Allotments approved

- 17.2 If and when development consent (or consents) is (or are) obtained from the relevant consent authority to permit subdivision of any part of the Land into parcels which include (or are deemed under clause 17.15 to include) not less than, in aggregate, 500 or more Residential Allotments, clause 17.5 will come into effect.

Subsequent contributions when plans of subdivision registered

- 17.3 If development consent for any subdivision of the Land subsequent to the consent or consents referred to in clause 17.2 (including, if those consents permitted more than 500 Residential Allotments, the excess above 500) is obtained from the relevant consent authority, the Minister and the Joint Venture will liaise to determine appropriate lots in that subdivision, which meet the criteria in clause 17.14, with a view to agreeing the Residential Allotments to be offered to the Minister under clause 17.5. If the Parties cannot agree on which Residential Allotments are to be offered to the Minister or his nominee within 60 days after the date of development consent for that subdivision, then the issue of which Residential Allotments are to be transferred to the Minister or his nominee must be referred for determination under clause 8.
- 17.4 Once the Residential Allotments to be offered to the Minister or his nominee have been agreed or determined under clause 17.3, the Landowner and the Joint Venture may not make any change to the draft plan of subdivision:
- (a) which reduces the area of the relevant Residential Allotments by more than 5%; or
 - (b) makes any material change to the relevant subdivision which could have an adverse impact on the relevant Residential Allotments,
- without the prior consent of the Minister.
- 17.5 Once the subdivision certificate issues for the subdivision referred to in clause 17.3, the Joint Venture must offer to transfer to the Minister or his nominee, or procure the transfer to the Minister or his nominee, a number of Residential Allotments equivalent to the Relevant Percentage of the Residential Allotments in (or deemed by clause 17.15 to be in) that subdivision (being those Residential Allotments agreed or determined under clause 17.3) to use for Affordable Housing and which must be located within that subdivision. For the avoidance of doubt, by completion of each Precinct (subject to an alternative arrangement reached under

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clause 17.23) the Joint Venture must have provided 3% of all Residential Allotments developed for the purpose of providing Affordable Housing.

- 17.6 The offer referred to in clause 17.5 must clearly indicate on a copy of the relevant plan or plans of subdivision which Residential Allotments are being offered to the Minister or his nominee.
- 17.7 Any transfer to the Minister or his nominee under clause 17.5 must be for no monetary consideration, free of all encumbrances and affectations (other than normal inter allotment easements for drainage, right of way or services and restrictions on use which apply consistently to Residential Allotments in the relevant subdivision).
- 17.8 For the purposes of calculating the number of lots to be offered under clause 17.5:
- (a) where the Relevant Percentage of Residential Allotments for the purposes of clause 17.5 is not a whole number of Residential Allotments, the number of Residential Allotments to be offered under clause 17.5 will be the next lowest whole number with the fraction being carried forward to be satisfied from the next subdivision of the Land (if any) for which development consent is obtained;
 - (b) if, by the operation of clause 17.15, the number of Residential Allotments to be offered to the Minister under clause 17.5 exceeds 10% of the total number of Residential Allotments in that subdivision (ignoring for this purpose any deeming under clause 17.15), then the number of Residential Allotments to be offered under clause 17.5 will be the largest whole number less than 10% of the total number of Residential Allotments approved under that consent for subdivision and the excess will also be carried forward to be satisfied from the next subdivision of the Land (if any) for which development consent is obtained (or if the 10% threshold is again exceeded, carried forward until satisfied); and
 - (c) when the Development is nearing completion and it is no longer possible to carry forward the relevant fraction to be satisfied from the next subdivision, a monetary contribution in lieu of the transfer of a Residential Allotment must be made to the Minister being the amount \$A in the following formula:

$$\text{\$A} = \text{\$B} \times \text{C}$$

Where

\\$A = the relevant amount payable to the Minister in lieu of transfer of a Residential Allotment under clause 17.5;

\\$B = the average dollar value of the last 10 Residential Allotments transferred to the Minister or his nominee under clause 17.5 as agreed by the Parties, or failing agreement, determined in accordance with clause 8; and

C = the relevant fraction carried forward in accordance with the procedure in this clause 17.8.

Acceptance of offer and payment for rates and taxes

- 17.9 The Joint Venture acknowledges that the Minister may accept an offer from the Joint Venture under clause 17.5 (either as to all the Residential Allotments or some only of the Residential Allotments in the offer) by notice in writing to the Joint Venture within the period specified in clause 17.13. The Minister's notice may specify that:

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- (a) the Minister requires that certain nominated Residential Allotments in the offer be transferred to the Minister or his nominee in accordance with clause 17.10; but that
 - (b) the Minister would prefer to receive a monetary contribution in lieu of the transfer of certain other nominated Residential Allotments in the offer.
- 17.10 Subject to clause 17.11, as soon as practicable after acceptance of the offer, the Joint Venture must procure the transfer of the nominated Residential Allotments to the Minister or his nominee in accordance with the relevant offer and, in respect of each of the Residential Allotments transferred, the Minister warrants that the Minister will make a payment to the Joint Venture within 90 days after the later of the date of the relevant transfer and the date that the relevant payment is able to be calculated, of a sum of money equal to the rates, water, sewerage, drainage service and usage charges, land tax and all other periodic outgoings (if any) paid by the Landowner in respect of the relevant Residential Allotments for the period commencing on the later of one month after:
- (a) the date on which the Joint Venture made the offer to transfer or procure the transfer of the relevant Residential Allotments to the Minister or his nominee; and
 - (b) the date on which the Joint Venture notifies the Minister that, as a practical matter, it holds the certificate of title for the relevant subdivided Residential Allotments and is otherwise ready and able to transfer the Residential Allotments to the Minister or his nominee.
- 17.11 If the Minister specifies under clause 17.9 that he would prefer to take some or all of the value of the Residential Allotment(s) in the offer by way of a monetary contribution in lieu of taking a transfer of relevant Residential Allotment(s), then the Minister and the Joint Venture will negotiate in good faith to agree an appropriate value to be attributed to each relevant Residential Allotment and if the Minister and the Joint Venture fail to agree within 28 days after the date of the Minister's notice under clause 17.9, then the value must be determined under clause 8. Once the value is agreed or determined, the Joint Venture must pay this amount to the Minister and upon payment, the Parties' obligations under clause 17.9 will be deemed to be satisfied in respect of each Residential Allotment to which that payment related.
- 17.12 For the purpose of calculating the payment (if any) to be made for land tax under clause 17.10, land tax for the year current at the date of transfer of the relevant Residential Allotment must be adjusted:
- (a) using the taxable value of the Residential Allotment by itself and that tax scale which is applicable to the Residential Allotment and the Landowner that gives the least amount; and
 - (b) if the Residential Allotment has no separate taxable value, by calculating its taxable value on a proportional area basis,
- and if any other amount forming part of the payment to be made under clause 17.10 relates partly to the relevant Residential Allotment and partly to other parts of the Land, the amount must be adjusted on a proportional area basis.
- 17.13 If the Minister does not accept an offer made by the Joint Venture under clause 17.5 within 12 months after the relevant offer was made, the Landowner or the Joint Venture may at any time thereafter serve notice on the Minister that unless he exercises his right to accept that offer

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within a period of 1 month after service of the notice, the offer will expire. If the Minister fails to accept that offer within that period of 1 month, the Joint Venture or the Landowner may dispose of the relevant lot or lots the subject of that offer as it sees fit without further reference to the Minister and the Parties' obligations under clause 17.5 will be deemed to be satisfied in respect of each Residential Allotment to which the offer applies.

Characteristics of Residential Allotments to be transferred to the Minister

17.14 The Residential Allotments offered to the Minister under clause 17.5 must:

- (a) so far as is possible be evenly scattered throughout the relevant subdivision and be located so that they are also evenly scattered with respect to any Affordable Housing in adjoining subdivisions;
- (b) be similar in access, shape, size, affectations and encumbrances as other Residential Allotments in the relevant subdivision of the Land;
- (c) have a range of lot sizes and values commensurate with the range of lot sizes provided in the relevant subdivision of the Land; and
- (d) have connection to available services (including sewer, stormwater, potable water, electricity, telephone and gas, if gas is to be supplied) to the same extent and standard as surrounding Residential Allotments.

Super-lots

17.15 If development consent is obtained to permit subdivision of any part of the Land into one or more Super-lots, for the purposes of clause 17.5 each relevant Super-lot will be deemed to constitute a certain number of Residential Allotments calculated in accordance with the following formula (and that number may be a fractional number):

$$\text{Number of Residential Allotments} = \frac{a}{b}$$

where:

a = the area of the relevant Super-lot

b = the lower of 400 square metres or the average area of the Residential Allotments created as part of the Land developed for residential purposes up to and including the relevant subdivision of which the relevant Super-lot forms a part.

17.16 If the Joint Venture has certified to the Minister that a lot (which but for that certification would have been a Super-lot) is a Residential Allotment, but subsequently the Landowner or the Joint Venture obtains development consent to subdivide that lot into smaller Residential Allotments, that lot will be treated as a Super-lot for the purposes of calculating the number of Residential Allotments to be offered to the Minister under clause 17.5. For the avoidance of doubt, a subdivision of one of these lots by a purchaser (who is not a Related Entity to either participant in the Joint Venture or the Landowner) from the Landowner does not create any further liability in the Joint Venture under clause 17.5.

Use for “Affordable Housing”

17.17 Residential Allotments transferred to the Minister under this clause 17 must be used for Affordable Housing. However a reference to using a lot or lots for Affordable Housing will not preclude the Minister from selling the relevant lot or lots to use the proceeds for Affordable

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Housing within the Development, provided that the Minister warrants that the Minister will first approach the Joint Venture to see if the Joint Venture would be interested in purchasing the relevant lot or lots and what price they might be prepared to offer.

Mortgage

- 17.18 At any time after development consent is obtained to permit subdivision of any part of the Land into parcels which include, in the aggregate, 500 Residential Allotments, the Minister may request that the Landowner give to the Minister a first mortgage to secure compliance with the obligations of the Landowner and the Joint Venture under this clause 17 in the form of the mortgage attached as Annexure M ("**Mortgage**"). The Landowner must grant the Mortgage as soon as practicable after that request.
- 17.19 The Mortgage must:
- (a) secure the obligations of the Landowner and the Joint Venture under this clause 17; and
 - (b) be secured against a part of the Land ("**Mortgaged Land**") selected by the Landowner as being one of the last parts of the Land which will be developed having an aggregate market value not less than \$12,000,000 (indexed in accordance with clause 1.15 to the date on which the Mortgage is granted) as agreed by the Parties or failing agreement, certified by a qualified valuer appointed by the Landowner. If the Landowner fails to make a selection of an appropriate part of the Land under this clause within 28 days after the date that the Minister makes the relevant request under clause 17.18 requiring the Mortgage, the Minister may make the selection of the appropriate part of the Land under this clause.
- 17.20 If the Mortgage is required by the Minister, and if the Landowner or the Joint Venture wish to develop the Mortgaged Land, the Minister must:
- (a) as mortgagee, promptly consent to the registration of a plan or plans of subdivision of the Mortgaged Land; and
 - (b) permit one or more partial discharges of the Mortgage in respect of subdivided lots within the Mortgaged Land which are required for sale to third parties, provided that the Minister is satisfied, in his absolute discretion, that the security remaining after each proposed partial discharge, is sufficient to secure the compliance by the Landowner and the Joint Venture with their obligations under this clause 17.
- 17.21 The Minister must pay any stamp duty and registration fees payable in relation to the Mortgage.
- 17.22 The Landowner agrees that the Minister may, at any time after making the request referred to in clause 17.18, lodge a caveat on the title to the Land or part of the Land nominated by the Landowner that satisfies the value test in clause 17.19(b) to protect its rights under this clause 17, but must permit registration of the Mortgage and must withdraw the caveat once the Mortgage is registered. The Minister, as caveator, must consent to the registration of any dealing in connection with the Development which is not inconsistent with the Minister being able to require a first registered mortgage over the Mortgaged Land.

Alternatives to Residential Allotments

- 17.23 In lieu of offering to transfer to the Minister or his nominee some or all of the Residential Allotments, the Joint Venture may offer to transfer to the Minister or his nominee a lesser number of already constructed residential accommodation and the Minister will, in good faith, consider that offer. If the Minister does not communicate his acceptance of that offer to the Joint Venture

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within 60 days of the date of the Joint Venture's offer, the Minister will be deemed to have refused the offer.

18. Employment Development Strategy

Background

- 18.1 A Performance Objective of the REP is the creation of employment opportunities for residents within the Development and the surrounding region.
- 18.2 The Joint Venture has undertaken studies of demands which will be created for employment as a result of the Development and the means of attracting business and industry to locate within the Development. The studies have formed the basis for predictions of the level of employment that may be created over the life of the Development and recognise:
- (a) the uncertainty of attracting new employment generating business and industry; and
 - (b) the time it may take to "**start up**" business and industry.
- 18.3 On this basis, the Joint Venture's obligation has been expressed to be to prepare and use all reasonable endeavours to implement an Employment Development Strategy ("**EDS**") directed at the creation of employment for the Land, it being acknowledged that the mere increase of resident population created by the Development will, of itself, create employment opportunities in the surrounding region in such industries as health, education, administration, transport, retail and service.

Joint Venture Obligations

- 18.4 Before the Joint Venture submits the Precinct Plan for the Eastern Precinct, it must prepare an EDS which:
- (a) examines current demographic and labour force trends to identify employment requirements that will be generated by the Development;
 - (b) estimates opportunities and constraints of the Land for achieving the employment objectives such as location, accessibility, exposure and competing land which is likely to generate employment;
 - (c) outlines the strategies for achieving the Performance Objectives relating to employment and business development, such as marketing and support services for home-based employment;
 - (d) identifies proposed employment land uses for the Eastern Precinct, and where possible for future Precincts;
 - (e) assesses employment opportunities globally over the Land; and
 - (f) integrates initiatives and strategies adopted by the Councils and other local agencies for employment generation.
- 18.5 Before submitting the EDS with the Precinct Plan for the Eastern Precinct, the Joint Venture must submit the EDS to the EDS Committee, which committee must, within 42 days of submission, review the EDS and advise the Joint Venture of any material changes it considers should be made to the EDS. The Joint Venture may if it considers appropriate (acting reasonably) incorporate those changes into the EDS. If the EDS Committee does not advise the Joint Venture of any changes it considers should be made to the EDS within this period, the EDS Committee will be deemed to consider that no changes are required to be made to the EDS.

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- 18.6 The Joint Venture must submit to the Relevant Council with the Precinct Plan for the Eastern Precinct the EDS with those changes, if any, recommended by the EDS Committee and adopted by the Joint Venture (if any).
- 18.7 Following the First Subdivisional Works Date for the Eastern Precinct, the Joint Venture must use all reasonable endeavours to implement the strategies in the EDS.
- 18.8 On every anniversary of the First Subdivisional Works Date for the Eastern Precinct, the Joint Venture must in its report to the Minister referred to in clause 20.3 give particulars of the extent to which the Joint Venture has implemented the EDS and achieved the objectives stated in it.
- 18.9 No later than every three years after the first anniversary of the First Subdivisional Works Date for the Eastern Precinct, the Joint Venture must prepare and submit to the EDS Committee a review of the EDS which:
- (a) reviews demographic and labour force trends to determine if the employment requirements generated by the Development have changed;
 - (b) identifies the number of new full-time equivalent jobs that have been created on the Land;
 - (c) determines whether employment on the Land is being generated at a satisfactory rate;
 - (d) identifies new market and policy trends in employment and business development at a State Government and local government level, and assesses how they will affect job creation efforts on the Land;
 - (e) has regard to transport planning and infrastructure provision issues;
 - (f) outlines any proposed amendments to strategies in the EDS;
 - (g) identifies reasons for findings (if any) that the target employment numbers have not been reached; and
 - (h) identifies measures to overcome any shortfall in employment creation.
- 18.10 The EDS Committee must within 42 days of the receipt by it of a review of the EDS from the Joint Venture advise the Joint Venture of any material changes it considers (acting reasonably) should be made to the EDS. The Joint Venture may if it considers appropriate incorporate those changes in the EDS. If the EDS Committee does not advise the Joint Venture of any changes it considers should be made to the EDS within this period, the EDS Committee will be deemed to consider that no changes are required to be made to the EDS.

EDS Committee

- 18.11 The Minister must establish the EDS Committee as soon as reasonably practicable after receipt of advice in writing from the Joint Venture that it anticipates completion of the EDS, but in any event no later than 60 days after receipt of a request received after the Commencement Date.
- 18.12 The EDS Committee is to comprise representatives of the Councils, the Department, the Department of State and Regional Development, the Premier's Department and any Commonwealth Government organisation considered relevant by the Minister.
- 18.13 The EDS Committee's primary function is to consider the EDS and subsequent reviews undertaken by the Joint Venture as required by clause 18.9 and to advise the Joint Venture on measures which might be taken to overcome any shortfall in employment creation based on targets identified in the EDS not being achieved.

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18.14 The role of the EDS Committee is advisory and not directory.

Bulk servicing

18.15 The Joint Venture will ensure that trunk infrastructure and headworks for water, sewerage and drainage are available to enable the development of the land zoned for employment. This is regardless of whether the land actually is developed. Land will be "**bulk serviced**" so that it is available for development, at a rate not less than the commensurate rate of development of the areas zoned Urban in the REP.

18.16 Notwithstanding the previous provisions of this clause 18, the Minister and the Joint Venture agree that:

- (a) they may agree on alternative timeframes to those referred to in this clause 18 provided that the alternative timeframes comply with the REP and the EPS; and
- (b) if they do so agree, that agreement will be documented in exchange of correspondence between the Joint Venture and a duly authorised representative of the Department.

19. Community Environment Program

19.1 The Joint Venture must, at its own cost, inform and provide on-going advice to all purchasers of Residential Allotments of the measures that can be taken by householders to promote ecologically sustainable residential living.

19.2 The information and advice must promote:

- (a) energy efficiency, waste reduction and management;
- (b) other measures to reduce the impact of residential living on biodiversity; and
- (c) alternatives to car travel.

20. Reporting and Monitoring

20.1 Clause 7(2) of the REP requires the Minister to consider the matters set out in subclauses (a), (b) and (c) before making a declaration under Clause 7(1) of the REP.

20.2 In order to permit the Minister to consider the matters in subclauses (b) and (c), the Minister requires the Joint Venture to make and deliver regular reports to the Minister about those matters.

20.3 Accordingly, the Joint Venture must, at its cost, deliver to the Minister a report on the following occasions:

- (a) when requested by the Minister prior to the Minister releasing a second or subsequent Release Area;
- (b) within 28 days of the Joint Venture lodging a draft Precinct Plan with a Council for adoption as envisaged by clause 12(1) of the REP;
- (c) within 28 days of the day upon which the plan of subdivision which subdivides any part of the Land into parcels which include in the aggregate 2,000 Residential Allotments is registered; and
- (d) on every second anniversary of the due date of the event referred to in clause 20.3(c).

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- 20.4 The report referred to in clause 20.3 must be in the form and contain the information as agreed between the Minister and the Joint Venture and failing agreement as determined by the Minister (acting reasonably).
- 20.5 Within 180 days of the Minister declaring the Eastern Precinct a Release Area and before the Joint Venture lodges a draft Precinct Plan with the Relevant Council for that Precinct, the Joint Venture must deliver to the Minister a draft report for consideration by the Minister.
- 20.6 Within 30 days of receipt by the Minister of the draft report, the Minister must advise the Joint Venture of any changes he requires to the report. For the purpose of reaching agreement on the report, the Minister and the Joint Venture must confer with a view to reaching agreement on the final form of the report. If the Joint Venture and the Minister are unable to reach agreement on the form and content of the report, the Minister must make a determination as envisaged by clause 20.4 no later than the date upon which the Joint Venture notifies the Minister that it intends to lodge the draft Precinct Plan for the Eastern Precinct.
- 20.7 Prior to the Joint Venture submitting the report to the Minister, the Joint Venture must consult with the Councils about the proposed form and contents of the report and the Joint Venture must, when delivering the draft to the Minister under clause 20.5, inform the Minister of the outcome of those consultations. The Minister may also consult with the Councils about the report.
- 20.8 The Minister and the Joint Venture may at any time and from time to time agree to vary the form and contents of the report.
- 20.9 For the purpose of the Parties reaching agreement on the form and contents of the report, it is agreed that the report is to:
- (a) contain all key performance commitments and objectives in the REP or this deed which the Development and all of its major components are to satisfy ("**the objectives**");
 - (b) contain the performance standards and criteria as set out in this deed or as agreed with the relevant agency from time to time for the performance of the objectives;
 - (c) contain information to establish the extent to which the objectives have been achieved or satisfied;
 - (d) ensure that the most cost effective method of providing the relevant information to the Minister is adopted and that no unreasonable cost burdens are imposed on the Joint Venture in making the report;
 - (e) require only relevant information and reasonable levels of detailed information to be provided;
 - (f) be integrated so far as possible with any other reporting regimes;
 - (g) minimise duplication of reporting by the Joint Venture to the extent that all reporting to agencies of the State Government about the achievement and satisfaction of the objectives is contained within the report;
 - (h) be a single document;
 - (i) allow full transparency in respect of the matters included in the report; and
 - (j) be easy to use.

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21. **Miscellaneous**

The Joint Venture must ensure that the Development incorporates water use minimisation measures including:

- (a) the installation of rainwater tanks for dwelling-houses constructed on allotments of land having an area exceeding 400 square metres;
- (b) the limitation of maximum water pressure through managing system zonings (pressure zoning), having regard to the operating requirements of Sydney Water Corporation;
- (c) the promotion of the use of low water demand fixtures in all dwellings and other buildings where appropriate;
- (d) investigating and, where reasonably ecologically practicable, constructing best practice and economically sustainable measures for the re-use of stormwater for irrigation of open space areas;
- (e) promotion of effluent re-use from the St Marys Sewer Treatment Plant within the Dunheved and Ropes Creek Precinct Employment Zones, subject to an assessment of salinity impacts; and
- (f) the use of reasonable measures available at the time the relevant Development of the Land is carried out.

22. **State Parties' legal costs**

The Joint Venture must make a contribution to the State Parties' legal costs in the agreed amount of \$155,000 (inclusive of GST) payable within 30 days after receipt of a Tax Invoice addressed to Maryland Development Company Pty Limited (ABN 45 069 368 896).

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**PART 3 - The rights and obligations of the Councils and the Joint
Venture**

To be agreed between the Joint Venture and the Relevant Councils

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PART 4 - Guarantee

23. Guarantee and Indemnity by LLC

Guaranteed Party

23.1 In this clause:

“**Guaranteed Party**” means the State Party.

“**Guaranteed Obligations**” means all agreements, conditions, covenants, provisions, obligations and liabilities expressed or implied on the part of the Party Liable to be performed, observed or complied with under Part 2 of this deed in favour of the Guaranteed Party as varied in writing from time to time by the relevant Parties.

“**Guarantor**” means LLC in respect of any Guaranteed Obligations of LLD.

“**Party Liable**” means LLD in its capacity as one of the persons comprising, and having a several half interest in, the Joint Venture and being liable severally for a one half share of the obligations, liabilities and responsibilities of the Joint Venture under this deed to the extent the Joint Venture is liable to comply with or satisfy a Guaranteed Obligation under this deed.

Guarantee

23.2 The Guarantor irrevocably guarantees to the Guaranteed Party the due and punctual performance and observance by the Party Liable of the Guaranteed Obligations.

23.3 Deleted.

Indemnity

23.4 The Guarantor irrevocably indemnifies the Guaranteed Party for all damages (including costs and expenses of enforcing the Guarantor’s obligations under this clause 23) which it incurs or suffers because the Party Liable fails to duly and punctually perform and observe the Guaranteed Obligations, provided that the liability of the Guarantor under this clause 23.4 is (subject to clause 23.12) limited to the maximum amount of damages for which the Party Liable may become liable to the Guaranteed Party in respect of the Guaranteed Obligations, assuming that the Party Liable remains duly incorporated at all relevant times and assuming that the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and on the basis that the Guaranteed Party has a duty to mitigate damages to the extent (if any) that it has such a duty to mitigate damages to the Party Liable.

23.5 The indemnity in clause 23.4 includes any damages (including costs and expenses of enforcing the Guarantor’s obligations under this clause 23) which the Guaranteed Party may suffer because:

- (a) the liability to perform or observe the Guaranteed Obligations is unenforceable in whole or in part as a result of a lack of capacity, power or authority or the improper exercise of a power or authority; or
- (b) the Guaranteed Obligations are rescinded or terminated by the Guaranteed Party for any reason, but only to the extent that the Party Liable remains liable for or in connection with the Guaranteed Obligations in such circumstances; or

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- (c) the Party Liable disregards an order for specific performance of the Guaranteed Obligations; or
- (d) an Insolvency Event occurs in respect of the Party Liable; or
- (e) the Guaranteed Obligations are not or have never been enforceable against the Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever, including any transaction relating to the Guaranteed Obligations being void, voidable or unenforceable and whether or not the Guaranteed Party knew or should have known anything about that transaction,

provided that the liability of the Guarantor under this clause 23.5 is (subject to clause 23.12) limited to the maximum amount for which the Party Liable may become liable to the Guaranteed Party in respect of the Guaranteed Obligations, assuming that the Party Liable remains duly incorporated at all relevant times and assuming that the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and on the basis that the Guaranteed Party has a duty to mitigate damages to the extent (if any) that it has such a duty to mitigate damages to the Party Liable.

23.6 Deleted.

Extent of Guarantee and Indemnity

- 23.7 (a) The guarantee provided in clause 23.2 and the indemnity provided in clause 23.4 are a continuing security and extend to all of the Guaranteed Obligations. Subject to clause 23.7(b), the Guarantor waives any right it has of first requiring the Guaranteed Party to commence proceedings or to enforce any other right against the Party Liable or any other person before claiming from the Guarantor under this deed.
- (b) Any amount which the Guarantor is liable to pay the Guaranteed Party under clause 23.2 and 23.4 must be paid within 14 days of a demand being made by the Guaranteed Party on the Guarantor. Any such demand must:
- (i) be in writing;
 - (ii) state that it is made under clause 23.2 or 23.4;
 - (iii) state and provide details of the amount being demanded and confirm that:
 - (A) a written demand for payment of the amount has been made on the Party Liable by the Guaranteed Party;
 - (B) at least 14 days has passed since the demand on the Party Liable was made; and
 - (C) the demand on the Party Liable remains unsatisfied; and
 - (iv) be signed by the Guaranteed Party.

Preservation of the Guaranteed Party's rights

- 23.8 The liabilities under this deed of the Guarantor as a guarantor or an indemnifier and the rights of the Guaranteed Party under this deed are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):
- (a) the Guaranteed Party or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with or

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- wholly or partially releasing the Party Liable, any other indemnifier or another person in any way; or
- (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Guaranteed Party or another person or both the Guaranteed Party and another person; or
 - (c) any variation or novation of a right of the Guaranteed Party or another person, or any material alteration of this deed, in respect of the Party Liable, the Guarantor or another person (other than to the effect of a variation or alteration agreed in writing by the relevant Parties); or
 - (d) the transaction of business, expressly or impliedly, with, for or at the request of the Party Liable, the Guarantor or another person; or
 - (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise whether or not the Guarantor or another person was a member; or
 - (f) a Security Interest being void, voidable or unenforceable; or
 - (g) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including, without limitation, taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it); or
 - (h) the death of any person or an Insolvency Event occurring in respect of any person; or
 - (i) a change in the legal capacity, rights or obligations of a person; or
 - (j) the fact that a person is a trustee, nominee, joint owner, or a member of a partnership or firm; or
 - (k) a judgment against the Party Liable or another person; or
 - (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of the Party Liable or another person at any time (whether received or paid jointly, jointly and severally or otherwise); or
 - (m) any part of the Guaranteed Obligations being irrecoverable; or
 - (n) an assignment of rights in connection with the Guaranteed Obligations; or
 - (o) the acceptance (by the Guaranteed Party) of repudiation (by the Party Liable) or other termination (by the Guaranteed Party) in connection with the Guaranteed Obligations other than a termination for default by the Guaranteed Party; or
 - (p) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor; or
 - (q) invalidity or irregularity in the execution of this deed by any Guarantor or any deficiency in or irregularity in the exercise of the powers of any Guarantor to enter into or observe its obligations under this deed; or
 - (r) any obligation of the Party Liable or any other Guarantor being discharged by operation of Law or otherwise; or
 - (s) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined; or

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- (t) because any other person who was intended to enter into this deed or otherwise become a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed has not done so or has not done so effectively; or
- (u) because a person who is a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed is discharged under an agreement or under statute or a principle of law or equity.

Suspension of Guarantor's rights

- 23.9 As long as the Guaranteed Obligations are due and remain unpaid and uncompensated, the Guarantor cannot without the consent of the Guaranteed Party:
- (a) in reduction of its liability under this deed, raise a defence, set-off or counterclaim available to itself, the Party Liable or a co-surety or co-indemnifier against the Guaranteed Party in respect of any matter that does not arise under or in connection with this deed or in relation to the Development; or
 - (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the Guaranteed Obligations.

Other securities and obligations of Guarantor

- 23.10 The Guaranteed Party's rights under this deed are additional to and do not merge with or affect and are not affected by:
- (a) any Security Interest now or subsequently held by the Guaranteed Party from the Party Liable, the Guarantor or any other person; or
 - (b) any other obligation of the Guarantor to the Guaranteed Party,
- notwithstanding any rule of law or equity or any statutory provision to the contrary.

Reinstatement of the Guaranteed Party's rights

- 23.11 If a claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the Guaranteed Obligations or other money payable under this clause is void or voidable under any Law relating to Insolvency Events or the protection of creditors and the claim is upheld, conceded or compromised, then:
- (a) the Guaranteed Party is entitled immediately as against the Guarantor to the rights in respect of the Guaranteed Obligations or other money payable under this deed to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
 - (b) promptly on request from the Guaranteed Party, the Guarantor agrees to do any act and sign any document reasonably required by the Guaranteed Party to restore to the Guaranteed Party any Security Interest or guarantee held by it from the Guarantor immediately prior to that payment, obligation, settlement, transaction, conveyance or transfer.

Dollar Capital and Limitation on Guarantee and Indemnity

- 23.12 Despite any other provision in this deed:
- (a) The aggregate maximum liability of the Guarantor under this clause 23 in relation to the Guaranteed Obligations is \$15,000,000 indexed in the same manner as amounts are

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indexed under clause 1.15 and the Joint Venture cannot develop any Precinct other than the Eastern and Dunheved Precincts until paragraphs (f) and (g) are satisfied.

- (b) The Parties agree that the aggregate maximum liability has been calculated to reflect one half of the agreed monetary value of the approximate liability of the Joint Venture in relation to the Guaranteed Obligations until completion of development of the Eastern and Dunheved Precincts at the date of this deed, as follows:
 - (i) obligations under clauses 11 and 12 (Regional Park and Regional Open Space): \$2,050,000;
 - (ii) obligations under clause 16 (Transport): \$5,000,000;
 - (iii) obligations under clause 17 (Affordable Housing): \$12,000,000; and
 - (iv) remaining obligations under Part 2 of this deed in favour of the Guaranteed Party together with contingency: \$10,950,000.
- (c) The Guarantor may notify the Minister when it believes that the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts have been completed, but this notification has no bearing on the duration of this guarantee.
- (d) Subject to paragraph (e), all obligations of the Guarantor under this clause 23 in relation to the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts shall be released in respect of any claim made by the Guaranteed Party under this clause 23 after the date which is the earlier of:
 - (i) the date on which the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts have been completed; and
 - (ii) 10 years after the Commencement Date (“**Precinct Completion Date**”).
- (e) (i) If the Guarantor assesses that the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts will not be completed by the Precinct Completion Date:
 - (A) it must give the Minister at least 12 months notice of the Guarantor’s assessment of the date on which the Guarantor assesses that the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts will be completed;
 - (B) the Precinct Completion Date will be replaced with that date; and
 - (C) paragraphs (c), (d) and (e) will apply to that replacement date.
- (ii) Unless paragraph (d)(i) or (e)(i) applies, the Precinct Completion Date automatically extends by 12 months and this paragraph will reapply to the extended Precinct Completion Date.
- (f) Before the commencement of any Precinct other than the Eastern and Dunheved Precincts, the Minister (on behalf of each Guaranteed Party) and the Guarantor must negotiate in good faith to endeavour to agree on:
 - (i) the aggregate maximum liability of the Guarantor under this clause 23 in relation to the Guaranteed Obligations during the development of that Precinct, taking

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into account any existing guarantee given by the Guarantor under this clause 23 or any deed of guarantee; and

- (ii) the Precinct Completion Date for that Precinct.
- (g) When the Minister and the Guarantor reach agreement on the matters referred to in paragraph (f) in relation to a Precinct, they will enter into a deed of guarantee for that Precinct on the terms and conditions of this clause 23, including this clause 23.12, with appropriate amendments made to clauses 23.12(a) and (b) to document the agreement reached for that Precinct.
- (h) The Guaranteed Party acknowledges that the Guarantor will have no liability or obligation under or for breach of clauses 23.2 and 23.4 in excess of the maximum amount for which the Party Liable may become liable to the Guaranteed Party (together with the costs and expenses of enforcing the Guarantor's obligations under this clause 23), assuming the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and assuming the Party Liable remains duly incorporated at all relevant times.
- (i) The extent of the Guarantor's obligations under clauses 23.2 and 23.4 in relation to a Guaranteed Obligation is to be no greater than one half of the monetary value of the liability of the Joint Venture in relation to the relevant Guaranteed Obligation, assuming the Guaranteed Obligation is not invalid, void, voidable or irrecoverable and is fully enforceable and assuming both parties comprising the Joint Venture remain duly incorporated at all relevant times.

Release of Guarantee

23.13 If the Minister consents to the assignment or novation of the obligations of the Party Liable under this deed in accordance with clause 9, then the Guarantor will have no liability to the Guaranteed Party in respect of the Guaranteed Obligations as from the date such assignment or novation becomes effective other than for those which arise before the date of such assignment or novation.

24. Guarantee and Indemnity by ComLand

Guaranteed Party

24.1 In this clause:

"Guaranteed Party" means the State Party.

"Guaranteed Obligations" means all agreements, conditions, covenants, provisions, obligations and liabilities expressed or implied on the part of the Party Liable to be performed, observed or complied with under Part 2 of this deed in favour of the Guaranteed Party as varied from time to time by the relevant Parties.

"Guarantor" means ComLand in respect of any Guaranteed Obligation of the Landowner.

"Party Liable" means St Marys Land Limited in each of its capacities under this deed including as Landowner and as one of the persons comprising, and having a several half interest in, the Joint Venture and being liable severally for a one half share of the obligations, liabilities and responsibilities of the Joint Venture under this deed to the extent the Joint Venture is liable to comply with or satisfy a Guaranteed Obligation under this deed.

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Guarantee

- 24.2 The Guarantor irrevocably guarantees to the Guaranteed Party the due and punctual performance and observance by the Party Liable of the Guaranteed Obligations.
- 24.3 If the Party Liable does not perform or observe the Guaranteed Obligations on time and in accordance with the provisions of this deed, then the Guarantor agrees to perform and observe such of the Guaranteed Obligations (of the Party Liable in its capacity as Landowner but not as part of the Joint Venture) for the benefit of the Guaranteed Party on demand from the Guaranteed Party (provided a demand has been made by the Guaranteed Party on the Party Liable).

Indemnity

- 24.4 The Guarantor irrevocably indemnifies the Guaranteed Party for all damages (including costs and expenses of enforcing the Guarantor's obligations under this clause 24) which it incurs or suffers because the Party Liable fails to duly and punctually perform and observe the Guaranteed Obligations, provided that the liability of the Guarantor under this clause 24.4 is (subject to clause 24.12) limited to the maximum amount of damages for which the Party Liable may become liable to the Guaranteed Party in respect of the Guaranteed Obligations, assuming that the Party Liable remains duly incorporated at all relevant times and assuming that the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and on the basis that the Guaranteed Party has a duty to mitigate damages to the extent (if any) that it has such a duty to mitigate damages to the Party Liable.
- 24.5 The indemnity in clause 24.4 includes any damages (including costs and expenses of enforcing the Guarantor's obligations under this clause 24) which the Guaranteed Party may suffer because:
- (a) the liability to perform or observe the Guaranteed Obligations is unenforceable in whole or in part as a result of a lack of capacity, power or authority or the improper exercise of a power or authority; or
 - (b) the Guaranteed Obligations are rescinded or terminated by the Guaranteed Party for any reason, but only to the extent that the Party Liable remains liable for or in connection with the Guaranteed Obligations in such circumstances; or
 - (c) the Party Liable disregards an order for specific performance of the Guaranteed Obligations; or
 - (d) an Insolvency Event occurs in respect of the Party Liable; or
 - (e) the Guaranteed Obligations are not or have never been enforceable against the Guarantor or are not capable of observance, performance or compliance in full because of any other circumstance whatsoever, including any transaction relating to the Guaranteed Obligations being void, voidable or unenforceable and whether or not the Guaranteed Party knew or should have known anything about that transaction,
- provided that the liability of the Guarantor under this clause 24.5 is (subject to clause 24.12) limited to the maximum amount for which the Party Liable may become liable to the Guaranteed Party in respect of the Guaranteed Obligations, assuming that the Party Liable remains duly incorporated at all relevant times and assuming that the Guaranteed Obligations are not invalid, void, voidable or irrecoverable and are fully enforceable and on the basis that the Guaranteed

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Party has a duty to mitigate damages to the extent (if any) that it has such a duty to mitigate damages to the Party Liable.

24.6 Deleted.

Extent of Guarantee and Indemnity

- 24.7 (a) The guarantee provided in clause 24.2 and the indemnity provided in clause 24.4 are a continuing security and extend to all of the Guaranteed Obligations. Subject to clause 24.7(b), the Guarantor waives any right it has of first requiring the Guaranteed Party to commence proceedings or to enforce any other right against the Party Liable or any other person before claiming from the Guarantor under this deed.
- (b) Any amount which the Guarantor is liable to pay the Guaranteed Party under clause 24.2, 24.3 and 24.4 must be paid within 14 days of a demand being made by the Guaranteed Party on the Guarantor. Any such demand must:
- (i) be in writing;
 - (ii) state that it is made under clause 24.2, 24.3 or 24.4;
 - (iii) state and provide details of the amount being demanded and confirm that:
 - (A) a written demand for payment of the amount has been made on the Party Liable by the Guaranteed Party;
 - (B) at least 14 days have passed since the demand on the Party Liable was made; and
 - (C) the demand on the Party Liable remains unsatisfied; and
 - (iv) be signed by the Guaranteed Party.

Preservation of the Guaranteed Party's rights

- 24.8 The liabilities under this deed of the Guarantor as a guarantor or an indemnifier and the rights of the Guaranteed Party under this deed are not affected by anything which might otherwise affect them at law or in equity including, without limitation, one or more of the following (whether occurring with or without the consent of a person):
- (a) the Guaranteed Party or another person granting time or other indulgence (with or without the imposition of an additional burden) to, compounding or compromising with or wholly or partially releasing the Party Liable, any other indemnifier or another person in any way; or
 - (b) laches, acquiescence, delay, acts, omissions or mistakes on the part of the Guaranteed Party or another person or both the Guaranteed Party and another person; or
 - (c) any variation or novation of a right of the Guaranteed Party or another person, or any material alteration of this deed, in respect of the Party Liable, the Guarantor or another person (other than to the effect of a variation or alteration agreed in writing by the relevant Parties); or
 - (d) the transaction of business, expressly or impliedly, with, for or at the request of the Party Liable, the Guarantor or another person; or
 - (e) changes which from time to time may take place in the membership, name or business of a firm, partnership, committee or association whether by death, retirement, admission or otherwise whether or not the Guarantor or another person was a member; or
 - (f) a Security Interest being void, voidable or unenforceable; or

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- (g) a person dealing in any way with a Security Interest, guarantee, judgment or negotiable instrument (including, without limitation, taking, abandoning or releasing (wholly or partially), realising, exchanging, varying, abstaining from perfecting or taking advantage of it); or
- (h) the death of any person or an Insolvency Event occurring in respect of any person; or
- (i) a change in the legal capacity, rights or obligations of a person; or
- (j) the fact that a person is a trustee, nominee, joint owner, or a member of a partnership or firm; or
- (k) a judgment against the Party Liable or another person; or
- (l) the receipt of a dividend after an Insolvency Event or the payment of a sum or sums into the account of the Party Liable or another person at any time (whether received or paid jointly, jointly and severally or otherwise); or
- (m) any part of the Guaranteed Obligations being irrecoverable; or
- (n) an assignment of rights in connection with the Guaranteed Obligations; or
- (o) the acceptance (by the Guaranteed Party) of repudiation (by the Party Liable) or other termination (by the Guaranteed Party) in connection with the Guaranteed Obligations other than a termination for default by the Guaranteed Party; or
- (p) the invalidity or unenforceability of an obligation or liability of a person other than the Guarantor; or
- (q) invalidity or irregularity in the execution of this deed by any Guarantor or any deficiency in or irregularity in the exercise of the powers of any Guarantor to enter into or observe its obligations under this deed; or
- (r) any obligation of the Party Liable or any other Guarantor being discharged by operation of Law or otherwise; or
- (s) property secured under a Security Interest being forfeited, extinguished, surrendered, resumed or determined; or
- (t) because any other person who was intended to enter into this deed or otherwise become a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed has not done so or has not done so effectively; or
- (u) because a person who is a co-surety or co-indemnifier for payment of the Guaranteed Obligations or other money payable under this deed is discharged under an agreement or under statute or a principle of law or equity.

Suspension of Guarantor's rights

24.9 As long as the Guaranteed Obligations are due and remain unpaid and uncompensated, the Guarantor cannot without the consent of the Guaranteed Party:

- (a) in reduction of its liability under this deed, raise a defence, set-off or counterclaim available to itself, the Party Liable or a co-surety or co-indemnifier against the Guaranteed Party in respect of any matter that does not arise under or in connection with this deed or in relation to the Development; or

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- (b) claim to be entitled by way of contribution, indemnity, subrogation, marshalling or otherwise to the benefit of a Security Interest or guarantee or a share in it now or subsequently held for the Guaranteed Obligations.

Other securities and obligations of Guarantor

24.10 The Guaranteed Party's rights under this deed are additional to and do not merge with or affect and are not affected by:

- (a) any Security Interest now or subsequently held by the Guaranteed Party from the Party Liable, the Guarantor or any other person; or
- (b) any other obligation of the Guarantor to the Guaranteed Party,

notwithstanding any rule of law or equity or any statutory provision to the contrary.

Reinstatement of the Guaranteed Party's rights

24.11 If a claim is made that all or part of a payment, obligation, settlement, transaction, conveyance or transfer in connection with the Guaranteed Obligations or other money payable under this clause is void or voidable under any Law relating to Insolvency Events or the protection of creditors and the claim is upheld, conceded or compromised, then:

- (a) the Guaranteed Party is entitled immediately as against the Guarantor to the rights in respect of the Guaranteed Obligations or other money payable under this deed to which it would have been entitled if all or that part of that payment, obligation, settlement, transaction, conveyance or transfer had not taken place; and
- (b) promptly on request from the Guaranteed Party, the Guarantor agrees to do any act and sign any document reasonably required by the Guaranteed Party to restore to the Guaranteed Party any Security Interest or guarantee held by it from the Guarantor immediately prior to that payment, obligation, settlement, transaction, conveyance or transfer.

Dollar Cap and Limitation on Guarantee and Indemnity

24.12 Despite any other provision in this deed:

- (a) The aggregate maximum liability of the Guarantor under this clause 24 in relation to the Guaranteed Obligations is \$15,000,000 indexed in the same manner as amounts are indexed under clause 1.15 and the Joint Venture cannot develop any Precinct other than the Eastern and Dunheved Precincts until paragraphs (f) and (g) are satisfied.
- (b) The Parties agree that the aggregate maximum liability has been calculated to reflect one half of the agreed monetary value of the approximate liability of the Joint Venture in relation to the Guaranteed Obligations until completion of development of the Eastern and Dunheved Precincts at the date of this deed, as follows:
 - (i) obligations under clauses 11 and 12 (Regional Park and Regional Open Space): \$2,050,000;
 - (ii) obligations under clause 16 (Transport): \$5,000,000;
 - (iii) obligations under clause 17 (Affordable Housing): \$12,000,000; and
 - (iv) remaining obligations under Part 2 of this deed in favour of the Guaranteed Party together with contingency: \$10,950,000.

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- (c) The Guarantor may notify the Minister when it believes that the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts have been completed, but this notification has no bearing on the duration of this guarantee.
- (d) Subject to paragraph (e), all obligations of the Guarantor under this clause 24 in relation to the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts shall be released in respect of any claim made by the Guaranteed Party under this clause 24 after the date which is the earlier of:
 - (i) the date on which the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts have been completed; and
 - (ii) 10 years after the Commencement Date ("**Precinct Completion Date**").
- (e) (i) If the Guarantor assesses that the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts will not be completed by the Precinct Completion Date:
 - (A) it must give the Minister at least 12 months notice of the Guarantor's assessment of the date on which the Guarantor assesses that the Guaranteed Obligations as they relate to the Eastern and Dunheved Precincts will be completed;
 - (B) the Precinct Completion Date will be replaced with that date; and
 - (C) paragraphs (c), (d) and (e) will apply to that replacement date.(ii) Unless paragraph (d)(i) or (e)(i) applies, the Precinct Completion Date automatically extends by 12 months and this paragraph will reapply to the extended Precinct Completion Date.
- (f) Before the commencement of any Precinct other than the Eastern and Dunheved Precincts, the Minister (on behalf of each Guaranteed Party) and the Guarantor must negotiate in good faith to endeavour to agree on:
 - (i) the aggregate maximum liability of the Guarantor under this clause 24 in relation to the Guaranteed Obligations during the development of that Precinct, taking into account any existing guarantee given by the Guarantor under this clause 24 or any deed of guarantee; and
 - (ii) the Precinct Completion Date for that Precinct.
- (g) When the Minister and the Guarantor reach agreement on the matters referred to in paragraph (f) in relation to a Precinct, they will enter into a deed of guarantee for that Precinct on the terms and conditions of this clause 24, including this clause 24.12, with appropriate amendments made to clauses 24.12(a) and (b) to document the agreement reached for that Precinct.
- (h) The Guaranteed Party acknowledges that the Guarantor will have no liability or obligation under or for breach of clauses 24.2, 24.3 and 24.4 in excess of the maximum amount for which the Party Liable may become liable to the Guaranteed Party (together with the costs and expenses of enforcing the Guarantor's obligations under this clause 24), assuming the Guaranteed Obligations are not invalid, void, voidable or irrecoverable

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and are fully enforceable and assuming the Party Liable remains duly incorporated at all relevant times; and

- (i) The extent of the Guarantor's obligations under clauses 24.2, 24.3 and 24.4 in relation to a Guaranteed Obligation is to be no greater than one half of the monetary value of the liability of the Joint Venture in relation to the relevant Guaranteed Obligation, assuming the Guaranteed Obligation is not invalid, void, voidable or irrecoverable and is fully enforceable and assuming both parties comprising the Joint Venture remain duly incorporated at all relevant times.

Release of Guarantee

24.13 If the Minister consents to the assignment or novation of the obligations of the Party Liable under this deed in accordance with clause 9, then the Guarantor will have no liability to the Guaranteed Party in respect of the Guaranteed Obligations as from the date such assignment or novation becomes effective other than for those which arise before the date of such assignment or novation.

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Execution page

EXECUTED as a deed

Signed by The Minister for Planning or his authorised delegate without assuming any personal liability:

Witness

Minister

Print Name

Print Name

Signed by Roads and Traffic Authority of New South Wales in the presence of:

Witness Signature

Signature

Print Name

Executed by St Marys Land Limited:

Director Signature

Director/Secretary Signature

Print Name

Print Name

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The Common Seal of Lend Lease

Development Pty Limited was affixed by the authority of the Directors in the presence of:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Signed Sealed and Delivered for Lend

Lease Development Pty Limited by its attorney under power of attorney registered book No in the presence of:

Witness Signature

Attorney Signature

Print Name

Print Name

Executed by ComLand Limited:

Director Signature

Director/Secretary Signature

Print Name

Print Name

The Common Seal of Lend Lease

Corporation Limited was affixed by the authority of the Directors in the presence of:

Deed of Agreement St Marys Development Agreement

Director Signature

Director/Secretary Signature

Print Name

Print Name

**Signed Sealed and Delivered for Lend
Lease Corporation Limited** by its attorney
under power of attorney registered book
No _____ in the presence of:

Witness Signature

Attorney Signature

Print Name

Print Name