

Infrastructure Agreement

Sustainable Planning Act 2009

Health Precinct Car Parking Infrastructure Agreement 2014

Sunshine Coast Regional Council (Council)

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Table of contents

<i>Clause</i>		<i>Page</i>
PART 1	PRELIMINARY	1
1.	INTRODUCTION	1
1.1	Short title	1
1.2	Deed	1
1.3	Date	1
1.4	Parties	1
1.5	Recitals	1
PART 2	TERMS AGREED BY THE PARTIES	2
2.	INTERPRETATION	2
2.1	Definitions	2
2.2	Undefined word	6
2.3	References	6
3.	INFRASTRUCTURE AGREEMENT	7
3.1	Infrastructure agreement under the Planning Act	7
3.2	Application of the infrastructure agreement	8
3.3	Relationship to a Proponent	8
3.4	Relationship to an Owner	8
3.5	Relationship to an Application	8
3.6	Relationship to an Approval	8
3.7	Relationship to a planning instrument	8
3.8	Relationship to the Development Agreement	8
4.	OPERATION OF THE INFRASTRUCTURE AGREEMENT	8
4.1	Commencement of the infrastructure agreement	8
4.2	Termination of the infrastructure agreement	9
5.	PRECONDITION	9
5.1	Statutory Applications and prerequisites	9
5.2	Notice of satisfaction	9
5.3	Effect of a Non-satisfaction Notice	10
6.	DEVELOPMENT ENTITLEMENTS	10
6.1	Prescribed Application	10
6.2	Consideration of a Prescribed Application	11
7.	DEVELOPMENT OBLIGATIONS	11
7.1	Development Obligations Schedule	11
7.2	Action to give effect to an Infrastructure Contribution	11
7.3	Specification of an Infrastructure Contribution	12
8.	DEALING IN RESPECT OF THE DEVELOPMENT LAND	12
8.1	Reconfiguring of the Development Land	12
8.2	Dealing with the Development Land	13

TABLE OF CONTENTS (continued)

<i>Clause</i>		<i>Page</i>
8.3	Change of ownership of the Development Land	14
9.	DEALINGS IN RESPECT OF THIS DOCUMENT	15
9.1	Dealing by a Proponent - Permanent car parking facility	15
9.2	Other Dealings by a Proponent	15
9.3	Dealing by the Council	15
10.	DEFAULT OF A DEVELOPMENT OBLIGATION	15
10.1	Application of this clause	15
10.2	Notice of default	16
10.3	Performance and fulfilment of a Development Obligation	16
10.4	Compulsory acquisition of land for a Land Contribution	16
10.5	Recovery of an amount as a liquidated debt	17
10.6	Application of an amount received by the Council	17
10.7	Council is relieved of its obligations for the period of a Proponent's default	17
11.	RIGHT OF ACCESS	18
11.1	Access to land of a Proponent	18
11.2	Access to land of the Council	18
11.3	Exercise of a right of access	18
12.	DISPUTE RESOLUTION GENERALLY	19
12.1	Application of this clause	19
12.2	Notice of a dispute	19
12.3	Discussion and mediation of a dispute	19
12.4	Determination of a dispute by an expert	20
12.5	Determination of an unresolved dispute	22
13.	FORCE MAJEURE	22
13.1	Application of this clause	22
13.2	Notice of Force Majeure	22
13.3	Suspension of an obligation	23
13.4	Removal or amelioration of Force Majeure	23
13.5	Dispute resolution process to apply	23
13.6	Matter beyond the Council's control	23
14.	TIME	23
14.1	Time of the essence	23
14.2	Extension of time	23
15.	FURTHER ACTION	23
15.1	Action to give effect to this document	23
15.2	Further action if a clause is invalid, illegal or unenforceable	23
16.	SEVERANCE	24
16.1	Removal from this document	24
16.2	Effect of removal on this document	24
16.3	Further action on removal	24

TABLE OF CONTENTS (continued)

<i>Clause</i>	<i>Page</i>
17. NOTICE	24
17.1 Form of a Notice	24
17.2 Giving of a Notice	24
17.3 Change of the details of a party	25
18. GOVERNING LAW AND JURISDICTION	25
18.1 Queensland law to apply	25
18.2 Queensland courts to have jurisdiction	25
19. PAYMENT	25
19.1 Identified costs	25
19.2 Unidentified costs	25
19.3 Tax	26
19.4 Payment requirements	26
19.5 Overdue payment	27
19.6 Application for exemption to pay stamp duty	27
20. INDEXATION	28
20.1 Application of this clause	28
20.2 Indexation of an amount	28
21. GST	28
21.1 Construction of this clause	28
21.2 Payment of GST	28
21.3 Reimbursable cost	29
21.4 Indemnified cost	29
21.5 Stated amount	29
21.6 No merger on termination	29
SCHEDULE 1	30
Reference schedule	30
SCHEDULE 2	33
Development Obligations schedule	33
SCHEDULE 3	47
Drawings schedule	47
SCHEDULE 4	49
Lease	49
SCHEDULE 5	109
Owner's consent	109
SCHEDULE 6	112
Example Deed (clause 8.2(c)(ii))	112
PART 3 EXECUTION BY THE PARTIES	129
Council	129
Proponent	129

Part 1 Preliminary

1. INTRODUCTION

1.1 Short title

This document may be referred to by the name stated in **schedule 1**.

1.2 Deed

This document is a deed which comprises the following:

- (a) **Part 1** which recites the following:
 - (i) the date of this document;
 - (ii) the names of the parties to this document;
 - (iii) the purpose for which the parties have entered into this document;
- (b) **Part 2** which witnesses the terms agreed upon by the parties;
- (c) **Part 3** which provides for the execution of this document by the parties.

1.3 Date

This document is made on the date when the last party executes this document.

1.4 Parties

This document is made between the parties in **schedule 1**.

1.5 Recitals

This document has been entered into for the following purposes:

- (a) each party is a party to the Development Agreement;
- (b) the Development Land is to be the subject of the Proposed Development;
- (c) the Proposed Development of the Development Land requires the provision of car parking management infrastructure;
- (d) the Development Obligations require car parking management infrastructure to be provided before or as part of the Proposed Development so that the Development Obligations are correlated with the Proposed Development.

Part 2 Terms agreed by the parties

2. INTERPRETATION

2.1 Definitions

In this document, unless the context or subject matter otherwise indicates or requires a word which is capitalised has the following meaning:

Application means an application for an Approval.

Approval means a consent, permit, licence, certificate, authorisation, registration, membership, allocation or approval under a law and includes a development approval and an approval of a Master Plan under the Development Agreement or the Kawana Waters DCP.

Approval Authority means an Authority under a law having the function to decide an Approval.

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

Business Day has the meaning in the *Acts Interpretation Act 1954* (Qld).

Calendar Day means from one midnight to the following one.

Claim means an allegation, debt, cause of action, liability claim, proceeding, suit or demand of any nature at law or otherwise, whether present or future, fixed or unascertained, actual or contingent.

Commencement Date means the date on which this document commences as stated in **clause 1.3**.

Completion means the stage in the provision of a matter by a Proponent when the Council is satisfied that the matter is complete other than for a minor omission and a minor defect which:

- (a) is not essential;
- (b) does not prevent the matter from being reasonably capable of being used for its intended purpose;
- (c) the Council determines the Proponent has a reasonable basis for not promptly rectifying; and
- (d) the rectification of which will not prejudice the convenient use of the matter.

Council means the Local Government in **schedule 1**.

CPI means the Consumer Price: All Groups Index for Brisbane, published by the Australian Bureau of Statistics or if that index is no longer published, then an index which in the Council's reasonable opinion is a similar index.

Dealing means to sell, transfer, assign, mortgage, charge, secure, encumber, lease or otherwise deal with the matter for which the term is used.

Decommissioning Date means the date the Permanent car parking facility reaches Completion.

Detailed Planning Area Plan has the meaning in the Kawana Waters DCP.

Developable Lot means the following:

- (a) a lot comprising the Development Land at the Commencement Date;
- (b) a Prescribed Lot;
- (c) a lot forming part of the Development Land which is not a Developed Lot.

Developed Lot means a lot forming part of the Development Land to which the Development Agreement ceases to apply other than a Prescribed Lot.

Development Agreement means the development agreement dated 6 September 1996 between Kawana Estates Pty Ltd, Buddina Estates Pty Ltd, the Council and the then Minister for Natural Resources.

Development Entitlements means the entitlements for the development of the Development Land in the following:

- (a) the Kawana Waters DCP;
- (b) the Structure Plan approved by the Council in accordance with the Kawana Waters DCP and by the Minister in accordance with the Development Agreement;
- (c) the Detailed Planning Area Plan for DPA12 approved by the Council in accordance with the Kawana Waters DCP and by the Minister in accordance with the Development Agreement;
- (d) a Site Development Plan approved by the Council in accordance with the Kawana Waters DCP;
- (e) an Approval under the Planning Act or the *Land Act 1994* for the development of the Development Land.

Development Land means the land stated in **schedule 1**.

Development Lease No. 2 has the meaning in the Kawana Waters DCP.

Development Obligation means an obligation under this document to be performed and fulfilled by a party.

Dispute Notice means a Notice given under **clause 12.2**.

DPA12 means the land in Detailed Planning Area 12 in the Kawana Waters DCP.

Force Majeure means an event:

- (a) being a Commonwealth or State government decree, an act of God, industrial disturbance, act of public enemy, war, international blockade, public riot, lightning, flood, earthquake, fire, storm or other physical or material restraint;

- (b) which is not within the reasonable control of the party claiming Force Majeure; and
- (c) which could not have been prevented by that party exercising a standard of knowledge, foresight, care and diligence consistent with that of a prudent and competent person under the circumstances.

GST has the meaning in the GST Act.

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

Infrastructure Contribution means a contribution for infrastructure which may be in the form of the following:

- (a) a Land Contribution;
- (b) a Work Contribution.

Infrastructure Standard means a standard, policy or procedure for infrastructure specified by the following:

- (a) Australian Standards Limited;
- (b) a manufacturer;
- (c) an Approval Authority;
- (d) the Building Code of Australia which applies in the State of Queensland, for building work;
- (e) a planning instrument;
- (f) an Approval;
- (g) a law;
- (h) this document.

Interim car parking facility means an interim at-grade car parking facility to be constructed in precinct 12, precinct 13, precinct 14 or precinct 15 in DPA12 which are indicatively identified in Drawing 1 in **schedule 3**.

Kawana Waters DCP means Development Control Plan 1 Kawana Waters.

Land Contribution means the provision of land including an easement for infrastructure.

Local Government has the meaning in the Local Government Act.

Local Government Act means the *Local Government Act 2009* (Qld).

Master Plan has the meaning in the Kawana Waters DCP.

Minister means the Minister under the Development Agreement.

Notice means a document to be given by a party or a person under this document.

Owner means for land the following:

- (a) the person for the time being entitled to receive the rent for the land;
- (b) the person who would be entitled to receive the rent for the land if the land were let to a tenant at a rent.

Permanent car parking facility means the permanent multi-deck car parking facility to be constructed in precinct 5 of DPA12 which is indicatively identified in Drawing 1 in **schedule 3**.

Plan of Subdivision means a plan however called for reconfiguring of a lot, which under a law requires the Approval in whatever form, of a Local Government before it can be registered or otherwise recorded under that law.

Example - A Plan of Subdivision is commonly referred to as the survey plan.

Planning Act means the *Sustainable Planning Act 2009* (Qld).

PPI means the Producer Price Index: General Construction Index for Road and Bridge Construction (4121) Queensland Series ID: A2333727L, published by the Australian Bureau of Statistics or if that index is no longer published, then an index which in the Council's reasonable opinion is a similar index.

Prescribed Application means an Application for an Approval for a Site Development Plan stated in **clause 6.1**.

Prescribed Lot means a lot for the following:

- (a) an Interim car parking facility;
- (b) the Permanent car parking facility.

Proponent means the proponent for the Development Land stated in **schedule 1**.

Proposed Development means the development of the Development Land provided for in the Development Entitlements.

Public Emergency means an event which the Council determines in its absolute discretion is a serious risk to property or public health and safety and requires urgent action.

Site Development Plan has the meaning in the Kawana Waters DCP.

Tax means the following:

- (a) a tax, levy, impost, deduction, charge or duty (including stamp and transactional duty) imposed under a law by an Authority, excluding GST;
- (b) any interest, penalty, fine and expense for a matter under **paragraph (a)**.

Transferee means a person to whom a Proponent proposes to sell a Developable Lot.

Work Contract means a contract for the provision of a Work Contribution.

Work Contribution means the provision of work for infrastructure.

2.2 Undefined word

If a word is not defined in this document, unless the context or subject matter otherwise indicates or requires, the word is to have a meaning given to it by the following:

- (a) the Development Agreement;
- (b) the Planning Act;
- (c) the Macquarie Dictionary if the word is not defined in the Development Agreement or the Planning Act.

2.3 References

In this document unless the context or subject matter otherwise indicates or requires:

- (a) a reference to a document, includes a consolidation, amendment, notation, supplement, replacement or variation of the document;
- (b) a reference to a law or a provision of a law, includes the following:
 - (i) the law and the common law including the principles of equity of the Commonwealth, a State or a Territory;
 - (ii) a statutory instrument made or in effect under the law or the provision;
 - (iii) a consolidation, amendment, extension, re-enactment or replacement of the law or the provision;
- (c) a reference to a word in:
 - (i) the singular includes the plural; and
 - (ii) the plural includes the singular;
- (d) a reference to the word dollar or \$, is a reference to a dollar of Australian currency and an amount payable is payable in Australian dollars;
- (e) a reference to writing, includes a mode of representing or reproducing a word in tangible and permanently visible form and includes a facsimile transmission;
- (f) a reference to the word includes, or to an example or particularisation of a clause, does not limit the meaning of a word to which the clause relates to a matter of a similar kind;
- (g) a reference to a word which is defined in this document, includes another part of speech or grammatical form of the word which is to have a corresponding meaning;
- (h) a reference to a party made up of more than one person, is a reference to all of those persons separately so that:

- (i) an obligation of a party binds them jointly and each of them individually; and
 - (ii) a right of a party benefits them jointly and each of them individually;
- (i) a reference to a day is a Calendar Day;
 - (j) a reference to a date on or by which an act is to be done is to be taken to be the next Business Day if:
 - (i) the date is not a Business Day; or
 - (ii) the act is done after 5.00pm on the day by which the act is to be done;
 - (k) a reference to a period of time which is to be calculated by regard to a day or an event, is to exclude the day or the day of the event;
 - (l) a reference to the word land, includes the following:
 - (i) an interest or estate in, on, over or under the land;
 - (ii) the airspace above the surface of the land and an estate or interest in the land;
 - (iii) the subsoil of the land and an estate or interest in the subsoil;
 - (iv) a part or parts of the land;
 - (v) an estate or interest created for any of the above matters;
 - (m) a reference to the word sell, includes transfer, dispose of and alienate but excludes a mortgage, licence, grant of an easement and a lease other than a lease for a term including an option exceeding 5 years;
 - (n) a reference to a successor in title of land, includes the following:
 - (i) a person deriving title to the land through or under the Owner of the land;
 - (ii) a mortgagee which takes possession of the land;
 - (o) a reference to a point is a reference to a point stated in a drawing;
 - (p) a reference to a drawing is a reference to a drawing in **schedule 4**; and
 - (q) a reference to the address of a party, is a reference to the physical or postal address of that party stated in **schedule 1** or as changed under this document, as indicated by the context or subject matter.

3. INFRASTRUCTURE AGREEMENT

3.1 Infrastructure agreement under the Planning Act

This document constitutes an infrastructure agreement under the Planning Act.

3.2 **Application of the infrastructure agreement**

This document applies to all development comprising the Proposed Development of the Development Land.

3.3 **Relationship to a Proponent**

- (a) A Development Obligation of a Proponent is a covenant made on behalf of the Proponent and the successors of the Proponent.
- (b) A Development Obligation of a Proponent is and remains personal to the Proponent other than as expressly provided in **clause 8.3**.

3.4 **Relationship to an Owner**

- (a) A Development Obligation of a Proponent attaches to the Development Land and is binding on the Owner of the Development Land and the Owner's successor in title of the Development Land under the Planning Act.
- (b) A Development Obligation is not affected by a change in the ownership of the Development Land or a part of the Development Land other than as expressly provided in **clause 8.3**.

3.5 **Relationship to an Application**

- (a) An Application for the Development Land is to comply with this document.
- (b) An Approval Authority in assessing or deciding an Application for the Development Land is to have regard to a relevant matter in this document.

3.6 **Relationship to an Approval**

- (a) This document is not intended to limit the nature or type of condition which an Approval Authority may lawfully impose on an Approval for the Development Land.
- (b) If a Development Obligation is inconsistent with an Approval for the Development Land, the Development Obligation is to prevail to the extent of the inconsistency.

3.7 **Relationship to a planning instrument**

The performance and fulfilment of a Development Obligation of a Proponent does not depend on a Development Entitlement which may be affected by a change to a planning instrument.

3.8 **Relationship to the Development Agreement**

This document is not intended to limit the application of the Development Agreement to the Development Land.

4. **OPERATION OF THE INFRASTRUCTURE AGREEMENT**

4.1 **Commencement of the infrastructure agreement**

This document is to be of no effect until the Commencement Date.

4.2 Termination of the infrastructure agreement

- (a) A party may give to each other party a Notice which states that it proposes to terminate this document if one of the following events has occurred:
- (i) the parties agree as follows:
 - (A) the Development Obligations have been performed and fulfilled;
 - (B) to terminate this document;
 - (ii) the parties agree as follows:
 - (A) that the performance and fulfilment of this document has been frustrated by an event outside of the control of the parties;
 - (B) to terminate this document.
- (b) A party may at a date, which is 30 Calendar Days after the giving of the Notice under **paragraph (a)**, give to each other party a Notice which states that the document is terminated.

5. PRECONDITION

5.1 Statutory Applications and prerequisites

The Council is to, within 30 business days of the Commencement Date or a later date agreed in writing by the parties (**Application Date**), apply to a relevant Authority for an Approval and meet the prerequisite requirements for the arrangements under this document on terms to the absolute satisfaction of the Council including the following (**Statutory Applications and prerequisites**):

- (a) the Treasurer granting approval for the Council to take ownership of the land for the Permanent car parking facility and to grant a lease to the Proponent of the land, being a type 2 financial arrangement under the *Statutory Bodies Financial Arrangements Act 1982*;
- (b) the Council obtaining the necessary documents and satisfying the necessary requirements under section 236 of the *Local Government Regulation 2012* in order to qualify for the relevant exception for a valuable non-current asset contract;
- (c) any other Statutory Applications or prerequisites related to a matter in this document.

5.2 Notice of satisfaction

- (a) The Council is to, within 10 Business Days of receiving a response from all of the relevant Authorities in respect of Statutory Applications or prerequisites, give to the Proponent:
- (i) a Notice which states that the Statutory Applications and prerequisites have been achieved on terms to the absolute satisfaction of the Council (**Satisfaction Notice**); or

- (ii) a Notice which states that the Statutory Applications and prerequisites have not been achieved on terms to the absolute satisfaction of the Council (**Non-satisfaction Notice**).

5.3 Effect of a Non-satisfaction Notice

If the Council gives a Non-satisfaction Notice, this document is to be of no effect.

6. DEVELOPMENT ENTITLEMENTS

6.1 Prescribed Application

- (a) The Proponent is to make an Application for an Approval of a Site Development Plan for a precinct of DPA12 (**Prescribed Application**) stated in column 1 of the following table at the time stated in column 2 of the following table:

Column 1 Precinct of DPA12	Column 2 Time
5	Prior to or at the same time that an Application is made for an Approval of a Site Development Plan for a precinct in DPA12 which of itself or in combination with other Site Development Plans generates a demand from non-residential development for 250 car parking spaces or more in the Interim car parking facilities.
12	Prior to or at the same time that an Application is made for an Approval of a Site Development Plan for any of precinct 2, precinct 3 or precinct 8.
13	Prior to or at the same time that an Application is made for an Approval of a Site Development Plan for any of precinct 2, precinct 3 or precinct 8 which provides for development that of itself or in combination with other Site Development Plans generates a demand for car parking spaces that exceeds the capacity of the Interim car parking facility in precinct 12.
14	Prior to or at the same time that an Application is made for an Approval of a Site Development Plan for any of precinct 4, precinct 6, precinct 7 or precinct 9.
15	Prior to or at the same time that an Application is made for an Approval of a Site Development Plan for any of precinct 4, precinct 6, precinct 7 or precinct 9 which provides for development that of itself or in combination with other Site Development Plans generates a demand for car parking spaces that exceeds the capacity of the Interim car parking facility in precinct 14.

- (b) However if an Application for an Approval of a Site Development Plan identified in column 2 of the table in **paragraph (a)** has been made prior to the Commencement Date, the Application for the Approval of a Site Development Plan for a precinct of DPA12 stated in column 1 of the table in **paragraph (a)** must be submitted as soon as is reasonably practicable after the Commencement Date.
- (c) If an Application for an Approval of a Site Development Plan identified in column 1 of the table in **paragraph (a)** has been made prior to the Commencement Date, the parties acknowledge that any Approval, if given, will be determined having regard to the matters in this document.

6.2 Consideration of a Prescribed Application

The Council is to decide a Prescribed Application in accordance with the Kawana Waters DCP in a manner which is as timely as is reasonably practicable.

7. DEVELOPMENT OBLIGATIONS

7.1 Development Obligations Schedule

The parties are to comply with the following on the Commencement Date:

- (a) the special conditions in **schedule 2**;
- (b) the other Development Obligations in **schedule 2**.

7.2 Action to give effect to an Infrastructure Contribution

- (a) A Proponent is to take an action which is necessary for the provision of an Infrastructure Contribution of the Proponent including the following:
 - (i) the making of an Application;
 - (ii) the obtaining of an Approval;
 - (iii) complying with an Approval including the conditions of an Approval;
 - (iv) Dealing with land or a document;
 - (v) the taking of all necessary steps to procure, for a Land Contribution for the Permanent car parking facility:
 - (A) the surrender of land from Development Lease No. 2;
 - (B) the registration of a plan in the appropriate Queensland State government office with respect to the land;
 - (C) the recording of particulars of the land in the freehold land register;
 - (D) a separate freehold title for the land;
 - (E) the transfer of the land to the Council in accordance with this document;

- (vi) any other action as directed by the Council from time to time.
- (b) A Proponent is to take the following action for an Infrastructure Contribution of the Proponent:
 - (i) consult regularly with the Council;
 - (ii) comply as soon as is reasonably practicable with a Notice given by the Council to the Proponent which states that the Proponent is to provide reasonable or relevant information to the Council for the following:
 - (A) the Proposed Development of the Development Land;
 - (B) a Development Obligation;
 - (C) to allow the Council to determine that a Development Obligation has been performed and fulfilled;
- (c) by not later than each anniversary of the Commencement Date, give to the Council a Notice which states the Proponent's performance and fulfilment of its obligations under this document.

7.3 **Specification of an Infrastructure Contribution**

An Infrastructure Contribution is to comply with the following:

- (a) this document;
- (b) a Development Obligation;
- (c) a relevant law;
- (d) a relevant planning instrument;
- (e) a relevant Approval;
- (f) a relevant Infrastructure Standard.

8. **DEALING IN RESPECT OF THE DEVELOPMENT LAND**

8.1 **Reconfiguring of the Development Land**

- (a) If the Development Land is subject to reconfiguring of a lot to create a Developed Lot, then a Development Obligation no longer:
 - (i) remains attached to the Developed Lot; and
 - (ii) binds the Owner of the Developed Lot.
- (b) If the Development Land is subject to a reconfiguring of a lot to create a Developable Lot, then a Development Obligation:
 - (i) remains attached to the Developable Lot; and
 - (ii) binds the Owner of the Developable Lot.

8.2 Dealing with the Development Land

- (a) A Proponent may Deal with a Developed Lot without the consent of the Council.
- (b) A Proponent is not to Deal with a Developable Lot, other than a Developable Lot to which **paragraph (e)** applies, unless the Proponent gives to the person the subject of the Dealing a Notice which states the following:
- (i) that the Developable Lot is subject to this document;
 - (ii) that there may be a Development Obligation which is unperformed and unfulfilled;
 - (iii) that a Development Obligation attaches to the Developable Lot and binds a future Owner;
 - (iv) that the Owner of the Developable Lot is liable to the Council to perform and fulfil a Development Obligation which remains unperformed and unfulfilled.
- (c) A Proponent is not to sell a Developable Lot, other than a Developable Lot to which **paragraph (e)** applies, to a Transferee without complying with the following:
- (i) where clause 8.2(c)(ii) does not apply, the Proponent and Transferee execute one of the following documents specified by the Council in its absolute discretion:
 - (A) a document prepared by the Council in which the Transferee covenants and agrees with the Council to the following:
 - that the Developable Lot is subject to this document;
 - that a Development Obligation in respect of a Developable Lot (**Prescribed Development Obligation**) may be unperformed and unfulfilled;
 - that a Prescribed Development Obligation attaches to the Developable Lot and binds a future Owner;
 - that the Owner of the Developable Lot is liable to the Council to perform and fulfil a Prescribed Development Obligation which remains unperformed and unfulfilled;
 - (B) a deed prepared by the Council in which the Transferee becomes contractually bound to the Council to perform and fulfil the Prescribed Development Obligation;

- (ii) where the Proponent is selling to the one Transferee, all of the Developable Lots comprising precinct 12, precinct 13, precinct 14, and precinct 15 in DPA 12 which are indicatively identified in Drawing 1 in **schedule 3**, the Proponent, the Transferee and Council execute a deed, an example of which is included in **schedule 6**, prepared by the Council in which the Transferee becomes contractually bound to the Council to perform and fulfil the Development Obligations and other terms stated in the deed.
- (d) However **paragraph (c)** does not prevent the Proponent from entering into an agreement for the sale of a Developable Lot which is conditional upon compliance with the matters stated in **paragraph (c)**.
- (e) A Proponent is not to Deal with a Developable Lot which is a Land Contribution for the Permanent car parking facility other than to give effect to the Development Obligations in **schedule 2** in respect of the Permanent car parking facility. For the purposes of this clause 'Deal' does not include an agreement between the Proponent and a third party for the transfer or assignment of any leasehold interest in a Prescribed Lot for a Permanent car parking facility if the agreement is conditional upon the Proponent obtaining the approval of Council in accordance with the terms of the lease contained in **schedule 4**, and the transfer of the leasehold interest is not effected until the Council's written approval has been given to the proposed assignment.

8.3 Change of ownership of the Development Land

- (a) If there is a change of ownership of a Developed Lot, a Development Obligation of a Proponent is not binding on the Owner's successors in title of the Developed Lot.
- (b) If there is a change of ownership of a Developable Lot, other than a Developable Lot to which **paragraph (d)** applies, which is not in compliance with **clause 8.2**:
 - (i) a Proponent is to perform and fulfil a Development Obligation of the Proponent which has not been performed and fulfilled immediately or at such other time which is stated in a Notice given by the Council to the Proponent, even if the time otherwise appointed for the performance and fulfilment of the Development Obligation has not arrived; and
 - (ii) a Development Obligation of the Proponent is binding on the Transferee as the Owner's successor in title of the Developable Lot.
- (c) If there is a change of ownership of a Developable Lot, other than a Developable Lot to which **paragraph (d)** applies, in accordance with **clause 8.2**, a Development Obligation of a Proponent:
 - (i) remains binding on the Proponent except to the extent provided for in a deed between the Proponent, the Transferee and the Council; and

- (ii) is binding on the Transferee as the Owner's successor in title of the Developable Lot to the extent provided for in a deed between the Proponent, the Transferee and the Council.
- (d) If the Land Contribution for the Permanent car parking facility is provided to the Council in accordance with the Development Obligation in **schedule 2**, a Development Obligation of the Proponent:
 - (i) remains binding on the Proponent;
 - (ii) is not binding on the Council.

9. DEALINGS IN RESPECT OF THIS DOCUMENT

9.1 Dealing by a Proponent - Permanent car parking facility

Despite any other provision of this document, a Proponent must not:

- (a) vary an interest, right or obligation under this document; or
- (b) sell, transfer or assign an interest, right or obligation under this document,

in relation to the matters set out in item 1.5 of the Infrastructure Contributions Schedule in **schedule 2**.

9.2 Other Dealings by a Proponent

Subject to clause 9.1, a Proponent must not:

- (a) vary an interest, right or obligation under this document; or
- (b) sell, transfer or assign an interest, right or obligation under this document,

unless it has first obtained the written consent of the Council, which consent must not be unreasonably withheld.

9.3 Dealing by the Council

The Council may, without the Proponent's consent, assign to an Authority or entity an interest, right or obligation under this document in the following circumstances:

- (a) a Council function is taken over by the Authority or entity; or
- (b) the Council otherwise determines acting in the public interest that it is desirable for this to happen.

10. DEFAULT OF A DEVELOPMENT OBLIGATION

10.1 Application of this clause

This clause applies if a Proponent fails to perform and fulfil a Development Obligation of the Proponent.

10.2 Notice of default

- (a) The Council is to give to a Proponent a Notice which states the following:
- (i) the details of the obligation which has not been performed or fulfilled by the Proponent;
 - (ii) the action which the Proponent is required to take to perform and fulfil the obligation;
 - (iii) the estimate of the Council's costs to perform and fulfil the obligation, which costs may include the following:
 - (A) the Council's charges for supervision;
 - (B) interest;
 - (C) administration costs;
 - (D) legal costs on a full indemnity basis or a solicitor and own client basis, whichever is the higher;
 - (E) overheads;
 - (F) a reasonable contingency;
 - (iv) a reasonable period within which the obligation is to be performed and fulfilled by the Proponent.
- (b) However **paragraph (a)** does not apply to a Public Emergency.

10.3 Performance and fulfilment of a Development Obligation

The Council may perform and fulfil a Development Obligation of a Proponent not performed and fulfilled by the Proponent in the following circumstances:

- (a) there is a Public Emergency;
- (b) the Proponent has not complied with a Notice given by the Council to the Proponent under **clause 10.2**.

10.4 Compulsory acquisition of land for a Land Contribution

- (a) The Council may compulsorily acquire under the *Acquisition of Land Act 1967* (Qld) land the subject of a Land Contribution of which a Proponent is the Owner without having to go through the pre-acquisition procedure under that law, if the Proponent has not complied with a Notice given by the Council to the Proponent under **clause 10.2**.
- (b) A Proponent consents to the Council compulsorily acquiring the land under **paragraph (a)** for the amount of \$1.10 in full and final payment of compensation under the *Acquisition of Land Act 1967* (Qld).

10.5 Recovery of an amount as a liquidated debt

The Council may recover from a Proponent as a liquidated debt the following amounts:

- (a) the amount of a payment not paid by the Proponent;
- (b) the amount stated in a Notice given by the Council to the Proponent under **clause 10.2**;
- (c) the amount stated in a Notice given by the Council to the Proponent for the following:
 - (i) the compensation the Council pays to a person other than the Proponent for the compulsory acquisition of land the subject of a Land Contribution under **clause 10.4**;
 - (ii) the costs incurred by the Council for the compulsory acquisition of land the subject of a Land Contribution under **clause 10.4**;
- (d) the amount stated in a Notice given by the Council to the Proponent representing the difference between the costs actually incurred by the Council in performing and fulfilling the Proponent's obligation and any amount received by the Council under **clause 10.5**.

10.6 Application of an amount received by the Council

The Council is to apply an amount received by the Council under **clause 10.5** for any of the following:

- (a) the performance and fulfilment of a Proponent's obligation;
- (b) the carrying out of development to mitigate the effect of a Proponent's failure to perform and fulfil an obligation;
- (c) reimbursing the Council for a Claim, cost or damage suffered by the Council as a result of a Proponent's failure to perform and fulfil the obligation;
- (d) a cost incurred by the Council in exercising a right for a Proponent's failure to perform and fulfil the obligation.

10.7 Council is relieved of its obligations for the period of a Proponent's default

The Council is, for the period a Proponent has failed to perform and fulfil a Development Obligation of the Proponent, under no obligation to perform or fulfil the following in respect of land in DPA12:

- (a) an obligation of the Council under this document or the Development Agreement;
- (b) an action or decision for an Application or take an action for a matter requiring an Approval;
- (c) give a consent or express the Council's satisfaction for a matter or take an action for a matter requiring the Council's consent or the expression of the Council's satisfaction under this document or the Development Agreement.

11. RIGHT OF ACCESS

11.1 Access to land of a Proponent

A Proponent is to, upon the receipt of a Notice given by the Council to the Proponent which states that access is requested to land of which the Proponent is the Owner or which is under the control of the Proponent, permit the Council to have access to the land for the following:

- (a) examining, inspecting, testing and monitoring the following:
 - (i) the state and condition of the land or vegetation or waters on the land;
 - (ii) a Land Contribution;
 - (iii) a Work Contribution;
 - (iv) the site of a Work Contribution on the Development Land or on other land;
- (b) determining whether a Development Obligation has been performed and fulfilled;
- (c) making good a breach of a Development Obligation;
- (d) the performance and fulfilment of an obligation;
- (e) the exercise by the Council of a right.

11.2 Access to land of the Council

The Council is to, upon the receipt of a Notice given by a Proponent to the Council which states that access is requested to land of which the Council is the Owner or which is under the control of the Council, permit the Proponent (and the Proponent's agents, contractors and employees) to have access to the land for the following:

- (a) the performance and fulfilment of a Development Obligation;
- (b) the exercise by the Proponent of a right.

11.3 Exercise of a right of access

- (a) A right of access includes the following:
 - (i) a right to bring machinery, equipment and materials onto the relevant land;
 - (ii) a right to effect and install work which is required and authorised to be performed and fulfilled.
- (b) A party exercising a right of access is:
 - (i) to exercise reasonable care so as not to cause damage or injury to property or a person;

- (ii) taken to be an invitee of the Owner and the occupier of the relevant land; and
- (iii) to promptly rectify any damage caused to property.

12. DISPUTE RESOLUTION GENERALLY

12.1 Application of this clause

This clause applies to a dispute which cannot be resolved by an agreement between the parties as to the performance and fulfilment of this document.

12.2 Notice of a dispute

- (a) A party may give to the other party to the dispute a Notice which states the following:
 - (i) the dispute;
 - (ii) that the dispute is to be resolved under **clause 12**.
- (b) A party which gives a Dispute Notice is to continue to perform and fulfil its obligations.
- (c) However the party which gives a Dispute Notice is not required to finish the disputed matter where that party indemnifies the other party against a Claim or the costs for finishing the disputed matter if the dispute is not resolved in favour of the indemnifying party.

12.3 Discussion and mediation of a dispute

- (a) The parties are to, within 10 Calendar Days of the date of the Dispute Notice, meet to discuss the dispute and its possible determination.
- (b) The parties may, within 7 Calendar Days of the meeting under **paragraph (a)**, agree to refer the dispute to mediation.
- (c) If the parties agree to refer the dispute to mediation under **paragraph (b)**, the parties are to:
 - (i) appoint a mediator agreed by the parties or if the parties fail to agree to the appointment of a mediator within the period referred to in **paragraph (b)**:
 - (A) request the President of the Queensland Law Society Incorporated to nominate a mediator; and
 - (B) appoint the mediator nominated by the President of the Queensland Law Society Incorporated; and
 - (ii) use their best endeavours to resolve the dispute by mediation.
- (d) The parties are to bear equally the cost of a mediator including the cost of the appointment.

- (e) The mediator is:
 - (i) not liable for the mediation other than for fraud or misfeasance; and
 - (ii) released and indemnified by the parties against a Claim other than for fraud or misfeasance which may be made for the mediation.

12.4 **Determination of a dispute by an expert**

- (a) The parties may agree to seek an independent resolution by an expert within the following time period:
 - (i) if the dispute was referred to mediation, within 24 Calendar Days of the date of the Dispute Notice;
 - (ii) if the dispute was not referred to mediation under **clause 12.3**, within 17 Calendar Days of the date of the Dispute Notice.
- (b) The parties may agree that an expert is to be appointed by the President or other equivalent person of the following entities as is appropriate in the circumstances:
 - (i) if an architect – the Australian Institute of Architects, Queensland Chapter;
 - (ii) if a real estate agent – the Real Estate Institute of Queensland;
 - (iii) if a quantity surveyor – the Australian Institute of Quantity Surveyors, Queensland Division;
 - (iv) if an engineer – the Institution of Engineers Australia, Queensland Chapter;
 - (v) if a mediator – the Queensland Law Society Incorporated;
 - (vi) if an accountant – the Institute of Chartered Accountants, Queensland Division;
 - (vii) if an actuary – the Institute of Actuaries Australia, Queensland Division;
 - (viii) if a valuer – the Australian Institute of Valuers and Land Economists, Queensland Division;
 - (ix) if a town planner – the Planning Institute of Australia;
 - (x) if a lawyer – the Queensland Law Society Incorporated.
- (c) If the parties cannot agree on the type of expert, the type of expert is to be determined by the President of the Queensland Law Society Incorporated.
- (d) The person to be appointed to be an expert:
 - (i) is to have a technical understanding of the matter the subject of the dispute;

- (ii) is not to have a significantly greater understanding of one party's business or operation which might allow the other party to construe this greater understanding as a bias or a conflict of interest; and
 - (iii) is to inform the parties before being appointed of the extent of the expert's understanding of each party's business or operation and if that information shows a possible bias, then that person is not to be appointed as an expert other than with the consent of the parties.
- (e) The expert is to:
- (i) act as an expert and not as an arbitrator;
 - (ii) proceed in a manner the expert thinks appropriate but is:
 - (A) to observe the rules of natural justice but not the rules of evidence;
 - (B) not to accept an oral submission unless both parties are present; and
 - (C) to ensure that on the receipt of a written submission from one party that a copy of the submission is given to the other parties as soon as is reasonably practicable;
 - (iii) consider a document, information and other material, whether given to the expert by a party or not, which the expert in its absolute discretion considers reasonable or relevant to the determination of the dispute;
 - (iv) give effect to the intent of the parties in entering into this document as stated in **clause 1.5** in determining the dispute;
 - (v) give a draft determination which states the expert's intended determination and requests each party to make a further submission within 10 Business Days;
 - (vi) give a final determination which states the expert's determination; and
 - (vii) act with expedition with a view to giving a final determination as soon as is reasonably practicable.
- (f) The expert may engage the expert's own adviser or consultant to provide information to help the expert in making a determination.
- (g) The parties are to comply with a direction given by an expert for the determination of the dispute.
- (h) The referral of a dispute to an expert is not an arbitration and the *Commercial Arbitration Act 1990* (Qld) is not to apply.
- (i) The expert's decision is final and binding on the parties.

- (j) The parties are to bear equally the cost of an expert including the cost of the appointment and the cost of an adviser or consultant engaged by the expert.
- (k) The expert is:
 - (i) not liable for the expert determination other than for fraud or misfeasance; and
 - (ii) released and indemnified by the parties against a Claim other than for fraud or misfeasance which may be made for the expert determination.

12.5 Determination of an unresolved dispute

- (a) A party may between 14 and 35 Calendar Days (inclusive) after the date of a Dispute Notice, and whether before or after the reference of a dispute to an expert under **clause 12.4**:
 - (i) commence a Claim for the determination of the dispute; or
 - (ii) give to the other parties a Notice which states that it will not be bound by the expert's decision if that party is not entitled to commence a Claim such as is the case with a Local Government for an Application.
- (b) The reference of a dispute to the expert under **clause 12.4** is to be terminated and the dispute is to be dealt with by a court if a party has commenced a Claim or given a Notice which states that it will not be bound by the expert's decision.
- (c) A dispute is to be finally determined by the expert under **clause 12.4** in the following circumstances:
 - (i) if the parties agree to have the dispute determined by the expert;
 - (ii) if a party has not under **paragraph (a)** commenced a Claim or given a Notice which states that it will not be bound by the expert's decision.

13. FORCE MAJEURE

13.1 Application of this clause

This clause does not apply to a Development Obligation of the Proponent for the following:

- (a) a payment;
- (b) a Land Contribution.

13.2 Notice of Force Majeure

If a party is unable by reason of Force Majeure to perform and fulfil an obligation, the party is to, as soon as is reasonably practicable after the Force Majeure, give to each other party a Notice which states the following:

- (a) that Force Majeure is in existence;
- (b) full particulars of the Force Majeure.

13.3 **Suspension of an obligation**

An obligation of a party so far as it is affected by Force Majeure is suspended during the following:

- (a) the continuance of Force Majeure;
- (b) a further period which is reasonable in the circumstances.

13.4 **Removal or amelioration of Force Majeure**

The party giving a Notice of Force Majeure is to, as soon as is reasonably practicable, use its best endeavours to remove the Force Majeure or ameliorate its effect.

13.5 **Dispute resolution process to apply**

If the parties are unable to agree on the existence of a party's Force Majeure or the period during which an obligation is suspended during the continuance of Force Majeure the dispute is to be resolved under **clause 12**.

13.6 **Matter beyond the Council's control**

The Council is to be relieved of the performance and fulfilment of an obligation which is dependent on the occurrence of a specified circumstance for so long as there is a change, deviation or non-occurrence of the circumstance arising from a matter beyond the Council's control.

14. **TIME**

14.1 **Time of the essence**

Time is, in all cases, of the essence.

14.2 **Extension of time**

The parties may agree to extend a time stated in this document by giving to each other a Notice which states the extended time.

15. **FURTHER ACTION**

15.1 **Action to give effect to this document**

A party is to do at its cost everything reasonably necessary to effect, perfect or complete this document and a transaction incidental to this document.

15.2 **Further action if a clause is invalid, illegal or unenforceable**

The parties are to use their best endeavours including the preparation, negotiation and execution of a further document to ensure that the object of a clause or part of a clause which is held by a court to be invalid, illegal or unenforceable is substantially achieved.

16. SEVERANCE**16.1 Removal from this document**

A clause or part of a clause which is held by a court to be invalid, illegal or unenforceable is to be treated as removed from this document.

16.2 Effect of removal on this document

The remaining clauses are not affected by:

- (a) the invalidity, illegality or unenforceability of a clause or part of a clause; or
- (b) the removal of a clause or part of a clause from this document.

16.3 Further action on removal

The parties are to use their best endeavours to satisfy the intent of this document as stated in **clause 1.5**, for a clause or part of a clause which is held by a court to be invalid, illegal or unenforceable, to the extent that it is possible having regard to the relevant court judgment.

17. NOTICE**17.1 Form of a Notice**

- (a) A Notice given by a party is to be:
 - (i) in writing;
 - (ii) signed by the party; and
 - (iii) marked for the attention of the relevant person.
- (b) A party receiving a Notice is not obliged to enquire as to the authority of the person signing the Notice.

17.2 Giving of a Notice

- (a) A party may give to any other party a Notice by sending the Notice in one of the following ways:
 - (i) delivering the Notice to the other party at the physical address of the party;
 - (ii) sending the Notice to the other party by electronic mail;
 - (iii) posting the Notice by prepaid post to the other party at the postal address of the party;
 - (iv) faxing the Notice to the other party at its facsimile number.
- (b) A Notice is to be treated as given in the following circumstances:
 - (i) if it is delivered, when it is left at the physical address of the other party;

- (ii) if it is sent by electronic mail and no electronic error notification is received by the sender, the date and time the electronic mail indicates it was sent;
 - (iii) if it is sent by post, 3 Calendar Days after it is posted or 7 Calendar Days after it is posted if sent to or from a place outside Australia;
 - (iv) if it is sent by facsimile, as soon as the sender receives from the sender's facsimile machine a report of an error-free transmission to the correct facsimile number.
- (c) The Council may prove the giving of a Notice by the chief executive officer of the Council certifying that a Notice has been given.

17.3 **Change of the details of a party**

A party may change the address, facsimile number and the person to whose attention a Notice is to be brought by giving to each other party a Notice which states the following:

- (a) the changed details;
- (b) that the change is to take effect from a date which is at least 7 Calendar Days after the Notice is given to each other party.

18. **GOVERNING LAW AND JURISDICTION**

18.1 **Queensland law to apply**

This document is governed by the laws which apply in the State of Queensland.

18.2 **Queensland courts to have jurisdiction**

- (a) The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the State of Queensland and a court which has jurisdiction to hear an appeal from those courts.
- (b) The parties are not to object and waive their right to object to the following:
 - (i) a legal proceeding brought in those courts;
 - (ii) the exercise of the jurisdiction by those courts on any basis.

19. **PAYMENT**

19.1 **Identified costs**

A party is liable for and is to pay the costs in **schedule 1**.

19.2 **Unidentified costs**

- (a) A Proponent is liable for and is to pay on demand by a Notice given by the Council to the Proponent the Council's costs for the following in respect of the Proponent:
 - (i) the preparation, negotiation and execution of a document required under this document, including without limitation the following:

- (A) a deed or other document for the sale of a Developable Lot or other Dealing;
- (B) a security;
- (C) a document for an Infrastructure Contribution;
- (D) a Plan of Subdivision;
- (ii) the giving effect of this document or a document required under this document;
- (iii) the exercise or non-exercise of a right, including for the actual or contemplated enforcement or preservation of a right, waiver, release, indemnity, discharge or charge under this document.
- (b) The Council's costs are to include legal costs on a full indemnity basis or a solicitor and own client basis, whichever is the higher.

19.3 **Tax**

A Proponent is liable for and is to pay on demand by a Notice given by the Council to the Proponent the Council's costs for a Tax (other than if it arises from the default by the Council) for the following in respect of the Proponent:

- (a) this document;
- (b) a security;
- (c) a document for an Infrastructure Contribution;
- (d) a document provided for under this document;
- (e) a transaction evidenced, effected or contemplated by this document or a document referred to in **paragraphs (a) to (d)**.

19.4 **Payment requirements**

- (a) An amount payable to a party is to be paid free from a deduction.
- (b) An amount payable to a party is to be paid in the following ways:
 - (i) in cash;
 - (ii) by an unendorsed bank cheque;
 - (iii) by the deposit by means of electronic funds transfer of cleared funds into a bank account nominated by the party.
- (c) A party making a payment is to give to the party receiving the payment a Notice which states the party's intention to make the payment at least 2 Business Days from the date that the Notice is given.

19.5 Overdue payment

- (a) This clause applies if a party (**Payer**) has not paid to the other party (**Payee**) an amount payable by the Payer when it becomes due for payment (**Overdue Amount**).
- (b) The Payer is to pay to the Payee interest on the Overdue Amount during the period the Overdue Amount remains unpaid.
- (c) The interest is to be paid on the following date:
 - (i) a date stated in a notice given by the Payee to the Payer;
 - (ii) the first day of each month if no date is fixed by the Payee.
- (d) The interest is to be calculated on the basis of the following:
 - (i) a daily balance;
 - (ii) the days which have elapsed from the date it becomes due for payment to the date it is paid;
 - (iii) a rate which is the total of 4% per annum and the cash rate specified by the Reserve Bank of Australia.
- (e) The Payee may capitalise the interest which is not paid when due for payment at the following intervals:
 - (i) the interval fixed in a Notice given by the Payee to the Payer;
 - (ii) on the first day of each month if no interval is fixed by the Payee.
- (f) The Payer is to pay interest on the capitalised interest under **paragraph (d)**.
- (g) The Payer's obligation to pay the Overdue Amount and interest on the date it becomes due for payment is not affected by another clause.
- (h) If a Claim under this document becomes merged in a judgment or an order of a court, then the Payer is to pay interest to the Payee on the amount of that Claim as an independent obligation.
- (i) The interest accrues from the date the Claim becomes due for payment both before and after the judgment or an order of the court until it is paid, at a rate which is the higher of the rate payable under the judgment or an order and the rate stated in **paragraph (d)**.

19.6 Application for exemption to pay stamp duty

- (a) The Proponent proposes to seek an exemption from the requirement to pay stamp duty in relation to this document and any document prepared under this document.
- (b) The Council is not to object to the Proponent seeking the exemption in **paragraph (a)**.

- (c) The Council is to use its reasonable endeavours to assist the Proponent in seeking the exemption in **paragraph (a)**.
- (d) The Proponent is to be responsible for the Council's costs under **paragraph (c)**.

20. INDEXATION

20.1 Application of this clause

This clause applies to an amount stated or calculated under this document other than an amount which is stated not to be indexed.

20.2 Indexation of an amount

An amount is to be indexed in accordance with the following formula:

$$IA = A \times \frac{\text{Index Number (Later Period)}}{\text{Index Number (Base Period)}}$$

where:

IA is the indexed amount.

A is the amount to be indexed.

Index Number is the number in the index stated in **schedule 1**.

Base Period is the period stated in **schedule 1**.

Later Period is the period stated in **schedule 1**.

21. GST

21.1 Construction of this clause

In this **clause 21**:

- (a) a word has the meaning in the GST Act; and
- (b) a reference to GST payable and an input tax credit entitlement include the GST payable by, and the input tax credit entitlement of, the representative member for a GST group of which the entity is a member.

21.2 Payment of GST

- (a) If a party or an entity through which that party acts (**Supplier**) is liable to pay GST on a supply made under or in connection with this document, the recipient is to pay to the Supplier an amount equal to the GST payable by the Supplier.
- (b) The recipient is to pay the amount stated in **paragraph (a)** in addition to and at the same time that the consideration for the supply is to be provided under this document.

- (c) The Supplier is to deliver a tax invoice or an adjustment note to the recipient before the Supplier is entitled to the payment of the amount stated in **paragraph (a)**.
- (d) The recipient may withhold the payment of the amount stated in **paragraph (a)** until the Supplier provides a tax invoice or an adjustment note, as appropriate.
- (e) If an adjustment event arises in respect of a taxable supply made by a Supplier under this document, the amount payable by the recipient is to be recalculated to reflect the adjustment event and a payment is to be made by the recipient to the Supplier or by the Supplier to the recipient as the case requires.
- (f) The parties are to do all things including producing a tax invoice and other documents which may be necessary or desirable to enable or help the other party to claim an input tax credit, set-off, rebate or refund for an amount of GST for a supply under this document.

21.3 **Reimbursable cost**

If a party is required to pay for a cost of another party (**Reimbursable Cost**), the amount to be paid is the amount of the Reimbursable Cost net of an input tax credit or reduced input tax credit to which the other party is entitled for the Reimbursable Cost.

21.4 **Indemnified cost**

If a party has the benefit of an indemnity for a cost (**Indemnified Cost**), the indemnity is for the Indemnified Cost net of an input tax credit or reduced input tax credit to which that party is entitled for the Indemnified Cost.

21.5 **Stated amount**

An amount stated in this document is exclusive of GST unless otherwise expressly stated.

21.6 **No merger on termination**

Clause 21 does not merge on the termination of this document and continues to have effect until each party gives to each other party a Notice waiving the benefit of the clause.

Schedule 1

Reference schedule

Items in the schedule	Description of the items in the schedule
1	Short title
2	Parties
3	Development Land
4	Owner of the Development Land
5	Payment of costs
6	Indexation

1. Short title

Health Precinct Car Parking Infrastructure Agreement 2014

2. Parties

Column 1 Name	Column 2 Address	Column 3 Facsimile Number	Column 4 Person to whose attention a Notice is to be brought
Council			
Sunshine Coast Regional Council	Locked Bag 72 Sunshine Coast Mail Centre QLD 4560	07 5475 7277	Chief Executive Officer
Proponent			
Stockland Kawana Waters Pty Ltd ACN 009 693 556 and Stockland Buddina Pty Ltd ACN 009 682 384	PO Box 20 WURTULLA QLD 4575	07 5491 0143	The Regional Manager Stockland Group

3. Development Land

Column 1 Owner	Column 2 Real Property Description	Column 3 Area	Column 4 Address
State of Queensland acting through the Department for Natural Resources and Mines	Part of Lot 462 on SP231226 identified on Drawing 1 in schedule 3	39,024m ²	Eccles Boulevard, Bokarina, Queensland 4575

Note: see clause 2.1, definition of Development Land

4. Owner of the Development Land

Column 1 Name	Column 2 Owner's consent
State of Queensland acting through the Department for Natural Resources and Mines	The Owner of the Development Land: (a) has consented to the Development Obligations of a Proponent being attached to the Development Land under the Planning Act; and (b) a copy of the document evidencing the Owner's consent is contained in schedule 5 .

Note: see Section 663 (When infrastructure agreement binds successors in title) of the Planning Act.

5. Payment of costs

Column 1 Amount of payment (\$)	Column 2 Timing of payment	Column 3 Party making payment	Column 4 Party receiving payment
Preparation, negotiation and execution of this document and related documents			
\$25,000	Within 14 days of the Proponent receiving an invoice from the Council	Proponent	Council

Note: see clause 19.1

6. Indexation

Column 1 Index	Column 2 Base period	Column 3 Later period
1. Any amount in this document		
CPI	Commencement Date	The relevant period in accordance with this document.

Note: see clause 20

Schedule 2

Development Obligations schedule

1. Special conditions

Column 1 Condition number	Column 2 Condition (clause 7.1(a))
1	<p>Performance and fulfilment of this document</p> <p>(a) The Proponent is not to develop precincts 12, 13, 14 and 15 of DPA12 for any defined use other than a car park until sufficient car parking is provided in the Permanent car parking facility in accordance with this document.</p> <p>(b) The Proponent is not to otherwise take an action or make an omission which would prejudice the intended effect of this document including the following:</p> <ul style="list-style-type: none"> (i) the making of an Application for an Approval or the amendment or revocation of an Approval for an Interim car parking facility or the Permanent car parking facility; (ii) the development of the land intended for an Interim car parking facility or the Permanent car parking facility, <p>(c) However nothing in this special condition, prevents the Proponent from informally submitting a document for a proposed Application to the Council for the development of precincts 12, 13, 14 or 15 of DPA 12 for discussion with and consideration by the Council which may give as much or as little consideration to the document submitted to the Council under this special condition as the Council considers appropriate in its absolute discretion.</p>
2	<p>Land Contribution for an Interim car parking facility</p> <p>(a) This special condition applies if:</p> <ul style="list-style-type: none"> (i) a Proponent fails to fulfil and perform a Work Contribution for an Interim car parking facility; (ii) the Council has given a Notice under clause 10.2; (iii) the Proponent has not performed or fulfilled the Work Contribution for an Interim car parking facility. <p>(b) The Proponent is to provide a Land Contribution for the relevant Interim car parking facility prior to 30 days after the end of the period within which the Work Contribution for the Interim car parking facility is to be performed or fulfilled by the Proponent as stated in the Notice under clause 10.2.</p>
3	<p>Land Contribution for Permanent car parking facility</p> <p>The Proponent is to ensure that the land for the Land Contribution for the Permanent car parking facility:</p> <p>(a) is freeholded from the land comprised in Development Lease No. 2 prior to the reconfiguring of the Development Land to create a Developed Lot, which of itself or in combination with other Developed Lots, is the subject of Site Development Plans which provide for development that generates a demand for 250 car parking spaces or more in the Interim car parking facilities; and</p>

Column 1 Condition number	Column 2 Condition (clause 7.1(a))
	<p>(b) is not developed other than for:</p> <ul style="list-style-type: none"> (i) the predominant activity of the Permanent car parking facility; and (ii) an associated activity in respect of the Permanent car parking facility which is: <ul style="list-style-type: none"> (A) identified in the Detailed Planning Area Plan for DPA12; and (B) subordinate to the Permanent car parking facility.
4	<p>Lease of land for the Permanent car parking facility</p> <ul style="list-style-type: none"> (a) The Council (as lessor) agrees to grant and the Proponent (as lessee) agrees to accept the lease in schedule 4 (Lease). (b) The parties agree to Complete and execute the Lease as soon as is reasonably practicable following the Completion of the Infrastructure Contribution in item 1.5.1 of the Infrastructure Contributions Schedule. (c) The Proponent irrevocably authorises and directs the Council to Complete and deliver the Lease by doing the following: <ul style="list-style-type: none"> (i) inserting sufficient details to complete any items or blanks in the Lease consistent with this document; and (ii) making any other additions or alterations to the Lease, which are: <ul style="list-style-type: none"> (A) necessary to enable the registration of the Lease and to give effect to this document; or (B) agreed in writing between the Council and the Proponent. (c) If the form of the Lease becomes or is inappropriate for registration due to changes in the requirements of the titles office, the Council and the Proponent agree to make the necessary changes to the form of the Lease without changing the meaning of the Lease so that it is in a form capable of registration.
5	<p>Use of the Permanent car parking facility</p> <ul style="list-style-type: none"> (a) The parties acknowledge that in accordance with the Development Agreement, the Proponent has submitted to the Council and the Council has approved a Detailed Planning Area Plan for DPA 12 which relevantly provides for the following: <ul style="list-style-type: none"> (i) that a multi-deck car park, being the Permanent car parking facility, is to be provided in Precinct 5 pursuant to the Car Parking Management Strategy; (ii) that a Site Development Plan is required for Precinct 5. (b) The Proponent is to include within an Application for an Approval of a Site Development Plan for Precinct 5 of DPA 12 under the Kawana Waters DCP the following Development Criteria under the Kawana Waters DCP in respect of the Development and Use of the premises in Precinct 5 for the Permanent car parking facility:

Column 1 Condition number	Column 2 Condition (clause 7.1(a))
	<p>"1 Development Criteria for Precinct 5</p> <p>1.1 General Development Criteria for Precinct 5</p> <p><i>The premises the subject of this Site Development Plan is to be Developed for a multi-deck car park and Used for consolidated parking and shared parking of motor vehicles from the Development and Use of other premises in DPA 12 in accordance with the Car Parking Management Strategy.</i></p> <p>1.2 Specific Development Criteria for Precinct 5</p> <p><i>The Use of the premises the subject of this Site Development Plan for a multi-deck car park is to comply with the following development criteria:</i></p> <p>(a) <i>The hours of operation of and access to the car park are to be the minimum hours of:</i></p> <p>(i) <i>6.00am to 10.30pm on weekdays and Saturdays; and</i></p> <p>(ii) <i>6.00am to 6.00pm on Sundays and public holidays,</i></p> <p><i>unless otherwise agreed to by the Council, or such further lawful trading hours as the lessee of the Permanent car parking facility, at its absolute discretion from time to time, determines.</i></p> <p>(b) <i>The bulk leasing or discounting of fees of spaces in the car park:</i></p> <p>(i) <i>is only permitted to a person or entity that is parking a motor vehicle or motor vehicles that are associated with the Development and Use of premises in DPA 12 in accordance with the Car Parking Management Strategy; and</i></p> <p>(ii) <i>is not to exceed 20% of the total number of spaces in the car park."</i></p> <p>(c) The Proponent is to Use the Permanent car parking facility in accordance with the Approved SDP where:</p> <p>(i) the Council grants an Approval of an Application for an Approval of a Site Development Plan identified in paragraph (b) (Approved SDP); and</p> <p>(ii) the parties execute the lease for the Permanent car parking facility under special condition 4; and</p> <p>(iii) the Proponent has not transferred, assigned or novated the lease identified in paragraph (ii).</p> <p>(d) The Proponent is not to make an Application for amendment of the Approved SDP under the Kawana Waters DCP to remove the specific development criteria for Precinct 5 identified in paragraph (b).</p> <p>(e) The Council is to amend the Land Record under the <i>Local Government Regulation 2012</i> for the Development Land to include a notation that the Use of the premises in Precinct 5 for the Permanent car parking facility is to be carried out pursuant to the Approved SDP.</p>

Column 1 Condition number	Column 2 Condition (clause 7.1(a))
6	<p>Interim car parking facility in precinct 12 and precinct 13 of DPA12</p> <p>(a) The Proponent may provide the Work Contribution for the construction of a Prescribed interim car parking facility in accordance with the following:</p> <p>(i) the reduced specification in paragraph (b):</p> <p>(A) if the Proponent has obtained all Approvals for the Work Contribution for the construction of the Permanent car parking facility in precinct 5 of DPA12; and</p> <p>(B) where building works and associated operational works for the Permanent car parking facility in precinct 5 of DPA 12 have substantially commenced and are continuing to be carried out; and</p> <p>(C) where the Prescribed interim car parking facility is only operational for a period of up to 12 months from the Completion of the Work Contribution in accordance with the reduced specification;</p> <p>(ii) where paragraph (i) does not apply:</p> <p>(A) for the construction of an Interim car parking facility in precinct 12 of DPA 12, the specification in item 1.1.1 of the Infrastructure Contributions Schedule; and</p> <p>(B) for the construction of an Interim car parking facility in precinct 13 of DPA 12, the specification in item 1.2.1 of the Infrastructure Contributions Schedule.</p> <p>(b) For the purpose of paragraph (a)(i), the Work Contribution for the construction of a Prescribed interim car parking facility is to be provided in accordance with the following reduced specification:</p> <p>(i) 300mm granular pavement;</p> <p>(ii) 2-coat primer seal;</p> <p>(iii) carpark space linemarking;</p> <p>(iv) internal signage (as required);</p> <p>(v) wheel stops or kerbing to lake frontage;</p> <p>(vi) concrete crossover to external road;</p> <p>(vii) stormwater runoff to be collected and lawfully discharged without adversely impacting on the adjacent road reserve and walkable waterfront areas, and without causing nuisance to adjoining private property;</p> <p>(viii) provision of an appropriate level of lighting to facilitate public safety (CEPTED issue).</p> <p>(c) In this special condition:</p> <p>Prescribed interim car parking facility means the following:</p> <p>(i) an Interim car parking facility in precinct 12 of DPA 12 in item 1.1.1 of the Infrastructure Contributions Schedule;</p> <p>(ii) an Interim car parking facility in precinct 13 of DPA 12 in item 1.2.1 of the Infrastructure Contributions Schedule.</p>

2. Infrastructure Contributions Schedule

Column 1 Table number	Column 2 Infrastructure network (clause 7.1(b))
1	Car parking management infrastructure network

1. Car parking management infrastructure network

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
1.1	Interim car parking facility in precinct 12 of DPA12				
1.1.1	Work Contribution for the construction of an Interim car parking facility in precinct 12 of DPA12.	The Work Contribution is to comprise the provision of the work required for the construction of an Interim car parking facility in accordance with an Approval for the following: (a) a Detailed Planning Area Plan for DPA12; (b) a Site Development Plan for precinct 2, precinct 3, precinct 8 or precinct 12 of DPA12; (c) the development of precinct 2, precinct 3, precinct 8 or precinct 12 of DPA12.	Prior to: (a) the start of a use for any non-residential development in any of precinct 2, precinct 3 or precinct 8 of DPA12; or (b) a later time specified by the Council in a Notice given by the Council to the Proponent.	Proponent	If the Decommissioning Date is reached prior to the timing of the Infrastructure Contribution in Column 4 being reached, this Infrastructure Contribution is not to be provided.
1.1.2	Work Contribution for the maintenance and operation of an Interim car parking facility in precinct 12 of DPA12.	The Work Contribution is to comprise the provision of the work required for the maintenance and continuous operation of an Interim car parking facility in accordance with an Approval for the following: (a) a Detailed Planning Area Plan for DPA12; (b) a Site Development Plan for precinct 2, precinct 3, precinct 8 or precinct 12 of	The Work Contribution is to: (a) commence upon the provision of an Interim car parking facility under item 1.1.1; and (b) continue until the decommissioning of the Interim car parking facility in accordance with item 1.1.3.	Proponent	

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
1.1.3	Work Contribution for the decommissioning of an Interim car parking facility in precinct 12 of DPA12.	<p>DPA12;</p> <p>(c) the development of precinct 2, precinct 3, precinct 8 or precinct 12 of DPA12.</p> <p>The Work Contribution is to comprise the provision of work for the decommissioning of the Interim car parking facility in accordance with an Approval for the following:</p> <p>(a) a Detailed Planning Area Plan for DPA12;</p> <p>(b) a Site Development Plan for precinct 2, precinct 3, precinct 8 or precinct 12 of DPA12;</p> <p>(c) the development of precinct 2, precinct 3, precinct 8 or precinct 12 of DPA12.</p>	<p>The Work Contribution is:</p> <p>(a) not to occur prior to the:</p> <p>(i) Decommissioning Date; and</p> <p>(ii) commencement of the operation of the Permanent car parking facility as a car park; and</p> <p>(b) to be completed within 20 business days of the later of the following:</p> <p>(i) Decommissioning Date; and</p> <p>(ii) commencement of the operation of the Permanent car parking facility as a car park.</p>	Proponent	
1.2	Interim car parking facility in precinct 13 of DPA12				
1.2.1	Work Contribution for the construction of an Interim car parking facility in precinct 13 of DPA12.	The Work Contribution is to comprise the provision of the work required for the construction of an Interim car parking facility in precinct 13 of DPA12 in accordance with an Approval for the following:	<p>Prior to:</p> <p>(a) the start of a use for any non-residential development in any of precinct 2, precinct 3 or precinct 8 of DPA12 which generates a demand that exceeds the capacity of the</p>	Proponent	If the Decommissioning Date is reached prior to the timing of the Infrastructure Contribution in Column 4 being

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
1.2.2	Work Contribution for the maintenance and operation of an Interim car parking facility in precinct 13 of DPA12.	<ul style="list-style-type: none"> (a) a Detailed Planning Area Plan for DPA12; (b) a Site Development Plan for precinct 2, precinct 3, precinct 8, precinct 12 or precinct 13 of DPA12; (c) the development of precinct 2, precinct 3, precinct 8, precinct 12 or precinct 13 of DPA12. 	<ul style="list-style-type: none"> (a) Interim car parking facility in precinct 12 of DPA12; or (b) a later time specified by the Council in a Notice given by the Council to the Proponent. 	Proponent	reached, this Infrastructure Contribution is not to be provided.
		<p>The Work Contribution is to comprise the provision of the work required for the maintenance and continuous operation of an Interim car parking facility in precinct 13 of DPA12 in accordance with an Approval for the following:</p> <ul style="list-style-type: none"> (a) a Detailed Planning Area Plan for DPA12; (b) a Site Development Plan for precinct 2, precinct 3, precinct 8, precinct 12 or precinct 13 of DPA12; (c) the development of precinct 2, precinct 3, precinct 8, precinct 12 or precinct 13 of DPA12. 	<p>The Work Contribution is to:</p> <ul style="list-style-type: none"> (a) commence upon the provision of an Interim car parking facility under item 1.2.1; and (b) continue until the decommissioning of the Interim car parking facility in accordance with item 1.2.3. 		

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
1.2.3	Work Contribution for the decommissioning of an Interim car parking facility in precinct 13 of DPA12.	The Work Contribution is to comprise the provision of work for the decommissioning of the Interim car parking facility in precinct 13 of DPA12 in accordance with an Approval for the following: (a) a Detailed Planning Area Plan for DPA12; (b) a Site Development Plan for precinct 2, precinct 3, precinct 8, precinct 12 or precinct 13 of DPA12; (c) the development of precinct 2, precinct 3, precinct 8, precinct 12 or precinct 13 of DPA12.	The Work Contribution is: (a) not to occur prior to the: (i) Decommissioning Date; and (ii) commencement of the operation of the Permanent car parking facility as a car park; and (b) to be completed within 20 business days of the later of the following: (i) Decommissioning Date; and (ii) commencement of the operation of the Permanent car parking facility as a car park.	Proponent	
1.3	Interim car parking facility in precinct 14 of DPA12				
1.3.1	Work Contribution for the construction of an Interim car parking facility in precinct 14 of DPA12.	The Work Contribution is to comprise the provision of the work required for the construction of an Interim car parking facility in precinct 14 of DPA12 in accordance with an Approval for the following: (a) a Detailed Planning Area Plan for DPA12; (b) a Site Development Plan for precinct 4, precinct 6,	Prior to: (a) the start of a use for any non-residential development in any of precinct 4, precinct 6, precinct 7 or precinct 9 of DPA12; or (b) a later time specified by the Council in a Notice given by the Council to the Proponent.	Proponent	If the Decommissioning Date is reached prior to the timing of the Infrastructure Contribution in Column 4 being reached, this Infrastructure Contribution is not to be provided.

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
1.3.2	Work Contribution for the maintenance and operation of an Interim car parking facility in precinct 14 of DPA12.	precinct 7, precinct 9 or precinct 14 of DPA12; (c) the development of precinct 4, precinct 6, precinct 7, precinct 9 or precinct 14 of DPA12.	The Work Contribution is to: (a) commence upon the provision of an Interim car parking facility under item 1.3.1; and (b) continue until the decommissioning of the Interim car parking facility in accordance with item 1.3.3.	Proponent	
1.3.3	Work Contribution for the decommissioning of an Interim car parking facility in precinct 14 of DPA12.	The Work Contribution is to comprise the provision of the work required for the maintenance and continuous operation of an Interim car parking facility in precinct 14 of DPA12 in accordance with an Approval for the following: (a) a Detailed Planning Area Plan for DPA12; (b) a Site Development Plan for precinct 4, precinct 6, precinct 7, precinct 9 or precinct 14 of DPA12; (c) the development of precinct 4, precinct 6, precinct 7, precinct 9 or precinct 14 of DPA12.	The Work Contribution is: (a) not to occur prior to the: (i) Decommissioning Date; and (ii) commencement of the operation of the Permanent car parking	Proponent	

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
1.4		<p>(a) a Detailed Planning Area Plan for DPA12;</p> <p>(b) a Site Development Plan for precinct 4, precinct 6, precinct 7, precinct 9 or precinct 14 of DPA12;</p> <p>(c) the development of precinct 4, precinct 6, precinct 7, precinct 9 or precinct 14 of DPA12.</p>	<p>facility as a car park; and</p> <p>(b) to be completed within 20 business days of the later of the following:</p> <p>(i) Decommissioning Date; and</p> <p>(ii) commencement of the operation of the Permanent car parking facility as a car park.</p>		
1.4.1	<p>Work Contribution for the construction of an Interim car parking facility in precinct 15 of DPA12.</p>	<p>The Work Contribution is to comprise the provision of the work required for the construction of an Interim car parking facility in precinct 15 of DPA12 in accordance with an Approval for the following:</p> <p>(a) a Detailed Planning Area Plan for DPA12;</p> <p>(b) a Site Development Plan for precinct 4, precinct 6, precinct 7, precinct 9, precinct 14 or precinct 15 of DPA12;</p> <p>(c) the development of precinct 4, precinct 6, precinct 7, precinct 9, precinct 14 or precinct 15 of DPA12.</p>	<p>Prior to:</p> <p>(a) the start of a use for any non-residential development in any of precinct 4, precinct 6, precinct 7 or precinct 9 of DPA12 which generates a demand that exceeds the capacity of the Interim car parking facility in precinct 14 of DPA12; or</p> <p>(b) a later time specified by the Council in a Notice given by the Council to the Proponent.</p>	Proponent	<p>If the Decommissioning Date is reached prior to the timing of the Infrastructure Contribution in Column 4 being reached, this Infrastructure Contribution is not to be provided.</p>

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
1.4.2	Work Contribution for the maintenance and operation of an Interim car parking facility in precinct 15 of DPA12.	The Work Contribution is to comprise the provision of the work required for the maintenance and continuous operation of an Interim car parking facility in precinct 15 of DPA12 in accordance with an Approval for the following: (a) a Detailed Planning Area Plan for DPA12; (b) a Site Development Plan for precinct 4, precinct 6, precinct 7, precinct 9, precinct 14 or precinct 15 of DPA12; (c) the development of precinct 4, precinct 6, precinct 7, precinct 9, precinct 14 or precinct 15 of DPA12.	The Work Contribution is to: (a) commence upon the provision of an Interim car parking facility under item 1.4.1; and (b) continue until the decommissioning of the Interim car parking facility in accordance with item 1.4.3.	Proponent	
1.4.3	Work Contribution for the decommissioning of an Interim car parking facility in precinct 15 of DPA12.	The Work Contribution is to comprise the provision of work for the decommissioning of the Interim car parking facility in precinct 15 of DPA12 in accordance with an Approval for the following: (a) a Detailed Planning Area Plan for DPA12; (b) a Site Development Plan for precinct 4, precinct 6, precinct 7, precinct 9, precinct 14 or precinct 15 of	The Work Contribution is: (a) not to occur prior to the: (i) Decommissioning Date; and (ii) commencement of the operation of the Permanent car parking facility as a car park; and (b) to be completed within 20 business days of the later of the following:	Proponent	

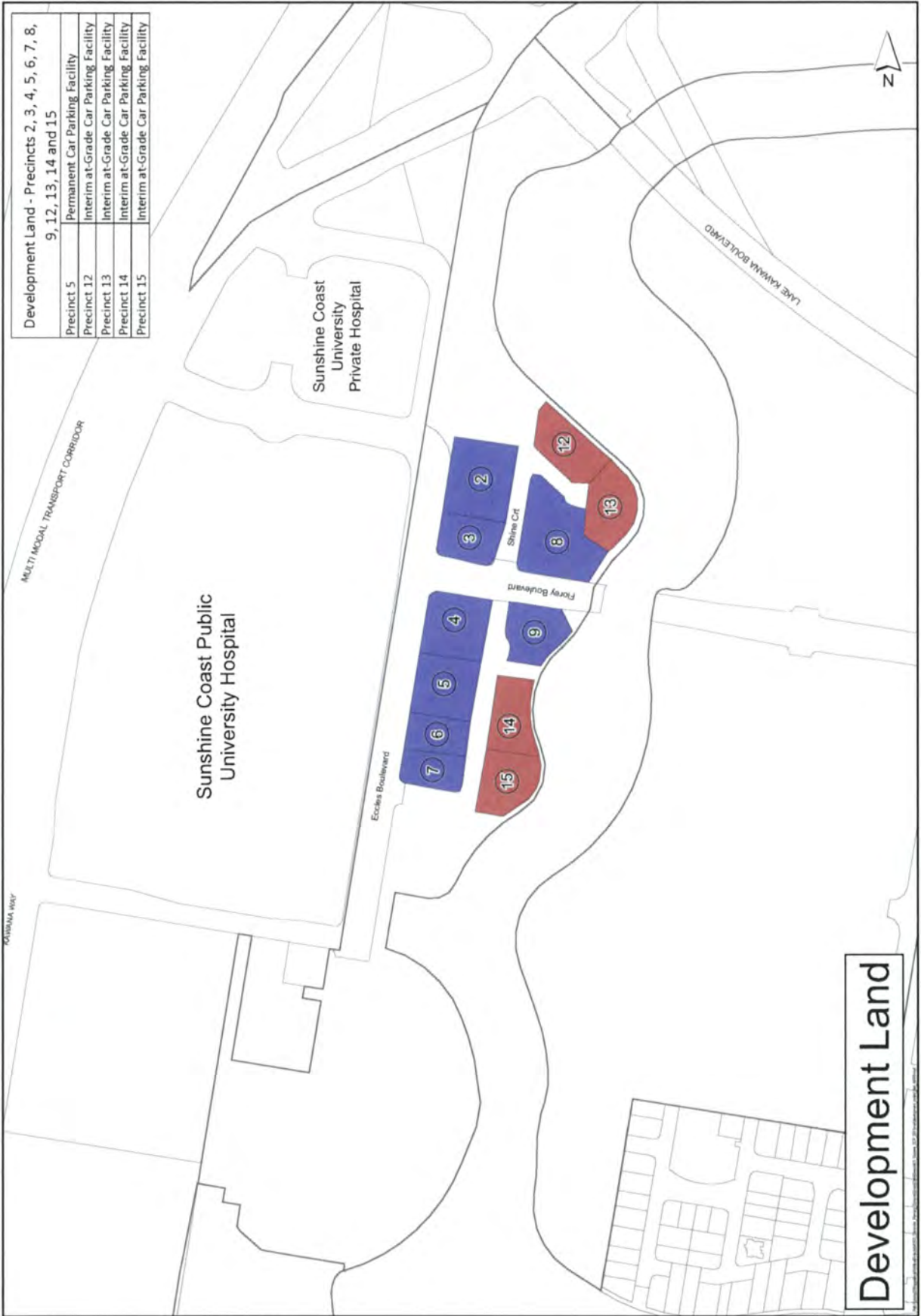
Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements	
1.5	Permanent car parking facility in precinct 5 of DPA12					
1.5.1	Land Contribution for land for the Permanent car parking facility in precinct 5 of DPA12.	The Land Contribution is to comprise the provision of the land for the Permanent car parking facility in precinct 5 of DPA12: (a) in accordance with an Approval for the following: (i) a Detailed Planning Area Plan for DPA12; (ii) a Site Development Plan for precinct 5 of DPA12; and (b) to accommodate a maximum of 600 car parking spaces.	(c) the development of precinct 4, precinct 6, precinct 7, precinct 9, precinct 14 or precinct 15 of DPA12. DPA12;	(i) Decommissioning Date; and (ii) commencement of the operation of the Permanent car parking facility as a car park.	Proponent	The Land Contribution is to be provided at no cost to the Council.
1.5.2	Work Contribution for the construction of the Permanent car parking facility in precinct 5 of DPA12.	The Work Contribution is to comprise the provision of the work required for the construction of the Permanent car parking facility in precinct 5 of DPA12: (a) in accordance with an Approval for the following: (i) a Detailed Planning Area Plan for DPA12; (ii) a Site Development	Prior to: (a) the start of a use for any non-residential development in DPA12 which of itself or in combination with other non-residential development in DPA12 will generate demand for 250 car parking spaces or more in the Interim car parking facilities; or (b) a later time specified by the Council in a Notice given by the Council to the Proponent.	Prior to: (a) the start of a use for any non-residential development in DPA12 which of itself or in combination with other non-residential development in DPA12 will generate demand for 325 car parking spaces or more in the Interim car parking facilities; or	Proponent	

Column 1 Item	Column 2 Infrastructure Contribution	Column 3 Specification of the Infrastructure Contribution	Column 4 Timing of the Infrastructure Contribution	Column 5 Party responsible for the Infrastructure Contribution	Column 6 Other requirements
		<p>Plan for precinct 5 of DPA12;</p> <p>(iii) development of the Permanent car parking facility; and</p> <p>(b) to accommodate between a minimum of 530 car parking spaces and 600 car parking spaces vehicles as provided in an Approval stated in paragraph (a).</p>	<p>(b) a later time specified by the Council in a Notice given by the Council to the Proponent.</p>		

Schedule 3

Drawings schedule

Column 1 Items in the schedule	Column 2 Description of the items in the schedule
1	Development Land Part of Lot 462 on SP231226



Schedule 4
Lease

Dealing Number



OFFICE USE ONLY

Privacy Statement

Collection of this information is authorised by the Land Title Act 1994 the Land Act 1994 and the Water Act 2000 and is used to maintain the publicly searchable registers in the land registry and the water register. For more information about privacy in NR&W see the department's website.

1. Lessor SUNSHINE COAST REGIONAL COUNCIL	Lodger (Name, address, E-mail & phone number) CBP Lawyers GPO Box 142 BRISBANE QLD 4001 Ph: (07) 3002 8700 rpo@cbp.com.au Ref: 131206	Lodger Code BE175A
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2. Lot on Plan Description	County	Parish	Title Reference
Lot ### on SP ###	###	###	###

3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)
		Stockland Kawana Waters Pty Ltd ACN 009 693 556 and Stockland Buddina Pty Ltd ACN 009 682 384	

4. Interest being leased
Fee simple

5. Description of premises being leased
The whole of the land

6. Term of lease Commencement date/event: ### Expiry date: ### #Options: Nil #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	7. Rental/Consideration SEE SCHEDULE
--	--

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:-
*the attached schedule;
* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

SEE ENLARGED PANEL

..... signature

..... full name

..... qualification / /

Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)	Execution Date	Lessor's Signature
---	-----------------------	---------------------------

9. Acceptance

The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.

SEE ENLARGED PANEL

..... signature

..... full name

..... qualification / /

Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)	Execution Date	Lessee's Signature
---	-----------------------	---------------------------

Title Reference ###

8. Grant/Execution

The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:-
*the attached schedule;
* delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994
Sunshine Coast Regional Council

.....signature
.....full name
.....qualification / /

Witnessing Officer Execution Date Lessor's Signature
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

9. Acceptance

The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.
Stockland Kawana Waters Pty Ltd

.....Signature Director
.....full name
.....qualification / /
Director/Secretary

Witnessing Officer Execution Date Lessee's Signature
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

.....Signature Director
.....full name
.....qualification / /
Director/Secretary

Witnessing Officer Execution Date Lessee's Signature
(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

2331856 1

SCHEDULE

Title Reference

Reference Schedule

Item 1 (definition of Rent in clause 1.1 and clause 3)	Rent \$1.00 per annum
Item 2	Dates and amounts or percentages of fixed rent increases Not applicable
Item 3 (definition of CPI Adjustment Date in clause 1.1)	CPI Adjustment Dates Not applicable
Item 4 (definition of Market Review Date in clause 1.1)	Market Review Dates Not applicable
Item 5 (definition of Term in clause 1.1 and clause 2)	Term 199 years
Item 6 (further term in clause 28)	Option Term and Reviews during Option Not applicable
Item 7 (Definition of Agreed Proportion in clause 1.1 and clause 5.1)	Agreed Proportion 100%
Item 8 (Definition of Permitted Use in clause 1.1 and clause 13.1)	Permitted Use The predominant activity of the Permanent car parking facility and an associated activity in respect of the Permanent car parking facility which is identified in the Detailed Planning Area Plan for DPA12 and is subordinate to the Permanent car parking facility. An associated activity must comply with the defined land uses and gross floor areas as stated in the Detailed Planning Area Plan for DPA12.
Item 9 (address for notices in clause 25.1)	Landlord's address for notices: Locked Bag 72, Sunshine Coast Mail Centre, Qld 4560 Facsimile: (07) 5475 7277 Email: mail@sunshinecoast.qld.gov.au Tenant's address for notices: Level 27, 133 Castlereagh Street, SYDNEY, NSW 2000 Facsimile: ### Email: ###

QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

SCHEDULE

Form 20 Version 2
Page 4 of 59

Title Reference ###

Item 10
(guarantor in clause 30)

Guarantor

Not applicable

Item 11
(security deposit in clause 31)

Security deposit

Not applicable

2-9712061

Title Reference ###

1. Interpretation

1.1 Definitions

In this Lease the following expressions have the following meanings:

Accounting Period means the period or periods not exceeding 12 months from time to time selected by the Landlord for the purpose of calculating the Outgoings.

Agreed Proportion means the ratio of the floor area of the Premises to the gross lettable floor area of the Building from time to time expressed as a percentage.

Air Conditioning Equipment means all plant and equipment in the Building used for the production and reticulation of chilled water or conditioned or circulating air but does not include any air conditioning equipment owned, hired or leased (other than from the Landlord) by the Tenant.

Approval has the meaning in the Infrastructure Agreement.

Area means the area within the boundaries of the local government area of Sunshine Coast Regional Council or the local government area of any successors to the Sunshine Coast Regional Council.

Architect means the architect appointed by the Landlord for the purposes of this Lease.

Authority includes any State or federal government, any semi or local government, any statutory, public or any other Person, authority, instrumentality or body having jurisdiction over the Building or the Land or anything in relation to them;

Building means:

- (a) the building and any other improvements to be erected on the Land by or on behalf of the Tenant as part of the Work Contribution (including any Services which form part of the Building), as indicatively identified in the Building Plans; and
- (b) following the Date of Practical Completion, the building or buildings erected on the Land and includes all improvements and any modifications, extensions or alterations to those improvements, including the Carpark.

Where the context permits in this Lease 'Building' also includes the Building Services and the Services Equipment.

Building Plans means the plans agreed between the Landlord and the Tenant in relation to Work Contribution.

Building Services means any service or facility installed in, connected or supplied to the Land or the Building, including Air Conditioning Equipment, mechanical services, building management systems or building management control systems, electrical services, security services, communication services, fire protection services (including any emergency fire equipment required by the relevant fire Authority), hydraulic services, vertical transportation services, essential services, utilities, roller door equipment and building maintenance units.

Business Day has the meaning in the *Acts Interpretation Act 1954 (Qld)*.

Carpark means the multi-level carpark constructed on the Land.

Certificate of Practical Completion means the certificate to be issued by the Architect in accordance with this Lease certifying to the Landlord and the Tenant that Practical Completion of the Work Contribution has been achieved.

Title Reference ###

Commencement Date means the day the Term begins as shown in Item 6 of the Form 7 and the parties agree that the Commencement Date is the day after the day that freehold title to the Land issues in the name of the Landlord.

Completion has the meaning in the Infrastructure Agreement and **Complete** and **Completed** have corresponding meanings.

Costs means all actions, claims, demands, losses, damages, costs or expenses that the Landlord may sustain or incur or for which the Landlord may become liable.

Date of Practical Completion means, for the Work Contribution, the date specified as the date on which Practical Completion of the Work Contribution is achieved and the Certificate of Practical Completion issued to the Landlord and the Tenant under **clause 7**.

Defect means any defect, shrinkage, fault or omission in the Work Contribution including any aspect of the Work Contribution that is not in accordance with the Development Documents.

Defects Liability Period means the period of 120 days from the Date of Practical Completion.

Development Documents means the following documents:

- (a) the Infrastructure Agreement; and
- (b) the following documents as defined in the Infrastructure Agreement:
 - (i) Development Agreement;
 - (ii) Development Lease No. 2;
 - (iii) Kawana Waters DCP;
 - (iv) a Master Plan.

DPA12 means the area of land identified as 'DPA12' in the Kawana Waters DCP.

Disability Standards means the Commonwealth Disability (Access to Premises - Buildings) Standards 2010.

Expiry Date means the day the Term expires as shown in Item 6 of the Form 7.

Form 7 means the Form 7 Lease to which this Schedule is attached.

Guarantor means the person (if any) named in item 10 of the Reference Schedule.

Industrial Requirements has the meaning given to that term in **clause 7.7**.

Infrastructure Agreement means the agreement between the Landlord (as Council) and Stockland Kawana Waters Pty Ltd ACN 009 693 556 and Stockland Buddina Pty Ltd ACN 009 682 384 (as Proponent).

Insured Risks means fire, storm, tempest, flood, earthquake, lightning, explosion or concussion from explosion, impact from vehicles or aircraft (other than hostile aircraft) and other aerial devices and articles dropped from them, riot, civil commotion and malicious damage, water damage (including sprinkler leakage, rain water, bursting or overflowing of water tanks, apparatus or pipes), act of God or other disabling events.

Land means the land:

- (a) for the permanent car parking facility in precinct 5 of DPA12 that comprises the Land Contribution and is indicatively identified in the Infrastructure Agreement; and

Title Reference ###

(b) described in item 2 of the Form 7.

Land Contribution means the land contribution under the Infrastructure Agreement for the permanent car parking facility in precinct 5 of DPA12 specified in item 1.5.1 of the Infrastructure Contributions Schedule in **schedule 2** of the Infrastructure Agreement.

Landlord means the party named in Item 1 of the Form 7 and includes in the case of a corporation its successors in title and assigns and in the case of a natural person or persons their and each of their respective heirs executors administrators and assigns and, where the context permits, includes the Landlord's Employees and Agents.

Landlord's Employees and Agents means each of the Landlord's employees, officers, agents, contractors and invitees.

Law includes statutes, ordinances, codes, common law, equity and torts law.

Lease means the Form 7 and all Schedules and annexures to the Form 7.

Lease Year means each separate year of the Term commencing respectively on the Commencement Date and on each anniversary of that date.

Manager means the manager (if any) appointed from time to time by the Landlord to manage the Land.

Market Review Date means each date in Item 4 of the **Reference Schedule**.

Option Term means the option for renewal referred to in item 6 of the Reference Schedule.

Outgoings means, where not paid by the Tenant otherwise under this Lease, the total of all amounts paid or payable by the Landlord for any one Accounting Period in respect of the operation, maintenance and repair of the Premises including but not limited to the following:

- (a) rates, charges and other levies payable to the local or other Authority in whose area the Premises is located excluding any levies or fees imposed on the Carpark but including any levies or fees imposed on, or required to be collected by, the Landlord by any Authority other than the Landlord or a Related Party of the Landlord;
- (b) rates and charges (including charges for excess water) payable to any local or other Authority responsible for the provision or reticulation of water and/or sewerage and/or drainage services;
- (c) levies, contributions and/or other amounts payable to any local or other Authority or company for or on account of fire protection services (including for any dedicated telephone line to the fire brigade);
- (d) all rates, taxes (excluding income or capital gains tax but including land tax on a single holding basis) charges, assessments and impositions whatsoever (whether parliamentary municipal or otherwise and whether assessed, charged or imposed by or under Federal or State law or by Federal State or local Authorities and even though of a novel character and for the avoidance of doubt any carbon or greenhouse gas charges, costs or taxes) that may at any time after the Commencement Date be assessed charged or imposed in respect of the Premises other than rates, taxes, charges, assessments and impositions assessed as a result of the Tenant's use of the Premises and payable by the Tenant pursuant to **clause 5.3**;
- (e) insurance premiums and any other charges including stamp duties on insurances referred to in **clause 11.7**;
- (f) the cost of any emergency fire equipment required by the relevant fire Authority;
- (g) the cost of any fees properly payable by the Landlord to comply with its obligations under the *Work Health and Safety Act 2011*;

Title Reference ###

- (h) the cost of alterations or additions to the Building whether structural or otherwise that may be required by reason of any statutory requirement other than costs recoverable, in whole or in part, from the Tenant under this Lease;
- (i) the cost of operating, maintaining, servicing and repairing the Services including repair by way of replacement of parts;
- (j) the charges payable to specialist contractors and the wages paid to any staff employed and the cost of materials used in or about the operation, maintenance, servicing and repair of the Services; and
- (k) the cost of pest control services.
The expression excludes:
 - (l) the cost of management, control and administration of the Premises and the collection of rents and like payments. Such cost includes the wages, superannuation contributions and other payments to or in respect of any employee and any fees or charges paid to any manager or centre manager, including any leasing commissions; and
 - (m) any other expenditure properly incurred in the administration and management of the Building.

Permanent car parking facility has the meaning given in the Infrastructure Agreement.

Permitted Use means the use in Item 8 of the Reference Schedule.

Practical Completion means, for the Work Contribution, that:

- (a) the Work Contribution has been Completed, except for minor omissions and minor defects:
 - (i) the immediate making good of which is not practical;
 - (ii) which do not prevent all or part of the Building from being reasonably capable of being used for the Permitted Use referred to in this Lease;
 - (iii) in relation to which the Architect, in agreement with the Tenant's Architect, has determined that the Tenant has reasonable grounds for not rectifying the minor defects or omissions prior to Practical Completion;
 - (iv) the existence of which or the rectification of which will not prejudice the convenient use of all or part of the Building for the Permitted Use referred to in this Lease; or
 - (v) which do not cause any legal restriction to the use or occupation of the Building;
- (b) a certificate of classification under the *Building Act 1975* (Qld) for the Building, or an Approval in writing to occupy and use the Building pending the issue of that certificate, has been issued; and
- (c) the Building Services are Complete and operational except for minor omissions and minor defects meeting the criteria in paragraph (a).

Premises means the premises described in Item 5 of the Form 7.

Principal Contractor has the meaning given in the WHS Regulation (as that term is defined in **clause 7.9**).

Reference Schedule means the schedule by that name forming part of this Lease.

Related Party means an agency or entity nominated by the Landlord to carry out any functions of the Landlord in its capacity as the local government.

Title Reference ###

Rent means the yearly amount in Item 1 of the **Reference Schedule** as varied under this Lease.

Services means the services to or of the Premises provided by Authorities or the Landlord (including, but not limited to, water, electricity, sewerage, gas and telecommunications) and where the context requires includes the Services Equipment.

Services Equipment means the equipment, within the Premises or the Land, producing or containing the Services.

Site Development Plan has the meaning given to this term in the Infrastructure Agreement.

Sunshine Coast Health Precinct means the area described as DPA12 in the Kawana Waters Development Control Plan 1 Gazetted 13 December 1996 as amended from time to time, which is adjacent to, or within the immediate surrounds of the Land.

Tenant means the party named in Item 3 of the Form 7 and includes in the case of a corporation its successors in title and permitted assigns and in the case of a natural person or persons their and each of their respective heirs executors administrators and permitted assigns.

Tenant's Architect means the architect appointed by the Tenant for the purposes of this Lease.

Tenant's Business means the business carried on by the Tenant from the Premises.

Tenant's Employees and Agents means each of the Tenant's employees, officers, agents, contractors, invitees and any other person claiming through or under the Tenant including, without limitation, the agents or contractors engaged or employed by the Tenant in connection with the Work Contribution.

Tenant's Property means the Building and all other plant, equipment, fixtures, fittings, furniture, furnishings and other property the Tenant brings or fixes to the Premises before the Commencement Date or during the Term.

Term means the term of this Lease as shown on the Form 7.

Trading Hours means the minimum hours of:

- (a) 6:00am to 10:30pm on weekdays and Saturdays; and
- (b) 6:00am to 6:00pm on Sundays and public holidays,

unless otherwise agreed between the parties, in writing or such further lawful trading hours as the Tenant, at its absolute discretion from time to time, determines.

Work Contribution means the work contribution for the Permanent car parking facility in precinct 5 of DPA12 specified in item 1.5.2 of the Infrastructure Contributions Schedule in **schedule 2** of the Infrastructure Agreement.

1.2 Construction

In this Lease unless the context otherwise requires,

- (a) reference to:
 - (i) one gender includes the other gender;
 - (ii) the singular includes the plural and the plural includes the singular;
 - (iii) a party includes that party's successors and permitted assigns;

Title Reference ###

- (iv) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and amendments or replacements of any of them;
 - (v) writing includes any mode of representing or reproducing words in tangible and permanently visible form and includes telex and facsimile or electronic mail transmission;
 - (vi) a body that has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged or the functions of which have become exercisable by any other body in its place, is taken to refer to the body established or constituted in its place or by which its functions have become exercisable;
 - (vii) the president of a body or Authority includes any person acting in that capacity;
 - (viii) clauses, sub-clauses, paragraphs, schedules and appendices are to clauses, sub-clauses, paragraphs, schedules and appendices in this Lease;
 - (ix) any thing (including any amount) is a reference to the whole or any part of it;
 - (x) a group of things or persons is a reference to any two or more of them collectively and each of them individually.
- (b) where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning.
 - (c) when the word 'including' is used to introduce a list of items, it does not limit the meaning of the words to which the list relates to those items or items of a similar kind.
 - (d) an agreement, representation or warranty:
 - (i) in favour of two or more persons is for the benefit of them jointly and severally; and
 - (ii) by two or more persons binds them jointly and severally;
 - (e) all dollar amounts are in Australian dollars, unless otherwise stated;
 - (f) headings are for convenience only and do not affect the interpretation or form part of this Agreement;
 - (g) any party that is a trustee is bound in its capacity as a trustee and personally; and
 - (h) if a day appointed by this Agreement for the payment of money or the performance of an act falls on a day that is not a Business Day, the day for the payment of that money or the performance of that act is instead the Business Day immediately following the day appointed.

2. Grant of Lease

The Landlord leases the Premises to the Tenant for the Term on the terms in this Lease.

3. Rent

3.1 Tenant to pay Rent

The Landlord acknowledges receipt of the Rent from the Tenant.

4. Rent Reviews

Not applicable.

Title Reference ###

5. Outgoings and other charges

5.1 Payment of Outgoings

- (a) The Tenant must pay the Outgoings for each Accounting Period.
- (b) Where the Tenant fails to comply with its obligation under **clause 5.1(a)**, the Landlord may recover from the Tenant, and the Tenant must pay, the Outgoings for each Accounting Period on receipt of relevant invoices from the Landlord as directed by the Landlord (acting reasonably)
- (c) For clarity, the parties acknowledge and agree that the Outgoings referred to in subparagraphs (f), (h), (i), (j) and (k) of the definition of Outgoings in **clause 1.1** are primarily payable directly by the Tenant, in its own right, in compliance with the provisions of this Lease and so will not form part of the Outgoings, so long as the Tenant duly pays those Outgoings.

5.2 Charges for utilities

- (a) The Tenant must pay all charges that may, from time to time, be imposed or charged by the relevant utility provider in respect of electricity, gas and water consumed in the Premises during the Term.
- (b) If assessed directly against the Tenant, such charges must be paid to the assessing Authority by the due date for payment.
- (c) If assessed against the Landlord, the Landlord must charge the Tenant as if the Tenant was a single consumer direct from the relevant utility provider and the Tenant must remit payment of such charges directly to the relevant utility provider by the due date for payment of the relevant utility service and provide the Landlord with evidence of payment within 14 days following the due date for payment.

5.3 Services provided by Landlord

Where the Landlord provides any Services, the Landlord must supply those Services to the Tenant at the standard rates charged by the Landlord for those Services (including any discounts for bulk supply or other relevant matters).

5.4 Charges relating to Tenant's business

The Tenant must pay all amounts that are during the Term assessed, charged or imposed upon or in respect of or by virtue of the Tenant's Business and whether assessed against the Landlord or the Tenant. If assessed against the Tenant, such amounts must be paid by the Tenant to the assessing Authority by the due date for the payment and if assessed against the Landlord must be paid to the Landlord upon demand by the Landlord.

5.5 Special services

The Tenant must pay for:

- (a) any security services supplied, at the Tenant's request, to the Premises.
- (b) any Costs for additional or unusual Services incurred by the Landlord at the Tenant's request.

5.6 Goods and services tax

(a) Definitions

In this **clause 5.6**:

- (i) 'GST', 'taxable supply' and 'tax invoice' have the same meanings as in the GST Act; and

Title Reference ###

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

(b) **Rent and other payments are exclusive of GST**

The consideration payable by the Tenant to the Landlord under a clause of this Lease (except for any provision in this **clause 5.6**) for a taxable supply made by the Landlord to the Tenant (including rent and outgoings) is exclusive of any amount attributable to GST (the 'GST-exclusive consideration').

(c) **Tenant's obligation to pay Landlord**

(i) The Tenant must, in respect of any taxable supply made by the Landlord to the Tenant under this Lease (including any extension or renewal of this Lease), pay to the Landlord, in addition to the GST-exclusive consideration and at the same time this Lease requires the GST-exclusive consideration to be paid, an amount that, under the GST Act, is equal to the GST payable on the GST-exclusive consideration.

(ii) The Tenant's liability under **clause 5.6(c)(i)** is not affected by the Landlord's entitlement to input tax credits under the GST Act. However, if in relation to a taxable supply made to the Landlord the Landlord is entitled to an input tax credit in respect of consideration paid by or for it for which the Tenant must reimburse the Landlord, the GST-exclusive consideration must be reduced by an amount equal to the input tax credit.

(d) **Tax invoice**

Before the Landlord is entitled to a payment under **clause 5.6(c)**, the Landlord must deliver to the Tenant a tax invoice for a taxable supply made by the Landlord to the Tenant.

(e) **Adjustment Event**

If an adjustment event arises in respect of a taxable supply made by the Landlord under this Lease (including any extension or renewal of this Lease), the amount payable by the Tenant under **clause 5.6(c)** will be recalculated to reflect the adjustment event and a payment will be made by the Tenant to the Landlord or by the Landlord to the Tenant as the case requires.

6. Payment requirements

6.1 Method of payment

The Tenant must make payments under this Lease to the Landlord (or to a person nominated by the Landlord in a notice to the Tenant) by the method the Landlord reasonably requires without set-off, counterclaim, withholding or deduction.

6.2 Correcting mistaken payments

(a) If the Tenant pays an amount that is incorrect and that is less than the amount that the Tenant should have paid, then even if the Landlord has given the Tenant a receipt, the Landlord must either:

- (i) give the Tenant a statement of the adjusted amount that is payable by the Tenant with the next rent payment; or
- (ii) give written notice to the Tenant requiring payment of the adjusted amount within 30 days.

(b) If the Tenant pays an amount that is incorrect and that is more than the amount that the Tenant should have paid, then the Landlord must credit the Tenant with the adjusted amount either:

- (i) in the next rent statement or invoice; or

Title Reference ###

- (ii) within 30 days after receiving notice of the mistake if the lease has terminated. .

6.3 On demand

If an amount is payable under this Lease on demand by or on behalf of a party, the other party must pay that amount within 10 Business Days after the later of:

- (a) written demand for payment is made; or
(b) a tax invoice is provided.

6.4 Payment obligations continue

Expiry or termination of this Lease does not affect:

- (a) the Tenant's obligations:
(i) to make payments under this Lease for periods before then; or
(ii) to give information to the Landlord to enable it to calculate those payments; or
(b) the Landlord's obligations to account to the Tenant for any overpayment made in advance.

6.5 Time of the essence

Time is of the essence of this Lease in connection with either party's obligations to pay money.

6.6 Interest on overdue money

If a party does not pay on time any amount payable by it under this Lease, it must pay the other party interest on that amount from when it becomes due for payment until it is paid. Interest is calculated on daily balances at a rate for unsecured overdraft accommodation in excess of \$100,000 quoted at the relevant time by a bank nominated by the recipient of the interest.

7. Carrying out of the Work Contribution

7.1 Application of this clause

The provisions of this clause are in addition to the provisions of the Infrastructure Agreement that apply to the Work Contribution.

7.2 Access to the Land and Building

The Landlord must:

- (a) make the Land available to the Tenant and the Tenant's Employees and Agents for the carrying out of the Work Contribution in accordance with this document and the Infrastructure Agreement; and
(b) allow the Tenant and the Tenant's Employees and Agents reasonable use of the site facilities and the Services for the purposes of carrying out the Work Contribution, the use of which is at the Tenant's cost in accordance with **clause 7.6**.

7.3 Tenant's Employees and Agents

The Tenant is responsible for all acts and omissions of each of the Tenant's Employees and Agents.

Title Reference

7.4 Performance of the Work Contribution

The Tenant must procure the Work Contribution to be Completed:

- (a) in a proper, thorough and workmanlike manner using quality new materials;
- (b) diligently and expeditiously;
- (c) in compliance with all relevant Approvals;
- (d) in accordance with the construction requirements for the Work Contribution set out in the Development Documents;
- (e) in order that Practical Completion of the Work Contribution is achieved by no later than the timing specified in the Infrastructure Agreement; and
- (f) otherwise in accordance with this Lease and the Development Documents.

7.5 Directions and Access Rights

- (a) In carrying out the Work Contribution the Tenant must, and must procure that the Tenant's Employees and Agents:
 - (i) act to avoid as far as possible any inconvenience to any person using or occupying the surrounding land or other nearby lands;
 - (ii) not cause any contamination or pollution on the Land or surrounds and take appropriate and reasonable measures to prevent any contamination or pollution; and
 - (iii) comply with the conditions contained in any Approval.

7.6 Services during the provision of the Work Contribution

- (a) During the provision of the Work Contribution, the Tenant must pay the utilisation costs of the water, electricity and other Building Services to either or both the Building and the Land. If such Building Services are not separately metered then the Tenant must reimburse the Landlord, within 30 Business Days of demand, the costs reasonably determined by the Landlord to be payable by the Tenant. Any dispute about the costs will be referred to the Architect and Tenant's Architect for joint determination.
- (b) The Tenant must provide all plant and equipment, facilities, labour and materials necessary for the carrying out of the Work Contribution.

7.7 Industrial relations

The Tenant is responsible for the co-ordination of all industrial matters and industrial disputes relating to the Work Contribution and must appraise itself of, comply with and cause the Tenant's Employees and Agents to comply with, all relevant building site agreements, industrial relations and safety policies and awards applying to the Land (**Industrial Requirements**).

7.8 Damage to the Land or the Building

The Tenant is liable for any damage caused to the Land and the Building either directly or indirectly, including damage as a result of the Work Contribution and the costs of any delays occasioned by the damage, except to the extent that material damage is caused or contributed to by the Landlord or the Landlord's Employees and Agents.

Title Reference ###

7.9 Workplace health and safety

- (a) In this **clause 7.9**:
- (i) **Principal Contractor** and other terms defined in the WHS Legislation have the meanings in the WHS Legislation; and
 - (ii) **WHS Legislation** means legislation relating to occupational health and safety issues including the *Work Health and Safety Act 2011 (Qld)*, *Work Health and Safety Regulation 2011 (Qld)* (**WHS Regulation**) and any regulations and codes made under or in connection with that Act.
- (b) If any part of the Work Contribution comprises a 'Construction Project' within the meaning of section 292 of the WHS Regulation, then the Tenant (as the 'person conducting a business or undertaking') will engage a Tenant's Employee and Agent as Principal Contractor of the Work Contribution.
- (c) If the Tenant does not engage a Principal Contractor under **clause 7.9(b)**, the Tenant is the Principal Contractor of the Work Contribution.
- (d) If the Tenant or Tenant's Employee and Agent nominated for the purpose of this **clause 7.9(d)** is engaged or taken to be engaged as the Principal Contractor, in accordance with **clauses 7.9(b)** and **7.9(c)**, then:
- (i) for the purpose of this **clause 7.9(d)**, the Landlord authorises the Tenant to manage or control the workplace (of the Work Contribution) to the extent necessary to discharge the duties of the Principal Contractor under the WHS Legislation and the Tenant accepts that engagement;
 - (ii) the Landlord agrees that the Tenant may also authorise a Tenant's Employee and Agent to manage or control the workplace (of the Work Contribution) to the extent necessary to discharge the duties of Principal Contractor under the WHS Legislation; and
 - (iii) the Tenant's, or the Tenant's Employee and Agent's, engagement as Principal Contractor ends on Completion of the Work Contribution, including the rectification of any Defects.
- (e) The Tenant must comply (and must ensure any nominated Tenant's Employee and Agent complies) with:
- (i) all directions given by the Principal Contractor of the Work Contribution; and
 - (ii) WHS obligations to consult with the Landlord in relation to discharging and complying with WHS obligations.
- (f) The Landlord is not assuming the role of designer of structures or plant (within the meaning of the WHS Legislation) in exercising its rights or performing its obligations under this Lease.

8. Ownership of Tenant's Property

- (a) The parties agree that, subject to the terms of this Lease, from the Commencement Date until the Expiry Date, where applicable and to the extent capable at Law:
- (i) the Tenant's Property is divisible from the balance of the Premises;
 - (ii) the Tenant is the owner of the Tenant's Property (including having the benefit of depreciation and other taxation law rights); and
 - (iii) the Landlord has no right as owner or any other proprietary right in respect of the Tenant's Property.
- (b) Subject to **clauses 20.2 and 20.3**, from the Expiry Date, the Tenant's Property automatically becomes the property of the Landlord without the need for any payment.

Title Reference ###

9. Practical Completion

9.1 Certificate of Practical Completion

- (a) The Tenant must give a notice to the Landlord at least five Business Days' before the day it considers that the Work Contribution will reach Practical Completion.
- (b) On the date specified in the notice given by the Tenant pursuant to **clause 9.1(a)** the Tenant, the Architect, the Tenant's Architect and the Landlord will together inspect the Work Contribution and compile a list of omissions and Defects (if any).
- (c) The Architect, in agreement with the Tenant's Architect, will deliver to the Tenant and the Landlord:
 - (i) a Certificate of Practical Completion if, in the reasonable opinion of the Architect, in agreement with the Tenant's Architect, the Work Contribution has reached Practical Completion and the Architect issues a Certificate of Practical Completion; or
 - (ii) if the Architect, in agreement with the Tenant's Architect, does not agree that the Work Contribution has reached Practical Completion, a list of works required to achieve Practical Completion prepared by the Architect and the Tenant's Architect.
- (d) If the Architect does not issue a Certificate of Practical Completion under this **clause 9.1**, the Tenant must take the necessary steps to Complete, or cause to be Completed, the list of items required to be done pursuant to **clause 9.1(c)(ii)**, and when the Tenant considers that the list of items have been Completed, it may again give notice to the Landlord under this **clause 9.1** and this **clause 9.1** will continue to apply save that the Architect will have five Business Days to comply with **clause 9.1(b)**.
- (e) The Tenant must not, prior to the Date of Practical Completion, go into occupation of the Building or any part thereof under this Lease, other than for the purpose of undertaking the Work Contribution so as to achieve Practical Completion.

9.2 Obligations after the Date of Practical Completion

- (a) As soon as practicable after the Date of Practical Completion, the Tenant must:
 - (i) cause any outstanding work for the Work Contribution to be finally Completed in accordance with this Lease and the Infrastructure Agreement;
 - (ii) rectify any Defects in the Work Contribution that are notified in writing by the Architect to the Tenant within the Defects Liability Period.
- (b) The Tenant must comply with **clause 9.2(a)(ii)** as soon as reasonably practicable after the Architect notifies the Tenant specifying in reasonable detail the relevant Defect.
- (c) Despite any other provision of this Lease, the Tenant is not required to make good any Defect in the Work Contribution to the extent to which that Defect is caused or contributed to by the Landlord's act, omission, negligence or default.

10. Landlord's Independence

The Tenant acknowledges that nothing in this Lease derogates from the Landlord's ability, in its capacity as a local government, to assess, approve, conditionally approve or refuse an application for an Approval having regard to proper planning principles or having regard to any submission made or public consultation undertaken in respect of an Approval.

Title Reference ###

11. Insurances

11.1 Tenant to insure

- (a) The Tenant must in connection with the Premises maintain with insurers and on terms approved by the Landlord (acting reasonably) in the name of the Tenant and noting the Landlord and any other person named by the Landlord and having an interest in the Premises:
- (i) public liability insurance for at least \$20 million;
 - (ii) plate glass insurance against all risks specified by the Landlord;
 - (iii) insurance for the full reinstatement cost of the Premises (including site clearance costs, approval costs and design and project management fees) where it is damaged or destroyed by any of the Insured Risks;
 - (iv) the Tenant's Property for its full value; and
 - (v) other insurances that are required by law or that, in the Landlord's reasonable opinion, a prudent tenant would take out for similar premises for a similar use including, but not limited to, insurance in connection with any Tenant's works on the Premises.
- (b) In addition to the insurances required under **clause 11.1**, during the carrying out of the Work Contribution, the Tenant or the relevant Tenant's Employee and Agent must maintain with insurers and on terms approved by the Landlord (acting reasonably) in the name of the Tenant or the relevant Tenant's Employee and Agents (as the case may be) and ensuring that the Landlord will be notified as soon as practicable if any of the policies lapse, terminate or are varied or forfeited:
- (i) a contract works policy in a sum sufficient to cover the full reinstatement cost (including demolition, removal of debris and consultants' fees) of the Work Contribution (including design costs and goods and materials on site);
 - (ii) public liability insurance for not less than \$20 million in respect of any single claim against legal liability for death or injury to any person or loss of or damage to or destruction of property arising out of or in connection with the performance of the Work Contribution;
 - (iii) workers' compensation insurance as required by statute in relation to the Work Contribution; and
 - (iv) except where the Landlord approves a different amount (such approval not to be unreasonably withheld) professional indemnity insurance for not less than \$10 million for any one claim.
- (c) **Clause 11.1(b)(iv)** only applies to those of the Tenant's Employees and Agents providing professional services in relation to the Work Contribution.
- (d) The Tenant must ensure that the relevant Tenant's Employees and Agents comply with the insurance requirements of all Industrial Requirements.

11.2 Group insurance policy

All insurance policies for the cover taken out under **clause 11.1** may be part of a block or group insurance policy also covering premises other than the Premises and entities other than the Tenant.

11.3 Proof of insurances

- (a) The Tenant must give the Landlord evidence that it has complied with **clause 11.1** when asked to do so.

Title Reference ###

- (b) The Tenant must, if requested by the Landlord, promptly provide to the Landlord a copy of the policy documentation (including policy numbers) for the insurances required to be effected by the Tenant pursuant to this Lease.
- (c) The Tenant acknowledges the Landlord may endorse any insurance policy it holds with the policy numbers of insurances effected by the Tenant under this Lease.

11.4 Notifiable events

The Tenant must notify the Landlord immediately if an insurance policy required by this **clause 11.1** is cancelled or an event occurs, of which the Tenant is aware, that may allow a claim or affect rights under an insurance policy in connection with the Premises or property in them.

11.5 Claims handling

The Tenant may enforce, conduct, settle or compromise claims under any insurance policy required by this Lease if it obtains the Landlord's approval (which the Landlord may not unreasonably withhold).

11.6 Insurance proceeds

Insurance proceeds of policies under **clause 11.1** that the insurer does not require to be used for replacement or reinstatement must be paid into a separate joint account in the names of the Landlord, the Tenant and, if required by the Landlord, any other person. The money must be used to settle claims in connection with the event insured against or to replace or reinstate the insured item.

11.7 Landlord's insurance

The Landlord may take out and maintain insurance cover for:

- (a) public liability insurance for at least \$20 million, or such other amount as reasonably determined by the Landlord; and
- (b) other insurances that are required by law.

12. Indemnities and releases

12.1 Indemnity by Tenant

The Tenant is liable for and indemnifies the Landlord against liability or loss arising from, and all Costs incurred in connection with:

- (a) any damage, loss, injury or death occurring in or on the Premises except to the extent caused by the act, omission, negligence or default of the Landlord or the Landlord's Employees and Agents;
- (b) any damage, loss, injury or death caused or contributed to by the act, omission, negligence or default of the Tenant or any of the Tenant's Employees and Agents in relation to or connected with the Work Contribution except to the extent caused by the act, omission, negligence or default of the Landlord or the Landlord's Employees and Agents;
- (c) damage, loss, injury or death caused or contributed to by the act, negligence or default of the Tenant or of the Tenant's Employees and Agents except to the extent caused by the act, omission, negligence or default of the Landlord or the Landlord's Employees and Agents; and
- (d) the Landlord doing anything that the Tenant must do under this Lease but has not done or has not, in the reasonable opinion of the Landlord, done properly.

Title Reference ###

12.2 Release of Landlord

The Tenant releases the Landlord from, and agrees that the Landlord is not liable for, liability or loss arising from, and cost incurred in connection with:

- (a) damage, loss, injury or death except to the extent caused by the act, omission, negligence or default of the Landlord or the Landlord's Employees and Agents; or
- (b) damage, loss, injury or death caused or contributed to by the act, omission, negligence or default of the Tenant or any of the Tenant's Employees and Agents in relation to or connected with the Work Contribution except to the extent caused by the act, omission, negligence or default of the Landlord or the Landlord's Employees and Agents;
- (c) anything the Landlord is permitted or required to do under this Lease; or
- (d) a Service not being available, being interrupted or not working properly not being due to the negligence or default of the Landlord or Landlord's Employees and Agents.

12.3 Independent indemnities

Each indemnity is independent from the Tenant's other obligations and continues during this Lease and after it expires or is terminated. The Landlord may enforce an indemnity before incurring expense.

12.4 Condition of Landlord's liability

- (a) In the case of any matter that is the Landlord's responsibility under this Lease, the Landlord is not deemed to be in default unless the Tenant gives the Landlord written notice of the matter and the Landlord fails within a reasonable time from receipt of the notice to take proper steps to address the matter.
- (b) **Clause 12.4** does not require the Tenant to give notice to the Landlord of a matter of which the Tenant is not aware.

13. Permitted Use

13.1 Permitted Use

The Tenant must:

- (a) not use the Premises or any part of them for any purpose other than for the Permitted Use without the Landlord's approval;
- (b) operate the Carpark;
- (c) keep the Carpark open during the Trading Hours;
- (d) obtain and keep in full force and effect throughout the Term, all necessary licences, permits and approvals of each relevant Authority to use and operate the Carpark;
- (e) provide copies of the licences, permits and approvals referred to in **clause 13.1(b)** to the Landlord;
- (f) unless excluded under this Lease (including paragraph (a) of the definition of Outgoings), pay to the relevant Authority on or before the due date for payment any levy or fee imposed by an Authority on the Carpark or the Tenant;
- (g) cause the Premises to be adequately equipped for the Permitted Use to be conducted in a proper, reputable and business-like manner; and

Title Reference ###

- (h) instruct, engage or employ staff and independent contractors (**employees**) as may be necessary for the effective management of the Carpark including but not limited to effective traffic management during peak periods of Carpark use and ensure that such employees act in accordance with this Lease and in a manner consistent with the level of service usually expected in a carparking business.

13.2 No warranty as to use

The Landlord does not warrant that the Premises may be used for the Permitted Use.

13.3 Access

The Tenant may use and occupy the Premises at all times subject to any relevant legislation for the purposes of the Permitted Use.

13.4 Lawful use

The Tenant must do everything necessary for the Tenant to use the Premises lawfully throughout the Term, any further term and any period of holding over.

14. Car Parking Fees

14.1 Amount of Fees

The Tenant may charge fees for use of the Carpark as determined by the Tenant in accordance with sound commercial principles.

15. Tenant's additional obligations

15.1 Positive obligations

The Tenant must:

- (a) comply on time with all laws and the requirements of Authorities in connection with the Premises, the Tenant's Business, the Tenant's Property and the use or occupation of the Premises (including obtaining all permits) including any requirements for structural or other capital works to the Building provided that the Landlord has given its prior written approval to such works pursuant to the terms of this lease (as applicable);
- (b) comply with the requirements of any Site Development Plan that has been approved for the Land;
- (c) comply with the requirements of the Disability Standards;
- (d) inform the Landlord of material damage to the Premises or the Tenant's Property or of a faulty Service immediately it becomes aware of it;
- (e) observe the maximum load weights throughout the Building;
- (f) ensure that all fire fighting equipment in the Building is:
 - (i) maintained in good order and condition and as required by law; and
 - (ii) kept readily available for use in the Carpark to detect, alert, abort, prevent and retard the spread of fire.
- (g) prepare and maintain a comprehensive fire management control plan for the Carpark to the satisfaction in all respects of the Landlord and any relevant authorities;

Title Reference ###

- (h) ensure that the lifts in the Building are maintained in accordance with the relevant manufacturer's standards and as required by law;
- (i) notify the Landlord, immediately upon becoming aware, of any material accident to, material defect in or want of major repair to the Carpark or any fixtures or fittings;
- (j) obtain the written consent of the Landlord, not to be unreasonably refused, prior to altering or replacing (but not repairing) any Building Service installed as at the Commencement Date;
- (k) promptly, when asked by the Landlord acting reasonably, do everything necessary for the Tenant to do to enable the Landlord to exercise its rights under this Lease; and
- (l) comply with the Landlord's reasonable directions about Building security.

15.2 Negative obligations

The Tenant must not:

- (a) store or use inflammable, volatile or explosive substances on the Premises except where the substances are required for the Permitted Use or the Tenant's Business and in that case the Tenant must promptly notify the Landlord and the Tenant's insurer (where necessary to maintain the Tenant's insurance under this Lease) and comply with all relevant laws and regulations and the requirements of the Tenant's insurer in respect of such storage or use;
- (b) do anything in or around the Building that in the Landlord's reasonable opinion may be annoying, dangerous or offensive or may cause a nuisance to adjoining landowners or occupiers or to the public, it being acknowledged that the Tenant is not in breach of this **clause 15.2(b)** in operating the Premises as a carpark for the Trading Hours;
- (c) do anything to overload the Building Services or the Services nor use them for anything other than their intended purpose;
- (d) put up signs, notices, advertisements, blinds, shade sails or awnings, antennae or receiving dishes or install vending or amusement machines without the Landlord's approval, not to be unreasonably refused;
- (e) hold auction, bankrupt or fire sales in the Premises; or
- (f) keep an animal or bird on the Premises.

If this Lease requires the Tenant not to do something, then the Tenant must not do anything that may result in the thing happening.

15.3 Compliance by Tenant's Employees and Agents

The Tenant must ensure that the Tenant's Employees and Agents comply with the Tenant's obligations under this Lease as are applicable to them, and the obligation of proving that an obligation is not applicable to them rests with the Tenant.

16. Cleaning

The Tenant must at its cost:

- (a) keep the Premises and everything in them clean and:
 - (i) place all rubbish, wet refuse and waste material in proper containers within the Premises; and

Title Reference ###

- (ii) free of rodents, termites, cockroaches and other vermin and comply with the Landlord's reasonable directions in that regard (including without limitation regular cleaning and fumigation); and
- (b) keep any gardens and landscaped areas on the Land well maintained and clean and any lawns regularly mowed.

17. Repair and Tenant's works

17.1 Landlord's approval

- (a) The Tenant may not carry out Major Works to the Premises without the Landlord's prior approval, which approval must not be unreasonably withheld or delayed. If the Landlord's approval is required, the Landlord may impose reasonable conditions.
- (b) The Tenant will if required by the Landlord submit to the Landlord for perusal plans specifications and other details in relation to any proposed Major Works, and will pay such reasonable fees and expenses as the Landlord may reasonably incur in obtaining reports and advice on such plans specifications and details from architects, engineers, builders, and other professional persons.
- (c) Subject to the Landlord's rights under **clause 17.1(a)** and **clause 17.1(b)**, the Landlord agrees to promptly sign and return any owner's consent, permission or the like reasonably required by the Tenant to obtain any Authority approval to the Major Works.
- (d) For clarity, the parties agree that the Tenant may carry out works to the Premises, other than Major Works, without the Landlord's prior approval.
- (e) In this clause, Major Works are works to the Building that require local government approval to be lawfully effected or any structural works to the Building.

17.2 Tenant's works

The Tenant must ensure that any works it does, including works under **clause 17.4**, are done:

- (a) by contractors capable of completing the works in a competent manner and in accordance with paragraphs (b) - (e) of this clause;
- (b) in a proper and workmanlike manner;
- (c) in accordance with any plans, specifications and schedule of finishes required and approved by the Landlord;
- (d) in accordance with all laws and the requirements of Authorities; and
- (e) in accordance with the Landlord's reasonable requirements and directions.

17.3 Acknowledgment of good repair

The Tenant acknowledges that the Premises were in good repair at the Commencement Date.

17.4 Repair

- (a) The Tenant must:
 - (i) throughout the Term keep the Premises and the Tenant's Property in good and tenantable repair and condition for the Permitted Use, including making any structural repairs; and

Title Reference ###

- (ii) promptly clean or repair any marks or damage caused by any leaks, spillage or overflow of water, grease, oil or other liquids in or from the Premises.
- (b) For clarity, the Landlord and Tenant acknowledge and agree that the obligation of the Tenant to keep the Premises and the Tenant's Property in good and tenable repair and condition for the Permitted Use under **clause 17.4(a)** does not mean that the Tenant has to maintain the Premises or the Tenant's Property in the state or condition they were in as at the Commencement Date.

17.5 Removal of building materials

The Tenant must remove all building material or rubbish caused by any Tenant's works as often as is necessary to keep the Premises clean and tidy and must comply promptly with any request by the Landlord, acting reasonably, to remove building material or rubbish.

17.6 Industrial use

- (a) The Tenant must use its best endeavours to ensure that the Permitted Use causes as little damage as possible to any part of the Land or the Building including, without limitation, to hardstand areas, loading zones, kerbs and pavements, floors, gates and roller doors.
- (b) Subject to the Tenant's other rights and obligations under this **clause 17**, the Tenant must repair any damage caused to the Land and the Building by the Permitted Use within a reasonable time after a request by the Landlord.

18. Transfer and other dealings

18.1 Definitions

For the purposes of this **clause 18**:

- (a) **Deal With** means subleasing, sharing or licensing, and **Dealing** has a corresponding meaning;
- (b) **New Tenant** means the person to whom it is proposed to Transfer the Lease;
- (c) **Transfer** means transferring, assigning or novating this Lease.

18.2 Seeking the Landlord's approval

- (a) The Tenant may not Transfer or Deal With this Lease without the Landlord's written approval, not to be unreasonably refused.
- (b) The Tenant must give the Landlord a notice asking for that approval and provide with that notice:
 - (i) in the case of a Dealing, all information reasonably required by the Landlord; and
 - (ii) in the case of a Transfer, the information set out in **clause 18.3**.

18.3 Information relating to a Transfer

- (a) When seeking approval of a Transfer under **clause 18.2(b)(ii)**, the Tenant must provide to the Landlord detailed financial references and detailed business references on the New Tenant containing sufficient detail to enable the Landlord, acting reasonably, to properly consider:
 - (i) the experience of the New Tenant;
 - (ii) the ability of the New Tenant to carry out the Permitted Use including any proposal by the New Tenant to employ or contract someone with that ability; and

Title Reference ###

- (iii) the New Tenant's ability to meet the Tenant's financial obligations under this Lease (including its obligation under **clause 7 [Work Contribution]** to the extent the Tenant's obligations under that clause have not been fulfilled, as determined by the Landlord (acting reasonably)).

18.4 **Transfer preconditions**

If the Landlord gives its approval of a Transfer, prior to the Transfer taking place, the Tenant must:

- (a) remedy any default by the Tenant under this Lease unless the Landlord has waived it in writing;
- (b) ensure that the Tenant and the New Tenant enter into a deed of covenant with the Landlord relating to the Transfer, which deed is to be in the form attached to this Lease as **annexure B** and prepared by the Landlord's solicitors at the cost of the Tenant;
- (c) ensure that a guarantee and indemnity in the form of the guarantee and indemnity contained in the deed in the form attached to this Lease as **annexure B** is provided by the directors of the New Tenant or from a parent company or the directors of a parent company of the New Tenant, or at the parties' discretion, such other security for the Tenant's compliance under this Lease (such as a security deposit or bank guarantee) as the parties, acting reasonably in all respects (including as to terms of any bank guarantee and amounts of the security deposit or bank guarantee) agree;
- (d) obtain the Landlord's confirmation that the Landlord has obtained, at the Tenant's Cost, any consents it has agreed or is required to obtain; and
- (e) ensure that all moneys payable by the Tenant to the Landlord under this Lease are paid to the date of the Transfer, including the Landlord's reasonable costs of dealing with the request for approval under **clause 18.2**.

18.5 **Processing of Tenant's request and release on Transfer**

- (a) If the Tenant has complied with **clause 18.3**, the Landlord must assess and decide the request for approval of the Transfer without unreasonable delay.
- (b) Subject to **clause 18.5(c)**, the Landlord and the Tenant agree that the transferring Tenant is released from all obligations arising from or in connection with this Lease from the date this Lease is duly Transferred in accordance with this **clause 18**.
- (c) The release in **clause 18.5(b)**:
 - (i) does not apply in relation to any Transfer of the Lease by Stockland Kawana Waters Pty Ltd ACN 009 593 556 and Stockland Buddina Pty Ltd ACN 009 682 384; or
 - (ii) does not apply to any default of the Tenant under this Lease occurring before the date of the Transfer; and
 - (iii) in no way affects the obligations of a New Tenant under this Lease.

18.6 **Car bay licenses**

Nothing contained in or implied by this Lease prevents the Tenant from granting a licence of a car bay in the Premises for a term less than the Term.

18.7 **Subleasing to enable construction of Work Contribution**

- (a) Despite the provisions of this **clause 18**, the Landlord agrees that the Tenant does not have to obtain the Landlord's consent to the grant of a sublease of the Premises by the Tenant to enable construction of the Work Contribution on the Land by a third party.

Title Reference ###

- (b) The Tenant acknowledges and agrees with the Landlord that the grant of the sublease does not, in any way, derogate or release the Tenant from the Tenant's obligations under this Lease.
- (c) The Tenant must notify the Landlord, in writing, of the identity of the sublessee as soon as practical prior to the grant of the sublease.

19. Landlord's additional obligations and rights

19.1 Quiet enjoyment

Subject to the Landlord's rights, while the Tenant complies with its obligations under this Lease, it may occupy the Premises during the Term without any disturbance or interference by the Landlord or any person lawfully claiming under the Landlord.

19.2 Operation of services

The Tenant may not terminate this Lease or stop or reduce payments under it because a Service is not available or is interrupted or fails.

19.3 Consents

If the Landlord has agreed to obtain a person's consent in connection with this Lease (including any mortgagee of the Premises), then the Landlord must do everything reasonably necessary to obtain that consent. If as a condition of that consent the Tenant is requested to execute a document it must execute that document promptly. Such document must be on terms reasonably required by the Landlord.

19.4 Works

The Landlord may carry out any works that may be necessary on the Land or in the Building but must do everything reasonably necessary to minimise interference with the Tenant's Business.

19.5 Landlord's right to enter

- (a) The Landlord may enter the Premises at reasonable times on reasonable notice to see if the Tenant is complying with its obligations under this Lease or to do anything the Landlord must or may do under this Lease or to view the condition of the Premises generally.
- (b) If the Landlord decides there is an emergency, the Landlord may enter giving whatever, if any, notice it can (which may be verbal).
- (c) In exercising its right of entry, the Landlord:
 - (i) must make good any damage to the Premises and the Tenant's Property resulting from the exercise of the right;
 - (ii) comply with the laws and requirements of all Authorities;
 - (iii) exercise the right so as to cause a minimum of inconvenience and disturbance to the Tenant and the Tenant's Business at the Premises; and
 - (iv) if the Tenant makes available a representative, the exercise of the right must occur in the presence of such representative.

Title Reference ###

19.6 Prospective tenants or purchasers

After giving reasonable prior notice (not less than five Business Days), the Landlord may during the last three months of the Term:

- (a) enter the Premises to show prospective purchasers or mortgagees through the Premises;
- (b) display for a reasonable time from the Premises a sign indicating that the Building or Premises is available for purchase; and
- (c) display a sign indicating that the Premises are available for lease and enter the Premises with prospective tenants,

subject to any safety directions of the Tenant and any refusal to parts of the Premises on reasonable security or safety grounds.

19.7 Change of Landlord

If the Landlord deals with its interest in the Premises so that another person becomes landlord, the Landlord must procure, at the Landlord's cost, before completion of the substitution of the new landlord, the new landlord, the Landlord and the Tenant enter into a deed of covenant in which:

- (a) the new landlord covenants to comply with all of the Landlord's obligations in this Lease with effect from the date of the deed;
- (b) the Tenant covenants to comply with its obligations under this Lease in favour of the new landlord with effect from the date of the deed;
- (c) provision is made for the obligations of the Landlord to the Tenant under this Lease to terminate in accordance with the deed of covenant, except in respect of any prior breach of this Lease.

19.8 Landlord may rectify

- (a) After giving the Tenant reasonable notice of what is to be done, the Landlord may do anything that the Tenant should have done under this Lease but that it has not done in accordance with that notice or that the Landlord considers it has not done properly. If the thing is capable of remedy, the Landlord must first give notice under **clause 23.1(a)(i)** and wait for the period to expire before doing the thing.
- (b) The Landlord may recover the Costs of doing any matter set out in **clause 19.8(a)** from the Tenant on demand as evidenced in itemised invoices.

19.9 Agents

The Landlord may appoint agents or others to exercise any of its rights or perform any of its duties under this Lease. Communications from the Landlord override those from the agents or others if they are inconsistent.

20. Expiry or termination

20.1 Tenant to vacate

The Tenant must vacate the Premises on the earlier of the Expiry Date and the date this Lease is terminated and subject to **clauses 17** and **20.2**, leave them in a clean and tidy condition having regard to the Permitted Use.

20.2 Removal of Tenant's property

The Tenant must not remove (or must not be required to remove by the Landlord) the Tenant's Property that:

Title Reference ###

- (a) comprises the Building, the Building Services or the Services Equipment;
- (b) the Landlord has stated (as a condition of giving Approval to works) may not be removed; or
- (c) is part of structural work done by the Tenant to the Premises,

and on the earlier of the Expiry Date and the date this Lease is terminated, unencumbered ownership of the above Tenant's Property vests in the Landlord.

20.3 Time for removal

Subject to **clauses 20.2, 20.4 and 17.4(a)(i)**, the Tenant must:

- (a) to the extent required by the Landlord, remove the Tenant's Property from the Premises during the seven days immediately before the day the Premises must be vacated; and
- (b) subject to **clause 17.4**, leave the Premises in an 'as is' condition and repair any damage caused by the removal of the Tenant's Property.

20.4 Removal after re-entry

If the Landlord terminates this Lease by re-entry, the Tenant must give the Landlord a notice within seven days after termination that it will remove the Tenant's Property that it may or must remove from the Premises, excluding the Tenant's Property identified in **clause 20.2**.

20.5 Landlord's notice

Within seven Business Days after the Tenant gives its notice, the Landlord must give the Tenant a notice, stating when and how the Tenant's Property is to be removed from the Premises and by whom.

20.6 Tenant's property not removed

The Landlord may treat the Tenant's Property as abandoned and deal with it in any way it sees fit, at the Tenant's expense, if the Tenant does not:

- (a) give its notice on time (in the event that **clause 20.4** applies); or
- (b) remove the Tenant's Property in accordance with this **clause 20** or a notice given under it.

20.7 Risk

Subject to **clauses 12.1 and 12.2**, the Tenant's Property is at the Tenant's risk at all times.

20.8 Removal by Landlord

- (a) Despite the provisions of **clauses 20.2 to 20.5** the Landlord may upon termination of this Lease remove the Tenant's Property required to be removed under **clause 20.3** from the Premises and store the same in a public warehouse or elsewhere at the Tenant's cost without being deemed guilty of conversion or becoming liable for any loss or damage occasioned by such removal or storage.
- (b) Any costs incurred by the Landlord in or about such removal or storage must be paid by the Tenant to the Landlord upon demand and any reference in **clauses 20.2 to 20.6** to the Tenant removing the Tenant's Property is a reference to removing it from the Premises or the place of storage, as appropriate.
- (c) If the Tenant does not pay all Costs of removal or storage to the Landlord and remove the Tenant's Property from the place of storage within 1 month the Landlord may treat the Tenant's Property as abandoned and deal with it in any way it sees fit, at the Tenant's expense.

Title Reference ###

20.9 Return of keys etc

On the day the Tenant must vacate the Premises, the Tenant must give the Landlord the keys, access cards and similar devices for the Building and the Premises held by the Tenant, the Tenant's Employees and Agents and any other person they have given them to.

20.10 Handover of the Carpark

If this Lease is terminated pursuant to **clause 23** prior to the Expiry Date, the Tenant must do all things necessary:

- (a) to allow the Landlord (or a third party nominated by the Landlord), to operate the Carpark in accordance with the Permitted Use and the terms of this Lease, including giving assistance and advice about the running of the Carpark as reasonably requested by the Landlord; and
- (b) to effect or obtain a consent to the assignment of any contract, licence, permit or approval from the Tenant to the Landlord (or a third party nominated by the Landlord), or to procure a termination of any contract, licence, permit or approval held by the Tenant necessary to run the Carpark in accordance with the terms of the Permitted Use and the terms of this Lease.

21. Holding over

21.1 Monthly tenancy

If the Tenant continues to occupy the Premises after the Expiry Date with the Landlord's approval, it does so under a tenancy for a fixed term of 1 month and then from month to month either party may terminate on one month's notice ending on any day.

21.2 Terms of monthly tenancy

Subject to **clause 21.1**, the monthly tenancy is on the same terms as this Lease except for those changes that:

- (a) are necessary to make this Lease appropriate for a monthly tenancy; or
- (b) the Landlord requires as a condition of giving its approval to the holding over.

22. Damage to Building or Premises

22.1 Termination for destruction or damage

- (a) Subject to **clause 22.1(c)**, if the Building is completely damaged or partially damaged so that the Premises, or any part of the Premises, cannot be used or are inaccessible, the Tenant must repair the Building or Premises, as the case may be, so that the Premises are accessible and the Tenant can occupy and use them.
- (b) The Tenant must complete the repairs or replacement to the Landlord's reasonable satisfaction within a reasonable time, having regard to the extent of the destruction or damage.
- (c) The Tenant is not required to repair the Building or Premises, as the case may be, where, as a result of any act, omission, negligence or default of the Landlord or the Landlord's Employees and Agents, the insurer of any insurance policy which would otherwise respond in whole or in part to a claim for such damage or destruction would be entitled to:
 - (i) avoid the policy; or
 - (ii) decline to pay the claim; or
 - (iii) decline to pay 25% or more of the claim.

Title Reference ###

In this instance, the Tenant must give the Landlord a notice either:

- (iv) terminating this Lease on the date the Tenant gives in the notice; or
 - (v) stating that the Tenant intends to repair the Building or Premises in accordance with **clause 22.1(a)**.
- (d) If the Tenant gives a notice under **clause 22.1(c)(iv)**, the Tenant must vacate the Premises, remove any Tenant's Property the Tenant is entitled to remove having regard to **clause 20.2** and otherwise leave the Premises in a clean and tidy condition as at the date of termination of this Lease.

22.2 Reduction or abatement

- (a) The Tenant is not liable to pay Rent or any amount payable to the Landlord for Outgoings or other charges payable to the Landlord for the period that the Premises cannot be used or are inaccessible.
- (b) If the Premises are still useable but the useability is diminished because of the damage, the Tenant's liability to pay Rent and amounts payable for Outgoings is reduced in proportion to the reduction in useability.

22.3 Rights not affected

This **clause 22** does not affect any rights:

- (a) either party may have if:
 - (i) the damage is caused or contributed to by; or
 - (ii) rights under an insurance policy in connection with the Building are prejudiced or a policy is cancelled or payment of a premium or a claim is refused by the insurer because of,
 - the act, negligence or default of the other party or of their respective Employees and Agents; or
- (b) that arise before termination.

22.4 Dispute resolution

If there is any dispute or difference between the parties as to the:

- (a) nature or extent of the Tenant's loss of use of or access to the Premises;
- (b) amount of just and reasonable abatement to be paid or allowed to the Tenant by the Landlord under this **clause 22**
 - then:
 - (c) the dispute must be determined, at the request of either party, by a suitably qualified individual nominated (as the request of either party) by the President for the time being of the Real Estate Institute of Queensland. The person appointed must act as a mediator and not as an arbitrator. The mediator's costs must be borne equally by the parties (or in such proportions as the mediator in its discretion thinks fit in the circumstances). The mediator's decision is final and binding on the parties; and
 - (d) the mediator will determine the dispute within 20 Business Days of acceptance of the appointment under **clause 22.4(c)**.

Title Reference ###

23. Default

23.1 Definition of default

A party is in default if:

- (a) that party fails to comply with any of its obligations under this Lease and then fails to comply with a notice from the other party:
 - (i) in the case of a default by the Tenant involving abandonment of the Premises or a material failure to operate the Carpark in accordance with the provisions of this Lease, requiring the non-compliance to be remedied within seven days after receipt of the notice;
 - (ii) in the case of a default (other than the default referred to in **clause 23.1(a)(i)**) which is capable of being remedied (and setting out the reasonable steps required to effect such remedy), requiring the non-compliance to be remedied within seven days after receipt of the notice, or any longer period as is reasonable having regard to the nature of the non-compliance; or
 - (iii) in the case of a default (other than the default referred to in **clause 23.1(a)(i)**) which is incapable of being remedied, requiring payment of reasonable compensation.
- (b) that party being a company becomes an externally administered body corporate (as defined in Section 9 of the Corporations Law) or if it should pass or attempt to pass (except for the purpose of amalgamation or reconstruction with the prior approval of the other party) a resolution for winding up or enter into or attempt to enter into any composition or scheme of arrangement; or
- (c) if that party suffers or permits any mortgagee or chargee or any appointee of any mortgagee or chargee to enter into possession or act as receiver or manager of the Tenant's Business.

23.2 Dispute resolution

- (a) If there is any dispute or difference between the parties as to default (or alleged default) by a party, the parties agree to refer the dispute to expert determination in Brisbane administered by the Australian Commercial Dispute Centre (ACDC).
- (b) However, if the default is the failure of the Tenant to operate the Carpark during the Trading Hours (i.e. a breach of **clauses 13.1(b)** and **13.1(c)**), then the provisions of this **clause 23.2** do not apply.
- (c) The expert determination will be conducted without delay in accordance with the ACDC Rules for Expert Determination in force at the date of this Lease and amended in accordance with the copy attached at **Annexure A (Rules)**. The Rules set out the timeframes and procedures to be adopted, the process of selection of the expert and the costs involved, including the parties' respective responsibilities for the payment of the expert's costs and other costs of the expert determination.
- (d) The expert determination will be final and binding on the parties.
- (e) This **clause 23.2** survives termination of this Lease.

23.3 Covenant in favour of mortgagee

- (a) The Landlord promises in favour of any registered mortgagee of this Lease that the Landlord will give such mortgagee a copy of any notice of default given to the Tenant at the same time as it gives such notice to the Tenant.
- (b) If the default of the Tenant is not the subject of a dispute under **clause 23.2**, in addition to any other rights the mortgagee may have at law, within the timeframe identified in the notice under **clause 23.1(a)**, the mortgagee may elect by written notice given to the Landlord and the Tenant to enter into possession of the Premises and remedy the Tenant's default, in which case, it must do so within a further 21 days (**Remedy**

62/2782/21

Title Reference ###

Period), or a longer period agreed in writing between the mortgagee and the Landlord having regard to the nature of the breach, following such election. In exercising its right to remedy the Tenant's default, the mortgagee has the ability to assign this Lease on behalf of the Tenant in accordance with **clause 18**.

- (c) If the mortgagee does not make the election under **clause (b)**, subject first to the rights of the Landlord under **clause 23.4** and then subject to any other rights the mortgagee may have at law, the Landlord may exercise its rights as a result of the Tenant's default under this Lease.
- (d) The Landlord's promise to the mortgagee under **clause 23.3(a)** is given in consideration of any such mortgagee:
 - (i) not requiring the Landlord to enter into a deed of covenant; and
 - (ii) promising that it will not object to the grant of any licence under **clause 23.4**

23.4 Licence to Landlord

- (a) This **clause 23.4** only applies if there is a breach of the type referred to in **clause 23.1(a)(i)**.
- (b) At the end of the timeframe identified in the notice under **clause 23.1(a)(i)**, if the Tenant has not remedied the default, the Tenant grants the Landlord a licence to operate the Carpark and the right to do everything necessary for the Landlord to conduct the Permitted Use (the **Licence**).
- (c) For the avoidance of doubt, the Licence:
 - (i) commences immediately following the end of the timeframe identified in **clause 23.1(a)(i)**; and
 - (ii) if the mortgagee makes an election under **clause (b)**, expires on the date the mortgagee enters into possession of the Premises to remedy the Tenant's default.

23.5 Right of entry

if:

- (a) the Tenant is in default as defined in **clause 23.1** and the default is not the subject of a dispute under **clause 23.2**; and
- (b) where there is a registered mortgagee of this Lease, the mortgagee fails to rectify the Tenant's default in accordance with **clause 23.3**,

the Landlord may, after first giving notice to:

- (c) the Tenant, where required by law; and
- (d) any registered mortgagee of this Lease,

re-enter and take possession of the Premises, in which case this Lease will be terminated.

23.6 Tender after entry

Any moneys tendered by the Tenant after the Landlord enters into possession of the Premises in the manner described in **clause 23.4** and accepted by the Landlord must first be applied on account of any Rent and other moneys due but unpaid at the date of entry and secondly on account of the Landlord's costs of entering into possession of the Premises.

Title Reference

23.7 Damages for breach

If a party is in default (**Defaulting Party**), the Defaulting Party must indemnify and compensate any other party for (and the other party may recover from the Defaulting Party) all loss paid, suffered or incurred by the other party (**Innocent Party**) relating directly or indirectly to the default of the Defaulting Party, except to the extent that it is caused or contributed to by the Innocent Party or those for whom the Innocent Party is responsible. The Innocent Party must also mitigate its loss.

23.8 Concurrent Remedies

All the remedies available to the Innocent Party as a result of any default by the Defaulting Party are without prejudice to any other remedies that might otherwise be available and the Defaulting Party is not released from liability in respect of the breach or non-observance of any obligation by reason of the exercise by the Innocent Party of any such remedy.

24. Costs, charges and expenses

- (a) In connection with this Lease and any document or matter in connection with it, the Tenant must promptly pay:
- (i) for everything the Tenant must do;
 - (ii) all stamp duty (if any), registration fees and survey fees relating to this Lease; and
 - (iii) all Costs in connection with works the Tenant carries out.
- (b) Except as otherwise provided for in the Infrastructure Agreement, each party must pay its own legal and other costs and expenses of negotiating, preparing, executing and performing its obligations under this Lease.

25. Notices and approvals

25.1 Method of giving notice

A notice consent or approval must be:

- (a) in writing; and
- (b) left at or posted by registered mail to the address or sent to the electronic mail address or facsimile number of the party as set out in Item 9 of the **Reference Schedule**, as varied by notice.

25.2 Deemed receipt

A notice or approval is taken to be given:

- (a) if posted, on the third day after posting;
- (b) if sent by electronic mail and no electronic error notification is received by the sender, the date and time the electronic mail indicates it was sent; and
- (c) if sent by facsimile, as soon as the sender receives from the sender's facsimile machine a report of an error-free transmission to the correct facsimile number.

Title Reference ###

26. Miscellaneous

26.1 Waiver and variation to be in writing

A provision of or a right under this Lease may not be waived or varied except in writing signed by whoever is to be bound.

26.2 No deemed waiver

If the Landlord:

- (a) accepts rent or other money under this Lease (before or after termination);
- (b) does not exercise or delays exercising any right under **clause 23**;
- (c) gives any concession to the Tenant; or
- (d) attempts to mitigate its loss,

it is not a waiver of any breach or of the Landlord's rights under this Lease. An attempt by the Landlord to mitigate its loss is not a surrender of this Lease.

26.3 Exclusion of statutory provisions

The covenants, powers and provisions implied in leases by sections 105, 107 and 109 of the *Property Law Act 1974* do not apply to this Lease. In this Lease words used in any of the forms of words in Column 1 of the Third Schedule to the *Property Law Act 1974* do not imply a covenant under section 109 of that Act.

26.4 Prior breaches

Expiry or termination of this Lease does not affect any rights in connection with a breach of this Lease before then.

26.5 Warranties and undertakings

The Tenant warrants that it has relied only on its own enquiries in connection with this Lease and not on any representation or warranty by the Landlord or any person acting or seeming to act on the Landlord's behalf.

26.6 Undertakings

The Tenant must comply on time with undertakings given by or on behalf of the Tenant in connection with this Lease.

26.7 Severability

In case any provision of this Lease is invalid illegal or unenforceable in any respect, the remaining provisions are not in any way affected or impaired.

26.8 Entire agreement

This Lease and the Agreement for Lease pursuant to which it is executed contain the entire agreement between the parties and supersedes all previous correspondence and negotiations.

26.9 Consents

Where under this Lease the Landlord's consent is required such consent may be withheld or given with or without conditions by the Landlord in the Landlord's absolute discretion unless otherwise specifically provided. The grant of any such consent must be in writing and if not in writing is of no effect.

Title Reference ###

26.10 Tenant's risk and expense

The performance of any act, matter or thing that the Tenant is required or permitted to perform and the Tenant's occupation and use of the Premises is at the sole risk and expense of the Tenant unless otherwise specifically provided.

26.11 Time for performance

Where the Tenant is obliged to perform any act, matter or thing, the Tenant must fulfil such obligation:

- (a) within the time (if any) specified under the relevant provision of this Lease;
- (b) if no time is specified, within the time (if any) specified under any notice given by the Landlord in respect of that obligation; or
- (c) if no time is specified as referred to in paragraphs (a) and (b) of this clause, promptly.

26.12 Measurement of areas

Measurement of any area required under this Lease must be in accordance with the directions for measurement of net lettable area using the appropriate method of measurement utilised by the Property Council of Australia Limited at the Commencement Date.

26.13 Tenant not to permit or suffer prohibited matters

Wherever under this Lease the Tenant is prohibited from doing any act, matter or thing the Tenant is also prohibited from permitting or suffering such act, matter or thing to be done.

27. Power of attorney

27.1 Power of attorney

After the right of re-entry under **clause 23** has arisen, the Landlord, as the Tenant's attorney, may sign:

- (a) a surrender of this Lease;
- (b) a withdrawal of any caveat lodged by the Tenant; or
- (c) any other document concerning this Lease.

27.2 Appointment

The Tenant irrevocably appoints the Landlord and each of its officers as the Tenant's attorney to act under **clause 27.1**.

28. Option

Not applicable.

29. Environmental compliance

29.1 Compliance with legislation

The Tenant must ensure that it and the Tenant's Employees and Agents comply with all relevant environmental legislation in relation to the handling of any material that may be classified as hazardous, toxic or environmentally damaging in the course of the Permitted Use.

Title Reference ###

29.2 Indemnity

The Tenant must indemnify the Landlord against any Costs the Landlord may incur as a result of:

- (a) the breach by the Tenant of this **clause 29**; and
- (b) any contamination of the Land caused or contributed to by the Tenant or the Tenant's Employees and Agents or any other person claiming through or under the Tenant.

29.3 Remediation

- (a) The Tenant must, at its cost, undertake any steps reasonably required by the Landlord or the relevant authority to rectify any environmental damage or harm caused or contributed to by the Tenant, or the Tenant's Employees and Agents or any other person claiming through or under the Tenant, during the Term, even though this Lease may have expired, been surrendered or terminated.
- (b) If the Tenant fails to comply with its obligations under **clause 29.3(a)**, the Landlord may remediate the affected area and recover the costs of that remediation from the Tenant and the Tenant must pay those costs to the Landlord upon demand.

30. Guarantee and indemnity

Not applicable.

31. Bank guarantee or security deposit

Not applicable

32. Finalisation of this Lease

- (a) The Tenant irrevocably authorises and directs the Landlord (and its solicitors) to complete and deliver this Lease by:
 - (i) inserting sufficient details to complete any items or blanks in this Lease in conformity with this Lease and the Infrastructure Agreement; and
 - (ii) making any other minor additions or alterations to this Lease that are:
 - (A) necessary to enable registration of this Lease and to give effect to this Lease; or
 - (B) agreed in writing between the Landlord and the Tenant.
- (b) The Landlord must, at its cost, have the written unconditional consent to this Lease of any mortgagee of the Land endorsed on, or attached to, all signed originals of this Lease.
- (c) The Landlord must, on receipt of a cheque from the Tenant for the registration fees associated with this Lease, have this Lease registered on the title to the Land. Once registered, the Landlord must notify and provide the Tenant with a duplicate copy of the signed Lease.

33. Changes in Land Titles Office requirements

If the form of this Lease becomes or is inappropriate for registration due to changes in the requirements of the Queensland Titles Office, both the Landlord and the Tenant agree to make the necessary changes to the form of lease (without changing the meaning of the Lease) so that it is in a form that is capable of registration.

QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

SCHEDULE

Form 20 Version 2
Page 36 of 59

Title Reference ###

Annexure A – Rules

23188261

Title Reference ###

Rules for Expert Determination

Effective from 1 January 2012

633188363

Title Reference ###

Rules for Expert Determination

Business disputes can often be best resolved by the parties with the assistance of an independent third party. Expert Determination is a dispute resolution process which assists parties resolve disputes without the delay and expense of going to court or arbitration.

The parties enter into a binding agreement under which they agree to submit their dispute to a person with expertise in the area where the dispute has arisen (**Expert**) and agree to be bound by the decision of that Expert. The Expert is selected in accordance with these Rules from a panel of Experts provided by ACDC. The Expert then conducts the determination in accordance with the procedure set out in these Rules and the Expert Determination Agreement. The Expert then makes a determination which binds the parties.

If the parties to a dispute invoke these Rules they will be deemed to have agreed to be bound by the terms and conditions of these Rules and they shall fully cooperate to participate in the Expert Determination.

In the event that there is any conflict or inconsistency between the Expert Determination Agreement and these Rules (as amended):

- (a) the Rules (as amended) shall prevail if the conflict or inconsistency relates to any matter set out in clauses 5(a), 8 or 9 of the Rules;
- (b) otherwise the Expert Determination Agreement shall prevail.

For more information about Expert Determination or other ACDC dispute resolution procedures, please ring ACDC (part of the Australian International Disputes Centre) on (02) 9239 0700.

Address:

ACDC
c/- Australian International Disputes Centre
Level 16, 1 Castlereagh Street
Sydney NSW 2000

Email: info@disputescentre.com.au

Title Reference

1. Notification of Parties to the Dispute

- (a) If the parties to a dispute have invoked these Rules by referring the dispute to ACDC (either by consent of the parties, by way of an ACDC Expert Determination clause in the instrument of agreement or otherwise), the party (or parties) who alleges that a dispute has arisen which requires resolution by an Expert shall give written notice to the other party (or parties) setting out:
- (i) the nature of the dispute that has arisen;
 - (ii) the areas of expertise it considers are required to resolve the dispute; and
 - (iii) a brief description of the project or circumstances of the dispute
- (Notice of Dispute).**
- (b) Within seven (7) days of receipt of the Notice of Dispute, the other party (or parties) shall provide a written response stating its position in relation to the dispute, including:
- (i) a statement of the areas of expertise it considers are required to resolve the dispute; and
 - (ii) any comments it has on the matters set out in (a)(iii)
- (Notice of Response).**
- (c) Within seven (7) days of receipt of the Notice of Response the parties must take reasonable steps to confer and try to resolve the dispute.
- (d) If the dispute is not resolved within seven (7) days or within such further period as the parties agree, then the parties, or any one of the parties, shall notify ACDC that the dispute has not resolved, that the dispute is to be referred to Expert Determination and each party shall pay half (or such other proportion as may be agreed by the parties and ACDC) of the ACDC registration fee set out in clause 9 and Schedule 1 in force on the date the dispute is referred to expert determination (or such other time as ACDC in its absolute discretion considers appropriate).

2. Selecting an Expert

- (a) Upon receiving the registration fee and a copy of the Notice of Dispute and the Notice of Response, ACDC will select two or more appropriately qualified experts, based on the material set out in the Notice of Dispute and Notice of Response, and provide the parties with details of each person's qualifications and experience together with information concerning the fees charged by each person.
- (b) Within seven (7) days of receiving the details and information concerning the fees, each party shall provide ACDC with a list setting out their order of preference in relation to the proposed Expert. If any party believes that a person whose details have been provided is unsuitable to act as the Expert or some reason (such as known by a party) they should notify ACDC accordingly.
- (c) Upon receipt of the lists of preferences, ACDC will determine whether the parties, have identified a preferred Expert. If so, ACDC will appoint the preferred Expert.
- (d) If the parties have failed to identify a preferred Expert and the parties have agreed to invoke another method of appoint the Expert, ACDC will follow that method. If the parties have not specified any alternative method, or the alternative method does not result in the appoint of an Expert within a reasonable time, ACDC will, in its absolute discretion, appoint an Expert.
- (e) Upon appointment of an Expert ACDC will provide the Expert with copies of the Notice of Dispute and the Notice of Response and request the Expert to advise ACDC of any conflict of interest or any reason for perception of bias in that person acting as the Expert responsible for resolving the dispute. If so advised

Title Reference

ACDC will inform all the parties. If the parties still wish to continue with that Expert they must provide ACDC with a statement, in writing, that they are aware of the conflict of interest or facts that may give rise to a perception of bias but wish to proceed with the appointment of that Expert (see also clause 3). If the parties do not wish to continue with that Expert, ACDC will, in its discretion, appoint another Expert.

3. Neutrality of Expert

- (a) The Expert is independent and impartial and has no vested interest in the outcome of the Expert Determination.
- (b) If the Expert becomes aware at any stage of any circumstance that might reasonably be considered to adversely affect the Expert's capacity to act independent or impartially, the Expert must inform the parties immediately. The Expert must in such circumstances terminate the Expert Determination, unless the parties agree otherwise.

4. Expert Determination Agreement

Within seven (7) days of ACDC notifying the parties of the appointment of the Expert, the parties and the Expert will execute the Expert Determination Agreement. The Expert Determination Agreement shall be generally in the form of the agreement which will be provided to the parties after the matter is registered with ACDC at an appropriate time during the running of a case, or as amended in writing and signed by the parties and the Expert. The Expert Determination Agreement shall be incorporated into, and form part of, these Rules.

5. Actions prior to Commencement of the Expert Determination

- (a) Within seven (7) days of ACDC notifying the parties of the appointment of the Expert, ACDC shall provide the parties with an estimate of the fees and disbursements in the Expert Determination. Unless otherwise agreed by the parties, the Expert and ACDC, within seven (7) days of receiving the estimate, and in any case prior to commencement of the Expert Determination, the parties shall provide ACDC with a security deposit in the amount of the estimate. The security deposit may be utilised in accordance with clause 9 of these Rules.
- (b) The Expert may, if the Expert so desires, arrange a joint meeting or meetings with the parties. The meeting is not a hearing.
- (c) The Expert may shall not meet separately with the parties to discuss the dispute, unless both parties agree that separate meetings can occur.
- (d) The parties agree to comply with any procedural directions the Expert may give in the preparation for or in the course of the meeting.

6. Representation and Attendance

- (a) Each party is entitled to be represented at any meeting and the Expert Determination by its legal representative and other persons with information or knowledge relevant to the Expert Determination.
- (b) Unless the parties and ACDC otherwise agree, each party shall give ACDC, the Expert and the other party at least seven (7) days notice of who will be attending any meeting on its behalf.

7. Confidentiality

Confidential information disclosed to the Experts by the parties or by others attending in the course of the Expert Determination shall not be divulged by the Expert, unless authorised in writing by both parties. The Expert shall not be compelled to divulge records, reports or other documents (electronic or otherwise) received by him or her while serving in that capacity, or testify in regard to the Expert Determination in any adversarial proceeding, judicial forum or body.

Title Reference

8. Liability

Except in the case of fraud:

- (a) The parties release ACDC, its officers, employees and agents and the Expert from any liability of any kind whatsoever arising out of or in connection with the Expert's appointment or the Expert Determination.
- (b) The parties jointly and severally indemnify, and will keep indemnified, ACDC its officers, employees and agents from and against any claim for negligence or breach of any trade practices or fair trading legislation which may arise in connection with or resulting from the Expert's appointment or any act or omission arising out of or in connection with the Expert Determination. The indemnity is expressly given for the benefit of the parties indicated and may be enforced by them individually if necessary.

This document may be produced and relied upon as a complete defence to any such claim.

9. Fees

- (a) The parties agree to that they are equally responsible for the costs of the Expert Determination including room hire, ACDC's non-refundable registration fee as specified in Schedule 1, any further administration fees due to ACDC as specified in Schedule 1, and the Expert's fee (of which 10% is payable to ACDC), and any other disbursements.
- (b) The parties shall forward to ACDC their half share or other such proportion of the security deposit as required by these Rules.
- (c) Each party shall bear its own costs of the Expert Determination.
- (d) The Expert and ACDC may submit progressive invoices to the parties which can be drawn down against the security deposit.
- (e) In the event that the security deposit is insufficient to cover the anticipated fees and disbursements of the Expert or ACDC, the parties agree to submit such further security deposit as may be reasonably requested by ACDC or the Expert.
- (f) If the further security deposit is not received by ACDC within seven (7) days of the request by ACDC or the Expert, or such shorter period as ACDC or the Expert reasonably requires, the Expert and ACDC may suspend provision of their services in the Expert Determination until such time as the further security deposit is received.
- (g) In the event that the Expert Determination is suspended in accordance with the above clause the parties agree that neither ACDC, its officers, employees or agents nor the Expert shall have any liability whatsoever to the parties or any other person and the parties will indemnify ACDC, its officers, employees, servants and agents and the Expert from and against any such claim by any person. This document may be produced and relied upon as a complete defence to any such claim.

10. Prompt Determination

Notwithstanding the timeframes set out in these Rules, the Expert's determination must be made and finalised within thirty-five (35) days of the giving of a Notice of Dispute.

Title Reference ###

Schedule 1

1. For each Expert Determination, ACDC charges a registration fee as follows:
 - (a) \$1,100 (inclusive of GST) which covers registration and the first five (5) hours of administration by ACDC;
or
 - (b) In a case where the claims of more than one aggrieved party are consolidated, ACDC may in its absolute discretion charge each party \$550 (inclusive of GST) which covers registration and the first five (5) hours of administration by ACDC.
2. ACDC may in its absolute discretion charge a further administration fee at the rate of \$220 (inclusive of GST) per hour after the first five (5) hours of administration covered by the registration fee.

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QUEENSLAND LAND REGISTRY
Land Title Act 1994, Land Act 1994 and Water Act 2000

SCHEDULE

Form 20 Version 2
Page 43 of 59

Title Reference ###

Annexure B – Deed of Covenant

233188361

JTXB9P7ZYE

Our Ref: RPO.131206
Your Ref:

Deed of Covenant - Lease

Sunshine Coast Regional Council (Landlord)

Stockland Kawana Waters Pty Ltd ACN 009 693 556 and Stockland Buddina Pty Ltd ACN 009 682 384 (Assignor)

[insert name] (Assignee)

[insert name] (New Guarantor)

T 61 7 3002 8700
F 61 7 3221 3068
E law@cbp.com.au
I www.cbp.com.au

Level 5, 307 Queen Street
Brisbane Qld 4000
Australia
ABN 28 166 080 682

GPO Box 142
Brisbane Qld 4001
Australia
DX 301 Brisbane

**CBP Pty Ltd
Brisbane Melbourne
& Sydney**

ADVOC network member

JTXBBCRATX

Details**Date****Parties**

Name	Sunshine Coast Regional Council	
Description	Landlord	
Notice details	Address	Locked Bag 72, Sunshine Coast Mail Centre QLD 4560
	Fax	07 5475 7277
	Attention	Chief Executive Officer

Name	Stockland Kawana Waters Pty Ltd ACN 009 693 556 and Stockland Buddina Pty Ltd ACN 009 682 384	
Description	Assignor	
Notice details	Address	Level 27, 133 Castlereagh Street, Sydney NSW 2000
	Fax	[insert number]
	Attention	[insert name and title]

Name	[insert name]	
ABN		
Description	Assignee	
Notice details	Address	[insert address]
	Fax	[insert number]
	Attention	[insert name and title]

Name	[insert name]	
ABN		
Description	New Guarantor	
Notice details	Address	[insert address]
	Fax	[insert number]
	Attention	[insert name and file]

Background

- A The Assignor leases the Premises from the Landlord pursuant to the Lease.
- B The Assignor must obtain the Landlord's written approval before assigning the Lease.
- C The Landlord approves and consents to the assignment of the Lease from the Assignor to the Assignee from the Assignment Date on the terms of this Deed.
- D The New Guarantor guarantees the obligations of the Assignee pursuant to the terms of this Deed.

Deed

1. Definitions and Interpretations

1.1 Definitions

In this document:

Assignment Date means the date of completion of the Transfer Agreement being < Date of Agreement > or a date extended under the Transfer Agreement.

Business Day means any day other than a Saturday, Sunday or public holiday in Brisbane.

Claim means an allegation, debt, cause of action, liability claim, proceeding, suit or demand of any nature at law or otherwise, whether present or future, fixed or unascertained, actual or contingent.

Deed means this deed of covenant.

GST has the meaning set out in the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act.

Landlord's Goods means all 'personal property' (as defined in the PPSA) of the Landlord in the Premises (if any) or otherwise provided by the Landlord for the Tenant's use in connection with the Lease.

Land has the meaning given to this term in the Lease.

Lease means the registered lease between the Landlord and the Assignor for the Premises dated < Date of Lease > bearing dealing no.< insert number > and any document, varying, extending or amending or consenting to the dealing of that lease.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Premises means the premises described in the Lease.

Practical Completion has the meaning given to this term in the Lease.

Security Interest means a 'security interest' (as defined in the PPSA) of the Landlord in the Landlord's Goods which arises by virtue of the Lease (or any associated document).

Site Development Plan has the meaning given to this term in the Lease.

Transfer Agreement means the agreement, if any, executed between the Assignor and the Assignee to transfer the Assignor's leasehold interest in the Premises under the Lease.

1.2 Interpretation

Unless expressed to the contrary:

- (a) headings and boldings are for convenience only and do not affect the interpretation of this Deed;
- (b) where an expression is defined anywhere in this Deed another part of speech or grammatical form of that expression has a corresponding meaning;

- (c) a reference to:
- (i) an individual or person includes a firm, corporation, incorporated association, and government or statutory body or authority;
 - (ii) any gender includes all genders;
 - (iii) the singular includes the plural and vice versa;
 - (iv) recitals, clauses, schedules or annexures are to recitals, clauses, schedules or annexures of or to this Deed;
 - (v) a statute, ordinance or other law includes regulations and other statutory instruments made under it and consolidations, amendments and re-enactments of it;
 - (vi) money is to Australian currency;
 - (vii) this Deed or another document includes the document as varied or replaced; and
 - (viii) any party to this Deed, or any other document or arrangement includes that party's executors, administrators, substitutes, successors and permitted assigns.

2. Landlord's Consent to Assignment

- (a) Subject to the terms of this Deed, the Landlord approves and consents to the Assignor assigning its rights, interest and obligations in the Lease to the Assignee.
- (b) The Landlord's approval and consent in clause 2(a) is conditional upon, and the Landlord does not approve the assignment of the Lease even if the Assignee takes possession of the Premises, until all of the following have been satisfied to the Landlord's satisfaction or waived in writing by the Landlord:
- (i) the Assignee provides evidence to the Landlord that the Assignee has effected the insurances required by the Lease;
 - (ii) if the Lease is registered, the Assignor and Assignee have provided the Landlord with a copy of the Form 1 transfer of the Lease that the Assignee (as between the parties to this Deed) agrees to lodge in the appropriate office for registration purposes as soon as practical after the Assignment Date;
 - (iii) payment of the Landlord's costs pursuant to clause 5(a)(iii);
 - (iv) any breaches of the Lease by the Assignor have been remedied; and
 - (v) execution of this Deed by all parties named in it.
- (c) The Landlord's consent is not to be taken as authorising any other dealing with the Lease or Premises.

- (d) From the Assignment Date, the Assignor releases the Landlord from all Claims it has or may in the future have against the Landlord in respect of or in any way arising under the Lease, excluding Claims the Assignor may have against the Landlord under the Lease in relation to the period prior to the Assignment Date.

3. Assignee's Acknowledgement and Covenants

- (a) The Assignee acknowledges that a Site Development Plan may be approved for the Land and that pursuant to the terms of the Lease the Assignee must, in addition to the tenant's other covenants under the Lease, comply with the requirements of the Site Development Plan, so far as they apply to the Assignee's use or occupation of the Land.
- (b) The Assignee covenants to pay the rent and outgoings reserved by the Lease and to perform and observe the covenants contained in the Lease so far as they apply to the Assignee from the Assignment Date.

4. Assignee's Obligations

4.1 Obligations

The Assignee must at all times during the unexpired period of the term of the Lease or any extension or renewal of the Lease:

- (a) pay the rent;
- (b) pay the outgoings (as that term is defined in the Lease);
- (c) observe and perform the provisions (as applicable to the tenant) of the Lease; and
- (d) keep the conditions, restrictions and agreements (even those of a negative nature);

in accordance with the terms and conditions of the Lease as if the Assignee was named in place of the Assignor in the Lease provided that the Assignee is not liable for rent and outgoings prior to the Assignment Date.

4.2 Assumption of Liability

Subject to the terms of this Deed, as and from the Assignment Date, the Assignee assumes all the liabilities and responsibilities of the Assignor under the Lease as if the Lease had originally been entered into between the Landlord and the Assignee and is subject to the same re-entry provisions in case of default.

5. Continuing Obligations

- (a) The Assignor must:
 - (i) subject to clause 5(c), observe and perform (and meet any liability if applicable) all covenants and agreements expressed or implied in the Lease or made between the Landlord and Assignor despite the assignment and the provisions of this Deed;
 - (ii) not allow the Assignee to enter into occupation or possession of the Premises (in whole or in part) until on or after the Assignment Date, and only then, provided that the conditions in clause 2(b) have been satisfied or waived; and

- (iii) pay on or before the Assignment Date:
 - (A) the Landlord's reasonable costs of considering and granting consent;
 - (B) the Landlord's solicitor's reasonable costs;
 - (C) all stamp duty assessed on this Deed and any form of transfer of the Lease;
 - (D) any ancillary titles office registration fees (if required); and
 - (E) any other costs (except those of the Assignee);
 associated with this Deed.

- (b) Despite any other term contained in this Deed, the Assignor indemnifies and agrees to keep indemnified the Landlord in relation to any Claims arising from or in connection with any breach of the Lease by the Assignee up to and including the date upon which Practical Completion occurs.
- (c) The Assignor is, following Practical Completion, released from further compliance with the terms of the Lease, although the Assignor is not released from any liability relating to default:
 - (i) under the Lease up to and including the date of Practical Completion; or
 - (ii) of the Assignor under this Deed.

6. Extension of Assignment Date

6.1 Extension

If the assignment does not occur on the Assignment Date, the consent provided by the Landlord in accordance with this Deed remains in force for a period of two months after the Assignment Date after which the Landlord's consent automatically lapses.

6.2 Re-apply if Lapsed

The Assignor must re-apply for the Landlord's consent if the Landlord's consent lapses pursuant to clause 6.1 and the Assignor still seeks to assign the Lease to the Assignee.

7. Landlord's Continuing Rights

7.1 Continuing Right

Despite the provisions of this Deed, the Landlord does not waive its right to sue the Assignor for the following:

- (a) any breach of the Lease up to and including the date that Practical Completion occurs;
- (b) any breach of the Assignor under this Deed.

7.2 Continuing Liability

Subject to clause 5(c), the Assignor's and New Guarantor's liability is not impaired or discharged by:

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- (a) the assignment of the Lease pursuant to this Deed;
- (b) the granting of time or other indulgence by the Landlord to the Assignee; or
- (c) the Landlord consenting to any further assignment of the Lease after this Assignment.

8. Power of Attorney

8.1 Appointment

The Assignee irrevocably appoints the Landlord (and if the Landlord is a corporation the directors, general manager and the secretary for the time being of the Landlord jointly and severally) to be the attorney of the Assignee at any time after the power contained in the Lease to re-enter has been lawfully exercised to:

- (a) execute and sign a transfer or a surrender of the Lease;
- (b) to procure the transfer or surrender to be registered (if applicable);
- (c) from time to time to appoint a substitute or substitutes and revoke those appointments; and
- (d) to do execute and perform any act deed matter or thing in accordance with this clause as fully and effectually as the Assignor could do.

8.2 Ratification

The Assignee ratifies and confirms everything the attorney or any substitute or substitutes lawfully does or causes to be done in accordance with clause 8.1.

8.3 Statutory Declaration

A statutory declaration by an attorney that the power of re-entry contained in the Lease has been lawfully exercised is sufficient proof of that fact.

9. Trusts

9.1 Extension to Trusts

If at any time upon or subsequent to entering into this Deed or entering into or incurring the obligations contained in this Deed the Assignee is acting in the capacity of trustee of any trust (Trust) then, whether or not the Landlord has notice of the Trust, the Assignee covenants with the Landlord as follows:

- (a) this Deed extends to all rights of indemnity that the Assignee has against the Trust;
- (b) the Assignee warrants that it has full and complete power and authority pursuant to the Trust to enter into this Deed and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Assignee against the Trust and the Assignee must not release that right of indemnity or commit any breach of trust or be party to any other action which prejudices that right of indemnity;

- (c) despite anything in any deed of trust or settlement or other document, the Assignee is personally liable to the Landlord for the due performance, fulfilment and observance of the obligations under this Deed and under the Lease; and
- (d) during the currency of the Lease, the Assignee must not without the consent in writing of the Landlord allow any of the following events to happen:
 - (i) the removal, replacement or retirement of the Assignee as sole trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advance or distribution of capital of the Trust; and
 - (iv) any re-settlement of the Trust property.

9.2 Events of Default

It is an event of default under the Lease if:

- (a) the Assignee is guilty of any breach of trust in respect of the Trust;
- (b) ceases to be the sole trustee of the Trust; or
- (c) otherwise allows removal, replacement or retirement of it as trustee of the Trust.

10. Guarantee and Indemnity by New Guarantor

- (a) In consideration of the Landlord at the request of the New Guarantor having entered into or having agreed to enter into this Deed, the New Guarantor covenants and agrees with the Landlord that:
 - (i) The New Guarantor will be liable jointly and severally with the Assignee for the due and punctual payment of all rent, outgoings and other money to be paid by the Assignee under the Lease and for the due performance and observance by the Assignee of all the covenants terms and conditions of the Lease on the part of the Assignee to be performed and observed.
 - (ii) The New Guarantor indemnifies the Landlord from and against all losses damages costs and expenses which the Landlord may suffer or incur in consequence of any breach or non-observance of any of the covenants terms and conditions of the Lease on the part of the Assignee to be performed or observed and the New Guarantor agrees that the New Guarantor will remain liable to the Landlord under this indemnity notwithstanding as a consequence of any breach or non-observance the Landlord has exercised any of its rights under the Lease including its rights of re-entry and notwithstanding that the Assignee (being a corporation) may be wound up or dissolved or (being a natural person) may be declared bankrupt and notwithstanding that the guarantee given by the New Guarantor may for any reason be unenforceable either in whole or in part.

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- (iii) On any default or failure by the Assignee to observe and perform any of the covenants terms and conditions of the Lease the New Guarantor will immediately on demand by the Landlord pay all rent, outgoings and other money and make good to the Landlord all losses damages costs and expenses sustained or incurred by the Landlord by reason or in consequence of any default of the Assignee in performing or observing any of the covenants terms and conditions of the Lease.
- (iv) The liability of the New Guarantor under this guarantee and indemnity will not be affected by the granting of time or any other indulgence to the Assignee or by any assignment or purported assignment of the interest of the Assignee under the Lease or by the compounding compromise release abandonment waiver variation or renewal of any of the rights of the Landlord against the Assignee or by any neglect or omission to enforce those rights or by any other thing which under the law relating to sureties would or might but for this provisions release the New Guarantor in whole or in part from its obligations under this guarantee and indemnity.
- (v) Notwithstanding that as between the New Guarantor and the Assignee the New Guarantor may be a surety, nevertheless as between the New Guarantor and the Landlord the New Guarantor is deemed to be a primary debtor and contractor jointly and severally with the Assignee.
- (vi) To the fullest extent permitted by law the New Guarantor hereby waives such of the New Guarantor's rights as surety or indemnifier (legal equitable statutory or otherwise) as may at any time be inconsistent with any of the provisions of this guarantee and indemnity.
- (vii) The covenants and agreements made by the New Guarantor are not conditional or contingent in any way or dependent upon the validity or enforceability of the covenants and agreements of any other person and remain binding notwithstanding that any other person does not execute this Deed or this guarantee and indemnity.
- (viii) The obligations of the New Guarantor under this guarantee and indemnity continues until all rent, outgoings and other money payable under the Lease by the Assignee have been paid and until all other obligations and indemnities of the Assignee have been performed observed and satisfied and those obligations will not be reduced or affected by any notice to quit given under the terms of the Lease or the death insolvency liquidation or dissolution of the Assignee or the New Guarantor or either of them.
- (ix) The New Guarantor does not execute this guarantee and indemnity as a result of or by reason of any promise representation statement information or inducement of any nature or kind given or offered to the New Guarantor by the Landlord or on the Landlord's behalf whether in answer to any enquiry by or on behalf of the New Guarantor or not and (except as provided in this guarantee and indemnity) the Assignee was not prior to the execution of this guarantee and indemnity by the New Guarantor and is not subsequently under any duty to disclose to the New Guarantor or to do or execute any act matter or thing relating to the affairs of the Assignee or its transactions with the Landlord.

- (x) In the event of a further lease of the Premises being granted by the Landlord to the Assignee consequent upon the exercise of any option to renew contained in the Lease or in the event of the Landlord granting to the Assignee any extension of the term of the Lease, then this guarantee and indemnity will be deemed to extend to the further lease or the extension of the term as the case may be and will be read and construed as if the further lease is the Lease and the tenant holding under it is the Assignee.
 - (xi) All notices or demands to be given or made to or upon the New Guarantor will be deemed to be duly given and served on the New Guarantor if signed by the Landlord or the solicitors for the Landlord or if the Landlord is a corporation then by any officer of the corporate Landlord or the solicitors for the corporate Landlord and delivered to the New Guarantor (or if there is more than one New Guarantor then to any one or more of them) personally or if the New Guarantor are a corporation then to any person at its registered office or principal place of business or abode of the New Guarantor or if left at or sent to the New Guarantor through the post in a prepaid envelope addressed to the New Guarantor at the address (if any) of the New Guarantor last known to the Landlord. A notice or demand which is posted will be deemed to have been served on the New Guarantor on the day following the date of posting.
 - (xii) In the event of the invalidity of any part or provision of this guarantee and indemnity that invalidity will not affect the validity of the enforceability of any other part or provision of this guarantee.
 - (xiii) Where there is more than one person or corporation which together constitute the New Guarantor to the Lease, the obligations and liabilities of each of those persons or corporation are joint and several.
 - (xiv) This guarantee takes effect upon the Assignment Date and continues to be of full effect whether or not the Lease is subsequently registered in the Department of National Resources and Mines. References to 'the Lease' include any equitable lease agreement for lease or periodic tenancy arising upon the execution or acceptance by the Assignee of the instrument to which this guarantee is annexed.
- (b) In the event of the Landlord transferring the Premises or otherwise assigning the Landlord's rights and obligations as Landlord under the Lease the Landlord's rights under the guarantee (whether or not there is any express assignment of the rights) will be deemed to be assigned to the owner from time to time of the Premises or other assignee of the Landlord's rights and obligations.

11. GST

- (a) If GST is payable by a supplier (or by the representative member for a GST group of which the supplier is a member) on any supply made under or in relation to this Deed, the recipient will pay to the supplier an amount (**GST Amount**) equal to the GST payable on the supply. The GST Amount is payable by the recipient in addition to and at the same time as the net consideration for the supply, subject to receipt of a tax invoice.

cbp

- (b) If a party is required to make any payment or reimbursement, that payment or reimbursement will be reduced by the amount of any input tax credits or reduced input tax credits to which the other party (or the representative member for a GST group of which it is a member) is entitled for any acquisition relating to that payment or reimbursement.
- (c) This clause is subject to any specific agreement regarding the payment of GST on supplies.
- (d) For the purposes of this clause, words and phrases defined in the GST Act have the same meaning when the context indicates otherwise.

12. Security Interests

- (a) This clause applies if the Landlord has a Security Interest in any Landlord's Goods.
- (b) The New Tenant must, promptly when requested:
 - (i) take all steps, provide information (including providing the New Tenant's date of birth and serial numbers of any of the Landlord's Goods), produce documents and obtain consents;
 - (ii) execute and procure any third party, including the New Tenant's mortgagee, to execute any notice, consent, document or amendment to the Lease; and
 - (iii) do any other thing,

that the Landlord considers reasonably necessary to perfect the Security Interest or ensure the Security Interest has priority over any other person's security interest in the Landlord's Goods.

13. General

13.1 Notices

Any notice or other communication to a party under this Deed must be in writing and delivered personally, sent by prepaid mail, or sent by facsimile transmission to the recipient at the address or the facsimile number appearing in this clause or such other address or facsimile number as the recipient may have notified to the sender.

Landlord

Attention: Chief Executive Officer
 Address: Locked Bag 72, Sunshine Coast Mail Centre QLD 4560
 Facsimile: 07 5475 7277

Assignor

Attention: Chief Executive Officer
 Address: Level 27, 133 Castlereagh Street, Sydney NSW 2000
 Facsimile: [insert number]

Assignee

Attention: [insert name and title]

Address: [insert address]

Facsimile: [insert number]

New Guarantor

Attention: [insert name and title]

Address: [insert address]

Facsimile: [insert number]

A notice is deemed to be received:

- (a) if delivered personally, on the date of delivery;
- (b) if sent by prepaid post, five Business Days after posting; and
- (c) if sent by facsimile transmission, on receipt by the sender of a facsimile transmission report confirming receipt.

13.2 Counterparts

This document may be executed in any number of counterparts and all counterparts taken together will be deemed to be a single instrument.

13.3 Confidentiality

- (a) The terms and conditions of this Deed and all negotiations between the parties relating to the subject matter of this Deed are confidential.
- (b) A party must not make any public disclosure, communication or announcement about this Deed except with the prior written consent of the other parties (not to be unreasonably refused or delayed) or to comply with accounting, legal, stock exchange or other regulatory requirements.

13.4 Waiver

- (a) A failure or delay in exercise, or partial exercise, of a right, power, authority, discretion or remedy arising from a breach of or default under this Deed, does not result in a waiver of that right, power, authority, discretion or remedy.
- (b) A party is not entitled to rely on a delay in the exercise or non-exercise of a right, power, authority, discretion or remedy arising from a breach of this Deed or default under this Deed as constituting a waiver of that right, power, authority, discretion or remedy.

13.5 Further Assurance

All parties must do all things reasonably necessary to give full effect to this Deed and the transactions contemplated by this Deed.

cbp**13.6 Severability**

If any part of this Deed is, or becomes, legally invalid or unenforceable, the remainder of this Deed subsists and remains enforceable.

13.7 Entire Understanding

This document contains the entire agreement between the parties. All representations or agreements, whether oral or in writing made prior to the date of this Deed and relating to any matter dealt with in this Deed are merged in this Deed and do not have any effect from the date of this Deed.

13.8 Governing Law

- (a) This document is governed by the law of Queensland.
- (b) Each party irrevocably submits to the exclusive jurisdiction of the courts of Queensland and waives any objection to the venue of any legal process on the basis that the process has been brought in any inconvenient forum.

13.9 Assignment

The Assignee and the New Guarantor must not assign their rights under this Deed without the written consent of the Landlord.

Schedule 5

Owner's consent

Schedule 6

Example Deed (clause 8.2(c)(ii))

Our Ref: RPO.131206
Your Ref:



Deed of Covenant

Sunshine Coast Regional Council (Council)

**Stockland Kawana Waters Pty Ltd ACN 009 693 556 and
Stockland Buddina Pty Ltd ACN 009 682 384 (Stockland)**

[insert name] (Transferee)

T 61 7 3002 8700
F 61 7 3221 3068
E law@cbp.com.au
I www.cbp.com.au

Level 5, 307 Queen Street
Brisbane Qld 4000
Australia
ABN 28 166 080 682

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**CBP Pty Ltd
Brisbane Melbourne
& Sydney**

ADVOC network member

Contents

Part 1 Preliminary	2
1. Introduction.....	2
1.1 Short Title.....	2
1.2 Deed	2
1.3 Date	2
1.4 Parties.....	2
1.5 Recitals	2
Part 2 Terms Agreed by the Parties	2
2. Interpretation	2
2.1 Definitions	2
2.2 Undefined Word.....	3
2.3 References.....	3
3. Operation of document	5
3.1 Commencement of document	5
3.2 Consideration.....	5
3.3 Termination of document.....	5
4. Party obligations.....	5
4.1 Transferee obligations	5
4.2 Stockland obligations.....	5
4.3 Council obligations.....	5
4.4 Special Conditions	5
5. Miscellaneous	5
5.1 Time of the Essence	5
5.2 No dealings	5
5.3 No waiver implied	6
5.4 Severance.....	6
5.5 Further Action	6
5.6 Variation of Document	6
5.7 Governing law and jurisdiction.....	6
5.8 Costs.....	7
Schedule 1 Reference schedule	8
Schedule 2 Obligations schedule	10
Schedule 3 Drawings schedule.....	11
Schedule 4 Miscellaneous schedule	12
Part 3 Execution by the parties	13

Details

Date

Parties

Name	Sunshine Coast Regional Council
Description	Council
Notice details	Address Locked Bag 72, Sunshine Coast Mail Centre QLD 4560
	Fax 07 5475 7277
	Attention Chief Executive Officer

Name	Stockland Kawana Waters Pty Ltd ACN 009 693 556 and Stockland Buddina Pty Ltd ACN 009 682 384
Description	Stockland
Notice details	Address Level 27,133 Castlereagh Street, Sydney NSW 2000
	Fax
	Attention

Name	[insert name]
ABN	
Description	Transferee
Notice details	Address [insert address]
	Fax [insert number]
	Attention [insert name and title]

Part 1 Preliminary

1. Introduction

1.1 Short Title

This document may be referred to by the name stated in Schedule 1.

1.2 Deed

This document is a deed which comprises the following:

- (a) Part 1 which recites the following:
 - (i) the date of this document;
 - (ii) the names of the parties to this document;
 - (iii) the purpose for which the parties have entered into this document;
- (b) Part 2 which witnesses the terms agreed upon by the parties.
- (c) Part 3 which provides for the execution of this document by the parties.

1.3 Date

This document is made on the date when the last party executes this document.

1.4 Parties

This document is made between the parties in Schedule 1.

1.5 Recitals

This document has been entered into for the following purposes:

- (a) Stockland and the Council have entered into the Infrastructure Agreement;
- (b) Stockland wishes to sell the Developable Lot to the Transferee;
- (c) the Infrastructure Agreement requires that this Deed be entered into by the parties prior to the Settlement of the Contract for the sale of the Developable Lot;
- (d) the Transferee is to perform and fulfil the Prescribed Development Obligations.

Part 2 Terms Agreed by the Parties

2. Interpretation

2.1 Definitions

In this document, unless the context or subject matter otherwise indicates or requires a word which is capitalised has the following meaning:

Business Day has the meaning in the *Acts Interpretation Act 1954* (Qld).

Calendar Day means from one midnight to the following one.

Commencement Date means the date on which the document commences as stated in clause 1.3.

Contract means the Contract stated in Schedule 1.

Council means the Council stated in Schedule 1.

Developable Lot means the land stated in Schedule 1.

Development Obligations has the same meaning given to this term in the Infrastructure Agreement.

Infrastructure Agreement means the Infrastructure Agreement stated in Schedule 1.

Planning Act means the *Sustainable Planning Act 2009* (Qld).

Prescribed Development Obligations means the Development Obligations stated in schedule 2.

Transferee means the Transferee stated in Schedule 1.

Settlement means the day the Contract is completed.

2.2 Undefined Word

If a word is not defined in this document, unless the context or subject matter otherwise indicates or requires, the word is to have a meaning given to it by the following:

- (a) the Infrastructure Agreement;
- (b) clause 2.2(Undefined word) of the Infrastructure Agreement if the word is not defined in the Infrastructure Agreement.

2.3 References

In this document unless the context or subject matter otherwise indicates or requires:

- (a) a reference to a document, includes a consolidation, amendment, notation, supplement, replacement or variation of the document;
- (b) a reference to a law or a provision of a law, includes the following:
 - (i) the law and the common law including the principles of equity of the Commonwealth, a State or a Territory;
 - (ii) a statutory instrument made or in effect under the law or the provision;
 - (iii) a consolidation, amendment, extension, re-enactment or replacement of the law or the provision;
- (c) a reference to a word in:
 - (i) the singular includes the plural; and
 - (ii) the plural includes the singular;
- (d) a reference to the word dollar or \$, is a reference to a dollar of Australian currency and an amount payable is payable in Australian dollars;

- (e) a reference to writing, includes a mode of representing or reproducing a word in tangible and permanently visible form and includes a facsimile transmission;
- (f) a reference to the word includes, or to an example or particularisation of a clause, does not limit the meaning of a word to which the clause relates to a matter of a similar kind;
- (g) a reference to a word which is defined in this document, includes another part of speech or grammatical form of the word which is to have a corresponding meaning;
- (h) a reference to a party made up of more than one person, is a reference to all of those persons separately so that:
 - (i) an obligation of a party binds them jointly and each of them individually; and
 - (ii) a right of a party benefits them jointly and each of them individually;
- (i) a reference to a day is a Calendar Day;
- (j) a reference to a date on or by which an act is to be done is to be taken to be the next Business Day if:
 - (i) the date is not a Business Day; or
 - (ii) the act is done after 5.00 pm on the day by which the act is to be done;
- (k) a reference to a period of time which is to be calculated by regard to a day or an event, is to exclude the day or the day of the event;
- (l) a reference to the word land, includes the following:
 - (i) an interest or estate in, on, over or under the land;
 - (ii) the airspace above the surface of the land and an estate or interest in the land;
 - (iii) the subsoil of the land and an estate or interest in the subsoil;
 - (iv) a part or parts of the land;
 - (v) an estate or interest created for any of the above matters;
- (m) a reference to the word sell, includes transfer, dispose of and alienate but excludes a mortgage, licence, grant of an easement and a lease other than a lease for a term including an option exceeding five years;
- (n) a reference to a successor in title of land, includes the following:
 - (i) a person deriving title to the land through or under the Owner of the land;
 - (ii) a mortgagee which takes possession of the land;
- (o) a reference to the address of a party, is a reference to the address of that party in Schedule 1 or as changed under this document.

3. Operation of document**3.1 Commencement of document**

This document is made on the date when the last party executes this document.

3.2 Consideration

This document is entered into in consideration of the parties incurring obligations and giving rights under this document and the Infrastructure Agreement.

3.3 Termination of document

This document is terminated if the Contract is terminated prior to Settlement.

4. Party obligations**4.1 Transferee obligations**

The Transferee is, from Settlement, bound to the Council to perform and fulfil the following:

- (a) the Prescribed Development Obligations;
- (b) any other terms of the Infrastructure Agreement relating to the Prescribed Development Obligations.

4.2 Stockland obligations

Stockland remains bound to the Council to perform and fulfil the Prescribed Development Obligations and any other terms of the Infrastructure Agreement relating to the Prescribed Development Obligations to the extent these Development Obligations have not been performed and fulfilled by the Transferee.

4.3 Council obligations

The Council is bound to the Transferee to perform and fulfil the terms of the Infrastructure Agreement in relation to the Developable Lot or such of them as remain unperformed or unfulfilled by the Council at the time of Settlement.

4.4 Special Conditions

The parties are to comply with the Special Conditions in schedule 2.

5. Miscellaneous**5.1 Time of the Essence**

Time is, in all cases, of the essence.

5.2 No dealings

Stockland and the Transferee must not, other than in accordance with the written consent of the Council:

- (a) vary an interest, right or obligation under this document; or
- (b) sell, transfer, or assign an interest, right or obligation under this document.

5.3 No waiver implied

- (a) No waiver by a party of a breach by another party of any of the provisions in this document is to be implied or be otherwise effected unless written notice has been given to that effect.
- (b) Delay by a party in enforcing any of its rights does not prejudice those rights.

5.4 Severance

- (a) A clause or part of a clause which is held by a court to be invalid, illegal or unenforceable is to be treated as removed from this document.
- (b) The remaining clauses are not affected by:
 - (i) the invalidity, illegality or unenforceability of a clause or part of a clause; or
 - (ii) the removal of a clause or part of a clause from this document.
- (c) The parties are to use their best endeavours to satisfy the intent of this document as stated in clause 1.5, for a clause or part of a clause which is held by a court to be invalid, illegal or unenforceable, to the extent that it is possible having regard to the relevant court judgment.

5.5 Further Action

- (a) A party is to do at its cost everything reasonably necessary to effect, perfect or complete this document and a transaction incidental to this document.
- (b) The parties are to use their best endeavours including the preparation, negotiation and execution of a further document to ensure that the object of a clause or part of a clause which is held by a court to be invalid, illegal or unenforceable is substantially achieved.

5.6 Variation of Document

No modification, variation or amendment to this document is of any force or effect unless it is in writing and signed by the parties.

5.7 Governing law and jurisdiction

- (a) This document is governed by the laws which apply in the State of Queensland.
- (b) The parties irrevocably and unconditionally submit to the exclusive jurisdiction of the courts of the State of Queensland and a court which has jurisdiction to hear an appeal from those courts.
- (c) The parties are not to object and waive their right to object to the following:
 - (i) a legal proceeding brought in those courts;
 - (ii) the exercise of the jurisdiction by those courts on any basis.
 - (iii) the exercise or non-exercise of a right, including for the actual or contemplated enforcement or preservation of a right, waiver, release, indemnity, discharge or charge under this document.

cbp

5.8 Costs

- (a) Stockland agrees to bear all costs incurred by Council in relation to the negotiation, preparation and execution of this document including the Council's legal costs on an indemnity basis.
- (b) The Transferee is responsible for any stamp duty relating to this document.

Deed of Covenant**Schedule 1 Reference schedule****1. Short title**

Deed of Covenant dated 2014

2. Parties

Column 1 Name	Column 2 Address	Column 3 Facsimile Number	Column 4 Person to whose attention a Notice is to be brought
Council			
Sunshine Coast Regional Council	Locked Bag 72 Sunshine Coast Mail Centre QLD 4560	07 5475 7277	Chief Executive Officer
Stockland			
Stockland Kawana Waters Pty Ltd ACN 009 693 556 and Stockland Buddina Pty Ltd ACN 009 682 384	Level 27, 133 Castlereagh Street SYDNEY NSW 2000	[insert number]	[insert name and title]
Transferee			
[insert name]	[insert address]	[insert number]	[insert name and title]

3. Developable Lot

Column 1 Description	Column 2 Real property description	Column 3 Owner
Any lot or lots comprising the whole of the area included in Precinct 12, Precinct 13, Precinct 14 and Precinct 15 in DPA12 which are indicatively identified in drawing 1 in schedule 3 of the Infrastructure Agreement	[insert real property description]	[insert name of Owner]

4. Infrastructure Agreement

Column 1 Agreement	Column 2 Date
Health Precinct Car Parking Infrastructure Agreement 2014 entered into between the Council and Stockland	[insert date]

Deed of Covenant

5. Contract

Column 1 Parties	Column 2 Land	Column 3 Date
[insert Owner name] (Vendor) [insert name of Transferee (Transferee)]	Developable Lot, more particularly described as [insert real property description]	[insert date of Contract]

Deed of Covenant**Schedule 2 Obligations schedule**1. **Special Conditions**

Column 1 Condition number	Column 2 Condition (clause 4.4)
[insert number]	[insert special condition]
[insert number]	[insert special condition]
[insert number]	[insert special condition]
[insert number]	[insert special condition]

2. **Prescribed Development Obligations**

[insert relevant Development Obligations]

cbp

Deed of Covenant

Schedule 3 Drawings schedule

Column 1 Items in the schedule	Column 2 Description of the items in the schedule
[insert number]	[insert title of drawing]

cbp

Deed of Covenant

Schedule 4 Miscellaneous schedule

Column 1 Items in the schedule	Column 2 Description of the items in the schedule
[insert number]	[insert description of item included in the schedule]

cbp

Deed of Covenant

Transferee

Signed Sealed and Delivered by [insert name of Transferee]
on the _____ day of _____ /Year//

Company Secretary/Director

Director

Name of Company Secretary/Director
(print)

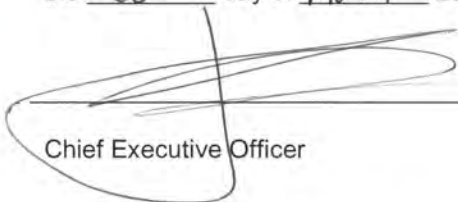
Name of Director (print)

Part 3 Execution by the parties

Council

Executed as a Deed.


Executed and Delivered by Sunshine Coast Regional Council by its duly appointed delegate on the 25 day of JUNE 2014 pursuant to the resolution of the Local Government passed on the 28 day of March 2013



Chief Executive Officer

J. KNAGGS

Name of Chief Executive Officer(print)



Witness

S. Eyles

Name of Witness (print)

Proponent

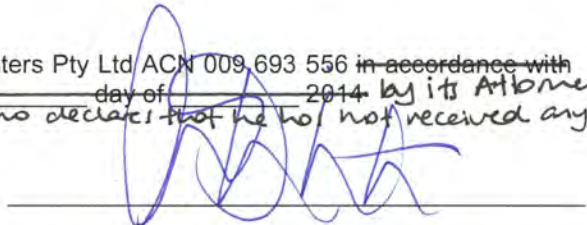
Executed and delivered by Stockland Kawana Waters Pty Ltd ACN 009 693 556 in accordance with section 127 of the Corporations Act 2001 on the ~~_____~~ day of ~~_____~~ 2014 by its Attorney under Power of Attorney No 7114 OS370 who declares that he has not received any notice of the revocation of the Power of Attorney



Director/Company Secretary Witness

MICHELLE MADELINE PHIBBS
Solicitor of the Supreme Court
of New South Wales
ANDREW JAMES WHITSON

Name of Director/Company Secretary (print)

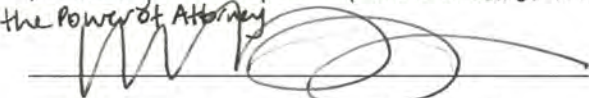


Director Attorney

ANDREW JAMES WHITSON

Name of Attorney Director (print)

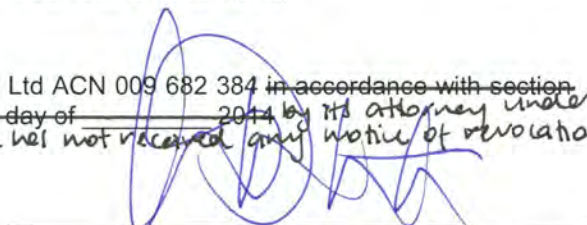
Executed and delivered by Stockland Buddina Pty Ltd ACN 009 682 384 in accordance with section 127 of the Corporations Act 2001 on the ~~_____~~ day of ~~_____~~ 2014 by its Attorney under Power of Attorney No 7114 OS394 who declares that he has not received any notice of revocation of the Power of Attorney



Director/Company Secretary Witness

MICHELLE MADELINE PHIBBS
Solicitor of the Supreme Court
of New South Wales
ANDREW JAMES WHITSON

Name of Director/Company Secretary (print)



Director Attorney

ANDREW JAMES WHITSON

Name of Attorney Director (print)