

Dated

Planning Agreement

142-154 Macquarie Street Parramatta

Parties

City of Parramatta Council (Council)
(ABN 49 907 174 773)

Landmark East Pty Ltd (Developer)
(ACN 166 816 011)

Contents

1	Definitions and interpretation.....	1
2	Planning agreement under the Act.....	6
3	Application of this Deed.....	6
4	Operation of this Deed.....	6
5	Developer's warranties as to capacity.....	7
6	Development Contribution to be made by the Developer.....	7
7	Application of the Monetary Contribution by the Council.....	7
8	Application of s7.11 and s7.12 of the Act to the Development.....	8
9	Registration of this Deed.....	8
10	Public Domain Works.....	8
11	Construction of Public Domain Works.....	9
12	Plaza and Public Open Space.....	10
13	Road Widening (Macquarie Street).....	11
14	Rectification of defects.....	11
15	Completion of Public Domain Works.....	12
16	Sale of Land.....	13
17	Dispute resolution.....	14
18	Confidentiality.....	15
19	Approvals and consent.....	16
20	Severability.....	16
21	No fetter.....	16
22	Goods and services tax.....	17
23	Further assurance.....	17
24	Entire understanding.....	18
25	Variation.....	18
26	Waiver.....	18
27	Costs and outlays.....	18
28	Notices.....	18
29	Force majeure – unforeseen events causing delay.....	20
30	Governing law and jurisdiction.....	21
	Schedule 1 Creation of Interests.....	22
	Schedule 2 Compliance Table.....	25
	Schedule 3 Contributions Table.....	26
	Annexure A – Indicative Plan Public Open Space.....	1
	Annexure B - Deed of novation (cl 16.1(1)(b)).....	3
	Annexure C – Plan showing proposed dedication land.....	8
	Annexure D – Access Licence.....	9

Parties **City of Parramatta Council** ABN 49 907 174 773
of 126 Church Street, Parramatta NSW 2124
(Council)

Landmark East Pty Ltd ACN 166 816 011
of Level 2, 72 Macquarie Street, Parramatta NSW 2124
(Developer)

Introduction

- A The *Parramatta Local Environmental Plan 2011* applies to the Land.
- B The Developer is the registered proprietor of the Land.
- C The Developer has submitted the Planning Proposal to Council requesting the Instrument Change by way of an amendment to the LEP.
- D By letter dated 26 February 2016, the Developer offered to enter into this Deed with Council in accordance with section 7.4 of the Act in connection with the Instrument Change and the carrying out of the Development of the Land, and on the terms and conditions of this Deed.
- E This Deed describes the works, public benefits and monetary contributions comprising the Development Contribution which the Developer offers to make under this Deed, and provides for the manner in which, and the terms upon which, the Developer is to provide the Development Contribution.
- F This Deed will be executed by the Parties after the public exhibition of the Instrument Change and prior to the commencement of the Instrument Change.
- G One or more Development Applications will be subsequently submitted by the Developer under Part 4 of the Act for the Development of the Land.

It is agreed

1 **Definitions and interpretation**

1.1 **Definitions**

In this Deed:

- (1) **Act** means the *Environmental Planning and Assessment Act 1979* (NSW);
- (2) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;

- (3) **Compliance Certificate** means a compliance certificate within the meaning of section 6.4(e) of the Act to the effect that work has been completed as specified in the certificate and complies with the plans and specifications for the Development;
- (4) **Confidential Information** means any information and all other knowledge at any time disclosed (whether in writing or orally) by the parties to each other, or acquired by the parties in relation to the other's activities or services which is not already in the public domain and which:
- (a) is by its nature confidential;
 - (b) is designated, or marked, or stipulated by either party as confidential (whether in writing or otherwise);
 - (c) any party knows or ought to know is confidential; or
 - (d) is information which may reasonably be considered to be of a confidential nature;
- (5) **Construction Certificate** has the same meaning as in the Act
- (6) **Council's Discretion** means:
- (a) the Council's power to make any law; or
 - (b) the Council's exercise of any statutory power or discretion;
- (7) **CPI means** the Consumer Price Index (All Groups) published by the Australian Bureau of Statistics;
- (8) **Dealing** in relation to the Land or any part of it means selling, transferring or assigning the Land;
- (9) **Deed** means this document, including any Schedule or annexure to it, signed by the parties;
- (10) **Dedication of Land** means dedication of part of the Land to Council as public road at no cost;
- (11) **Defects Liability Period** means, in respect of the Public Domain Works, the period of 365 days beginning on the date on which the Public Domain Works has achieved practical completion;
- (12) **Design Competition Scheme** means means the design competition winning scheme for the Land prepared by PTW Architects and awarded Design Excellence by the competition Jury on 8 April 2016 generally in accordance with the Design Competition Jury Report;
- (13) **Design Competition Jury Report** means a report which outlines the background, processes and the deliberations of the Jury for the Design Competition Scheme process, articulating the process and considerations in arriving at the selection of the Design Competition Scheme;
- (14) **Development** means a mixed-use development of the Land including but not limited to the currently proposed development which has a gross floor area of approximately 100,600 m² across three towers over a single basement. The currently proposed development includes: basement car parking, approximately 960 residential units, 21,000 m² of non-residential floor space and provision of

public open space areas, all generally as depicted in the Design Competition Scheme;

- (15) **Development Application** means a development application (as defined in the Act) for Development Consent.
- (16) **Development Consent** means a development consent (as defined in the Act) which authorises the carrying out of the Development on the Land, which may be a development consent for a concept development application within the meaning of Division 4.4 of Part 4 of the Act and any modification to a development consent and any subsequent development consent;
- (17) **Development Contribution** means the contribution items set out in Schedule 3, comprising:
- (a) the **Monetary Contribution** identified in Item 3 of Schedule 3;
 - (b) the **Public Domain Works** described at Item 2 of Schedule 3 ;
 - (c) the creation of interests in land which will remain in the Developer's ownership described at Item 1 of Schedule 3 (the **Creation of Interests**) on the terms set out in Item 1 of Schedule 1; and
 - (d) **Dedication of Land** described at Item 4 of Schedule 3.
- (18) **Easement** means an easement for access in favour of the public and the Council created over the Land as shown on the plan in Annexure A and upon the terms set out in Schedule 1;
- (19) **Estimated Value** means, for each item of the Development Contribution listed in Schedule 3, the amount set out in the sixth column of the table in Schedule 3 corresponding to that item.
- (20) **Governmental Agency** means any government and any governmental body whether:
- (a) legislative, judicial or administrative;
 - (b) a department, commission, authority, tribunal, agency or entity;
 - (c) commonwealth, state, territorial or local;
- but does not include a governmental body in respect of any service or trading functions as distinguished from regulatory or fiscal functions;
- (21) **Final OC** means a 'final occupation certificate' that authorises the use of the Development under Part 4A of the Act prior to 1 September 2019; or an 'occupation certificate' that authorises the use of the whole of the Development under Part 6 of the Act after 1 September 2019;
- (22) **Instrument Change** means an amendment to the LEP which results in an increase in the floor space ratio control in the LEP as it applies to the Land from 4:1 to at least 7:1.
- (23) **Land** means Lot 22 in DP790287, described or known as 142-154 Macquarie Street, Parramatta NSW;
- (24) **Legislation** means the Act and the *Local Government Act 1993* (NSW);

- (25) **LEP** means *Parramatta Local Environmental Plan 2011*;
- (26) **LRS** means Land Registry Services, New South Wales;
- (27) **Loss** includes any damage, loss, cost, liability (including a present, prospective or contingent liability or expense);
- (28) **Monetary Contribution** means an unendorsed bank cheque for the Monetary Contribution Amount payable to Council in accordance with clause 6.2 of this Deed;
- (29) **Monetary Contribution Amount** means \$4,743,370.00 indexed by annual indexation at the commencement of each financial year to reflect any increase in the CPI, from the date of this Deed until paid;
- (30) **Monetary Contribution Per Tower Amount** means an amount equal to a third of the total Monetary Contribution Amount;
- (31) **Occupation Certificate** means an 'occupation certificate' as defined under Part 4A of the Act prior to 1 September 2019; or an 'occupation certificate' as defined under Part 6 of the Act after 1 September 2019;
- (32) **Planning Proposal** means the planning proposal reference RZ/15/2014 lodged by Council for gateway determination on 13 April 2015 which was granted gateway determination on 12 June 2015;
- (33) **Plaza** means the open area with approximate dimensions of minimum 5,000 m² and maximum 5,500 m² depicted in the Design Competition Scheme which comprises the Public Open Space and active uses/privately leased areas such as seating, outdoor restaurants, and food and drink premises, generally as shown on the Plan comprising Annexure A . The final form of the Plaza including its layout, final design and the locations and extent of the Easements and the active uses/privately leased areas will be determined in the Development Application, and will generally be in accordance with the Plan comprising Annexure A, described in Clause 12 of this Deed. The Plaza will exclude the land required to be dedicated for Road Widening under Clause 13 of this Deed;
- (34) **Public Open Space** means areas of publicly accessible open space, public squares and shared lanes (having a minimum aggregate area of 4,000 m²) within the Plaza, to be constructed and embellished by the Developer as part of the Development, generally as described in Items 1 and 2 of Schedule 3 and in respect of which easements or rights of public access will be granted generally as described in Item 1 of Schedule 3;
- (35) **Public Domain Works** means the works carried out on and in the Plaza as described in Item 2 of Schedule 3;
- (36) **Quantity Surveyor** means a qualified independent and practising quantity surveyor with at least 5 years' experience in the assessment of building and construction costs;
- (37) **Rectification Certificate** means a compliance certificate within the meaning of section 6.4(e) of the Act to the effect that work the subject of a Rectification Notice has been completed as specified in the notice;
- (38) **Rectification Notice** means a written notice that identifies a breach of this Deed in respect of any of the Public Domain Works, containing sufficient detail

of the work to done to enable the Council to issue a Rectification Certificate and requiring the breach to be rectified within a reasonable specified time;

- (39) **Register** means the Torrens title register maintained under the *Real Property Act* 1900 (NSW). Registration has the corresponding meaning;
- (40) **Regulation** means the *Environmental Planning and Assessment Regulation* 2000 (NSW);
- (41) **Road Widening** means the transfer of part of the Land, dedicated to Council free of cost, for the purpose of widening Macquarie Street, being generally that part of the Land identified in **Annexure C**, denoted as 'Reservation Land', having an area of approximately 524m².
- (42) **Per Tower Amount** means an amount equal to a third of the total section 7.11 and/or 7.12 contribution for the Development required under the Act; and
- (43) **Tower** means any one of the three buildings described as B25, B35 and B60 in the Design Competition Scheme.

1.2 Interpretation

- (1) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced;
 - (g) dollars means Australian dollars unless otherwise stated; and
 - (h) an Item is to an item in a Schedule to this Deed.
- (2) "Including" and similar expressions are not words of limitation.
- (3) 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.
- (4) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.
- (5) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Deed or the inclusion of the provision in the Deed.

- (6) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3 **Parties**

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2 **Planning agreement under the Act**

- 2.1 The parties agree that this Deed is a planning agreement governed by Subdivision 2 of Division 7.1 of Part 7 of the Act. Schedule 2 demonstrates how this Deed complies with each of the requirements of Division 7.1 of the Act.

3 **Application of this Deed**

- 3.1 This Deed applies to the Land, the Instrument Change and to the Development.

4 **Operation of this Deed**

- 4.1 Until this Deed operates, this Deed constitutes an offer by the Developer to enter into this Deed in connection with the Instrument Change.
- 4.2 This Deed operates upon execution.
- 4.3 This Deed will remain in force until:
 - (1) it is terminated by operation of law; or
 - (2) all obligations are performed or satisfied.
- 4.4 The parties acknowledge that:
 - (1) the timing of delivery of the Development Contribution is as set out in the fifth column of the table at Schedule 3; and
 - (2) other than the Road Widening contribution required by clause 13 of this Deed, the Developer is not liable to provide any of the Development Contribution until a Development Consent is obtained to authorise commencement of the Development, and the Development Consent is activated.
- 4.5 The parties agree that in the event the Land is affected by a subsequent amendment to the LEP which is not related to the Planning Proposal and which increases the maximum floor space ratio applicable to the Land above that proposed in the Planning Proposal:
 - (1) this Deed will continue to operate; and
 - (2) the Development Contribution required pursuant to this Deed must be provided; and

- (3) any clause in the LEP which requires the provision of community infrastructure still applies, however

the Development Contribution may be taken into consideration by Council in determining any requirement to provide community infrastructure under the LEP.

5 Developer's warranties as to capacity

5.1 In addition to and despite all other warranties, express or implied, in this Deed, the Developer warrants and covenants that:

- (1) it is empowered to enter into this Deed and to do all things that will be required by this Deed;
- (2) all things have been done or will be done as may be necessary to render this Deed legally enforceable in accordance with its terms and fully valid and binding on it; and
- (3) all authorisations by any Governmental Agency (whether in Australia or not) that are required or will be required in connection with the execution and delivery of, the performance of obligations under or the validity or enforceability of, this Deed have been obtained or effected and are or will be fully operative.

6 Development Contribution to be made by the Developer

6.1 The Developer must make the Development Contribution in the manner and at the times set out in Schedule 3.

6.2 The parties agree that the Developer is entitled to make staged payments of the Monetary Contribution as follows:

- (1) the total Monetary Contribution Amount will be divided into three equal amounts, each equal amount being a **Monetary Contribution Per Tower Amount**; and
- (2) the Developer must pay the Monetary Contribution to Council as follows:
 - (a) the first Monetary Contribution Per Tower Amount is payable prior to the issue of the construction certificate for any above ground works for construction of the Tower that is commenced first in relation to the Development (First Tower);
 - (b) the second Monetary Contribution Per Tower Amount is payable prior to the issue of any Construction Certificate for the second Tower that is constructed in relation to the Development (Second Tower);
 - (c) the third Monetary Contribution Per Tower Amount is payable prior to the issue of any Construction Certificate for the third Tower that is constructed in relation to the Development (Third Tower).

7 Application of the Monetary Contribution by the Council

7.1 The Council must apply the Monetary Contribution towards the implementation of the Council's Parramatta City River Strategy and towards improvements to Argus Lane and James Ruse Reserve or such other local infrastructure as determined by Council in accordance with Council's adopted policies

8 **Application of s7.11 and s7.12 of the Act to the Development**

8.1 This Deed does not exclude the application of sections 7.11 and 7.12 of the Act to any Development Consent.

9 **Registration of this Deed**

9.1 The Developer agrees that it will procure the registration of this Deed on the relevant folios of the Register for the Land in accordance with section 7.6 of the Act and the terms of this Deed.

9.2 The parties must take all practicable steps to enable this Deed to be registered by the LRS on the title to the Land, including the execution of any documents and procuring the consent of each person whose consent is required to Registration.

9.3 The Developer shall lodge this Deed for registration on the relevant folios of the Register to the Land within 20 business days of the Instrument Change coming into effect.

9.4 Council:

(1) acknowledges that:

- (a) the Development is likely to be constructed in stages;
- (b) certain components of the Development Contribution are not required to be provided until the Final OC for the final stage of the Development;
- (c) prior to providing those components of the Development Contribution to Council, a number of dwellings will have been constructed and occupation certificates will have been issued for those dwellings;
- (d) the Developer may enter into contracts for the sale of the dwellings before those components of the Development Contribution have been provided to Council;

(2) must, within 28 days of the Developer submitting the relevant documents to Council, sign such documentation as the Developer may require, to remove this Deed from the Register for that part of the Land which comprises constructed dwellings to enable the Developer to complete the sale of those dwellings, provided always that the Developer has complied with its obligations under this Deed.

10 **Public Domain Works**

10.1 The parties acknowledge and agree that further design detail and refinement of the Public Domain Works may be necessary, taking in to account any approvals or development consent granted in respect of the Public Domain Works.

10.2 In carrying out the Public Domain Works, the Developer shall use suitable new materials and proper and tradesman-like workmanship.

10.3 The qualitative standard of the finishes and designs for the Public Domain Works must be no less than those described in any approved design Deeds, the Building Code of Australia and any applicable Australian Standards.

- 10.4 The Developer shall and must cause the Public Domain Works to be carried out in a proper and workmanlike manner.
- 10.5 The qualitative standard of the design and finishes for the Works must be no less than those described in the following documents:
- (a) any relevant Australian Standard;
 - (b) the City of Parramatta Council *Public Domain Guidelines* January 2016 and any other requirements or policies applied by the Council from time to time in assessing the adequacy of any works or improvements proposed for the public domain or to be accessible to the public in accordance with this agreement; and
 - (c) the Development Consent (including any modification).

11 Construction of Public Domain Works

11.1 Indemnity and Insurance

- (1) The Developer indemnifies the Council from all Loss caused by the performance of the Public Domain Works except to the extent that the Loss is caused or contributed to by the negligence or omission by the Council or any of the Council's servants, agents or contractors.
- (2) The Developer must:
 - (a) maintain public liability insurance, with an insurer approved by the Council, with the Council identified as an interested party, for an amount not less than the amount of \$20 million covering all aspects of the Public Domain Works and submit a copy of the certificate of insurance to the Council before the commencement of the construction of the Public Domain Works;
 - (b) maintain all other reasonably necessary and prudent insurance policies in respect of the Public Domain Works including:
 - (i) construction insurance in relation to the Public Domain Works;
 - (ii) insurance against death or injury to persons employed or otherwise engaged in relation to the undertaking of the Public Domain Works, and
 - (iii) any other insurances required at law; and
 - (c) maintain the insurances required under clause 11.1(2) until the expiration of the Defects Liability Period.

11.2 Approvals and consents

- (1) The Developer must (at its cost) obtain all relevant approvals and consents for the Public Domain Works whether from the Council or any other relevant government agency, including any necessary road opening permit.
- (2) Before commencing the Public Domain Works, the Developer must give to the Council copies of all approvals and consents for the Public Domain Works.

11.3 Construction Work

The Developer must (at its cost):

- (1) carry out and complete the Public Domain Works in accordance with all relevant laws all approvals and consents relating to the Public Domain Works (including the approval by the Council of plans and any other information submitted under this Agreement) within the timeframe set out in Schedule 3; and
- (2) ensure that all Public Domain Works are constructed in a good and workmanlike manner, in accordance with the plans approved under this Agreement so that they are structurally sound, fit for purpose, and suitable for their intended use; and
- (3) unless required under the Development Consent, contact Council's Representative prior to commencement of the Public Domain Works to determine whether Council require any inspection prior to commencement and/or during construction of the Public Domain Works; and
- (4) promptly advise the Council's Representative of any significant delays which it experiences in completing the Public Domain Works; and
- (5) comply with any reasonable directions from the Council in respect of the construction of the Public Domain Works.

11.4 Management of Works

The Council as a party to this Agreement and not as an authority may (but is not obliged to):

- (1) inspect the Public Domain Works during the course of construction at any stage as determined by it at reasonable times and upon giving reasonable notice; and
- (2) notify the Developer's representative in good faith of any material or significant defect, error or omission relating to the construction or installation of the Public Domain Works identified during or as the result of such inspection; and

The parties expressly agree that any failure to identify a defect, error and omission, will not be construed as amounting to an acceptance by the Council of that defect, error or omission.

12 Plaza and Public Open Space

The Developer must provide the Plaza generally in accordance with the Design Competition Scheme and the Plan in Annexure A.

12.1 The parties acknowledge that:

- (1) the final design of the Plaza will be determined by future development applications; and
- (2) while their intention is that legally enforceable public rights of access will apply to the majority of the Plaza, the extent of rights of access for members of the public over the Plaza can only be determined once the Plaza has been designed in detail.

12.2 Subject to clause 12.1 it is the parties' intention that Developer must provide the Plaza generally in accordance with the Design Competition Scheme and the Plan in Annexure A.

- 12.3 The parties agree that the Public Open Space is to be made available by the Developer periodically for events. The parties agree to negotiate in good faith to agree on a schedule of such events and the terms on which they may be held in the Public Open Space.
- 12.4 The Developer must at the Developer's expense, promptly do (or procure to be done) all things required to grant and register the Easement over that part of the Land which the parties agree having regard to clause 12.1 is to be made available for public access in accordance with the Plan attached in Annexure A and generally upon the terms set out in Schedule 1, within 30 days of Practical Completion of the Public Domain Works.

13 Road Widening (Macquarie Street)

- 13.1 An area of the Land adjoining Macquarie Street is to be dedicated to Council at no cost for the purpose of a public road, to facilitate the location of the Harris Street Light Rail Stop.
- 13.2 The area of the Land to be transferred to Council is approximately 524 m², being generally that land identified on the plan at Annexure C to this Agreement.
- 13.3 This area is to be dedicated at no cost to Council at the time set out at Item 4 in Schedule 3.
- 13.4 The Developer will not permit any person to traverse the land to be dedicated without its express written permission, if there is no licence or lease agreement covering the land, that fully indemnifies the Developer.
- 13.5 At the time of executing this Deed, the Developer must enter into a licence with Council (and/or another public authority nominated by the Council) in accordance with the terms of the Access Licence provided at Annexure D.

14 Rectification of defects

- 14.1 The Council may give the Developer a Rectification Notice during the Defects Liability Period.
- 14.2 The Developer must comply with a Rectification Notice at its cost.
- 14.3 When the Developer considers that it has complied with a Rectification Notice it may request the Council to issue a Rectification Certificate relating to the work the subject of the relevant Rectification Notice.
- 14.4 Within 14 days of receipt of the Developer's request under clause 14.3, the Council must:
- (1) issue a Rectification Certificate to the Developer if it is satisfied that the Developer has complied with the relevant Rectification Notice; or
 - (2) give the Developer notice of its decision to refuse to issue a Rectification Certificate containing sufficient detail of the reasons for its decision so as to inform the Developer of the work that needs to be done to enable the Council to issue a Rectification Certificate.
- 14.5 Without limiting any other right of the Developer, on receipt of a notice under clause 14.4(2), the Developer may obtain a Compliance Certificate from an accredited certifier, appointed by Deed between the parties acting reasonably, in relation to the work the subject of the Rectification Notice.

14.6 A Rectification Certificate or a Compliance Certificate referred to in clause 14.5 discharges the Developer from any further obligation to comply with a Rectification Notice.

14.7 If the Developer does not fully comply with a Rectification Notice, the Council may rectify the defect and may recover the reasonable cost of doing so as a debt due in a court of competent jurisdiction.

15 Completion of Public Domain Works

15.1 Definitions

In this clause:

- (1) **Certificate of Practical Completion** means a written notice from the Council to the Developer stating that the Contribution Item in respect of which the Council has received a Notice of Practical Completion has achieved Practical Completion on a specified date;
- (2) **Contribution Item** means Item 2 of Schedule 3;
- (3) **Notice of Practical Completion** means a written notice from the Developer to the Council which specifies that the Developer considers that a particular Contribution Item will achieve Practical Completion on a particular date, and includes a new Notice of Practical Completion served under clause 15.3(4)(a); and
- (4) **Practical Completion** means, in respect of a Contribution Item, the stage in the construction of the Contribution Item when construction is complete except for minor omissions and defects:
 - (a) which do not prohibit; or
 - (b) which may be rectified without prohibiting,the Contribution Item from being reasonably used for its intended purpose.

15.2 Notice of Practical Completion

The Developer must serve a Notice of Practical Completion on the Council for each Contribution Item it considers has achieved Practical Completion.

15.3 Council's response to Notice of Practical Completion

- (1) The Council must inspect a Contribution Item within 21 days of receipt of a Notice of Practical Completion in respect of that Contribution Item.
- (2) Within 28 days of receiving a Notice of Practical Completion the Council must (acting reasonably):
 - (a) serve a Certificate of Practical Completion on the Developer; or
 - (b) serve a written notice on the Developer specifying:
 - (i) that the relevant Contribution Item has not achieved Practical Completion; and
 - (ii) the work the Council requires the Developer to carry out in order for the relevant Contribution Item to achieve Practical Completion.

- (3) If the Council does not comply with clause 15.3(2) the relevant Contribution Item is deemed to have been subject to a Certificate of Practical Completion on the date specified in the Notice of Practical Completion.
- (4) If the Council serves a notice on the Developer under clause 15.3(2)(b) the Developer must:
 - (a) carry out the work specified in the notice within a reasonable time and then serve on the Council a new Notice of Practical Completion; or
 - (b) serve a notice on the Council disputing the matters set out in the notice served under clause 15.3(2)(b).

15.4 If the Developer serves a notice on the Council under clause 15.3(4)(b), clause 17 applies.

16 Sale of Land

16.1 If the Developer proposes to enter into a Dealing with any third party (**Transferee**) relating to the Developer's interests in the Land or any part of the Land, then:

- (1) the Developer must, at the Developer's cost,
 - (a) provide the Council with such documents as are reasonably necessary to demonstrate the Transferee's financial capacity to perform the Developer's obligations under the Deed;
 - (b) give Council a deed of novation in the form of Annexure B signed by the Developer and the Transferee under which:
 - (i) the Transferee agrees with Council and the Developer, to observe, perform and be bound by this Deed from completion of the sale of the relevant land;
 - (ii) the Transferee is bound by this Deed as if the Transferee were named in this Deed in place of the Developer; and
 - (c) the Developer is released from its obligations under this Deed except in respect of prior breach; and
- (2) Subject to clause 16.2, Council must:
 - (a) sign the deed of novation to agree to the novation of this Deed; and
 - (b) return the deed of novation to the Developer within 10 Business Days of receipt.

16.2 The Developer acknowledges that Council is not required to sign the deed of novation if:

- (1) the Developer is in material breach of its obligations under this Deed (unless that breach is waived by Council in writing); or
- (2) Council (acting reasonably) is not satisfied that the proposed Transferee is financially capable of complying with the Developer's obligations under this Deed in accordance with the deed of novation.

- 16.3 Without limiting clause 16.1, the Developer may not otherwise assign or deal with this Deed without the prior written consent of the Council which consent must not be unreasonably withheld.
- 16.4 The Council is required to give its consent under clause 16.3 if:
- (1) the Developer gives the Council at least 20 Business Days' notice of the proposed assignment;
 - (2) The Council is satisfied (acting reasonably) as to the Transferee's financial capacity to perform the Developer's obligations under the Deed and the Developer must comply with clause 16.1.1(a) to enable Council to be satisfied;
 - (3) the proposed assignee executes a deed with the parties under which:
 - (a) the proposed assignee agrees to perform all of the obligations of the Developer under this Deed which have not already been performed by the Developer;
 - (b) the proposed assignee is bound by this Deed as if the proposed assignee were named in this Deed in place of the Developer; and
 - (c) the Developer is released from its obligations under this Deed except in respect of prior breach; and
- 16.5 the Developer pays all expenses (including legal costs assessed on an indemnity basis) incurred by the Council in connection with the proposed assignment.
- 16.6 On receipt of the deed referred to in clause 16.4(2), in the form of Annexure B, the Council must execute the deed so that the Developer is released from its obligations under this Deed, except in respect of prior breach.
- 16.7 Council acknowledges that the Developer may in future seek to subdivide the Land (subject to obtaining all necessary authorisations) and enter into a Dealing in relation to part only of the Land. If the Developer subdivides the Land,
- (1) Council acknowledges that a deed of novation substantially in the form of Annexure B may be entered into in relation to part only of the Land, being one or more of the lots created by the subdivision referred to in this clause.

17 **Dispute resolution**

- 17.1 If a dispute arises in connection with this Deed, a party to the dispute must give to the other party or parties to the dispute notice specifying the dispute and requiring its resolution under this clause 17 (**Notice of Dispute**).
- 17.2 The chief executive officers of each party must confer within 3 days after the Notice of Dispute is given to try to resolve the dispute.
- 17.3 If the dispute is not resolved within 7 days after the Notice of Dispute is given to the other party or parties (**First Period**), the dispute is by this clause submitted to mediation. The mediation must be conducted in Sydney. The Resolution Institute Mediation Rules (at the date of this Deed) as amended by this clause 17 apply to the mediation, except where they conflict with this clause 17.
- 17.4 If the parties have not agreed upon the mediator and the mediator's remuneration within 7 days after the First Period:

(1) the mediator is the person appointed by; and

(2) the remuneration of the mediator is the amount or rate determined by;

the Chair of the Resolution Institute (**Principal Appointor**) or the Principal Appointor's nominee, acting on the request of any party to the dispute.

17.5 The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.

17.6 If the dispute is not resolved within 28 days after the appointment of the mediator (**Second Period**), either party may by written notice to the other party require the dispute to be submitted to expert determination.

17.7 The provisions of the Resolution Institute Expert Determination Rules as published by The Resolution Institute (to be found on its website www.resolution.institute) apply to the expert determination, except to the extent that there are inconsistent provisions in this Deed.

17.8 Despite anything in this clause 17, a party at any time may commence court proceedings in relation to any dispute or claim arising under or in connection with this Deed where that party seeks urgent interlocutory relief.

17.9 Despite the reference of a dispute to expert determination under this clause 17, the parties must continue to perform their obligations under this Deed. In the award, the expert may make any appropriate adjustment for the performance of obligations under this Deed since the Notice of Dispute was given.

17.10 Subject to clause 17.8, a party must not commence or maintain a court action or proceeding upon a dispute in connection with this Deed until the dispute has been referred to an expert and determined under this clause 17.

17.11 This clause 17 continues in force even where the Deed has been fully performed, terminated or rescinded or where the parties or any of them have been discharged from the obligation to further perform the Deed for any reason.

17.12 This clause 17 applies even where the Deed is otherwise void or voidable.

17.13 The parties must:

(1) keep confidential any information or Deeds disclosed under this clause; and

(2) only use any information or Deeds disclosed under this clause to attempt to resolve the dispute.

18 Confidentiality

18.1 The terms of this Deed are not confidential. This Deed may be exhibited by either party.

18.2 Except as stated in this Deed, Council must not and must not permit any of its officers, employees, agents, contractors or related companies to use or to disclose any Confidential Information to any person without the prior written consent of the Developer.

18.3 If requested by a party, the other party must:

(1) not issue, publish or authorise any media release, advertisement or publicity concerning this Deed without obtaining the prior written consent of the other party; and

- (2) ensure that its officers, employees, agents, contractors and related companies do the same.

18.4 This clause 18 does not apply to any information which:

- (1) is generally available to the public (other than as a result of the wrongful disclosure by the Council); or
- (2) is required to be disclosed by any law.

19 **Approvals and consent**

19.1 Each party may conditionally or unconditionally give or withhold its approval or consent in its absolute discretion unless this Deed expressly provides otherwise.

20 **Severability**

20.1 If any provision in this Deed is unenforceable, illegal or void or makes this Deed or any part of it unenforceable, illegal or void, then that provision is severed and the rest of this Deed remains in force.

21 **No fetter**

21.1 The parties:

- (1) acknowledge that the Council is a consent authority, having statutory rights and obligations under the Legislation;
- (2) do not intend this Deed to fetter Council's Discretion.

21.2 If, contrary to the parties' intention, any provision in this Deed is held by a court of competent jurisdiction to constitute an unlawful fetter on Council's Discretion:

- (1) the parties must take all practical steps, including the execution of any further Deeds, to ensure that the objective of this clause 21 is substantially satisfied; and
- (2) if clause 21.2(1) cannot be achieved without unlawfully fettering Council's Discretion, the relevant provision is severed and the rest of this Deed remains in force.

21.3 If:

- (1) the Legislation permits the Council to contract out of a provision of that Legislation or gives the Council power to exercise Council's Discretion; and
- (2) the Council has in this Deed contracted out of a provision or exercised Council's Discretion, then to that extent this Deed is to be regarded as consistent with the Legislation.

22 Goods and services tax

22.1 Definitions

In this clause 22:

- (1) **GST** means GST as defined in *A New Tax System (Goods and Services Tax) Act 1999* as amended (**GST Act**) or any replacement or other relevant legislation and regulations; and
- (2) words or expressions used in this clause which have a particular meaning in the **GST law** (as defined in the GST Act, and also including any applicable legislative determinations and Australian Taxation Office public rulings) have the same meaning, unless the context otherwise requires.

22.2 No taxable supply

The parties believe that there is no GST liability in respect of the grant of the Development Consent by Council or the payment or provision of the Development Contribution because:

- (1) to the extent that the Development Contribution is a monetary contribution:
 - (a) it is not consideration for the grant of the Development Consent or Deed to the Instrument Change by Council in accordance with section 81-5(2) of the GST Act; and
 - (b) the payment of a monetary Developer's Contribution is not a supply by the Developer under section 9-10(4) of the GST Act; and
- (2) to the extent to which the Development Contribution is a non-monetary contribution:
 - (a) it is not consideration for the grant of the Development Consent or Deed to the Instrument Change by Council in accordance with section 82-10(1) of the GST Act; and
 - (b) the grant of the Development Consent or Deed to the Instrument Change is not consideration for the supply of the non-monetary Development Contribution under section 82-5 of the GST Act.

22.3 If supply is a taxable supply

Despite clause 22.2, to the extent that the Commissioner of Taxation, a court or tribunal determines that any supply made under or in connection with this Deed is a taxable supply, the GST exclusive consideration otherwise to be paid or provided for that taxable supply is increased by the amount of any GST payable in respect of that taxable supply and that amount must be paid at the same time and in the same manner as the GST exclusive consideration is otherwise to be paid or provided. A party's right to payment under this clause is subject to a valid tax invoice being delivered to the recipient of the taxable supply.

23 Further assurance

- 23.1 Each party must promptly at its own cost do all things (including executing and if necessary delivering all Deeds) necessary or desirable to give full effect to this Deed.

24 Entire understanding

24.1 Subject to clause 24.2, this Deed:

- (1) is the entire Deed and understanding between the parties on everything connected with the subject matter of this Deed; and
- (2) supersedes any prior Deed or understanding on anything connected with that subject matter.

24.2 The explanatory note prepared in relation to this Deed under clause 25E(1) of the *Environmental Planning and Assessment Regulation 2000* (NSW) must not be used to assist in construing this Deed.

25 Variation

25.1 An amendment or variation to this Deed is not effective unless it is in writing and signed by the parties.

26 Waiver

26.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

26.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

26.3 A waiver is not effective unless it is in writing.

26.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

27 Costs and outlays

27.1 The Developer shall pay Council's reasonable legal costs (assessed on an indemnity basis) in connection with the preparation, notification and execution of this Deed, not exceeding \$20,000 plus GST.

27.2 The Developer must pay all stamp duty and other government imposts payable in connection with this Deed and all other Deeds and matters referred to in this Deed when due or earlier if requested in writing by the Council.

28 Notices

28.1 A notice or other communication connected with this Deed (**Notice**) has no legal effect unless it is in writing.

28.2 In addition to any other method of service provided by law, the Notice may be:

- (1) sent by prepaid ordinary post to the address for service of the addressee, if the address is in Australia and the Notice is sent from within Australia;
- (2) sent by prepaid airmail to the address for service of the addressee, if the address is outside Australia or if the Notice is sent from outside Australia;

- (3) sent by facsimile to the facsimile number of the addressee; or
 - (4) delivered at the address for service of the addressee.
- 28.3 A certificate signed by a party giving a Notice or by an officer or employee of that party stating the date on which that Notice was sent or delivered under clause 28.2 is prima facie evidence of the date on which that Notice was sent or delivered.
- 28.4 If the Notice is sent or delivered in a manner provided by clause 28.2, it must be treated as given to and received by the party to which it is addressed:
- (1) if sent by post from within Australia to an address in Australia, on the 2nd Business Day (at the address to which it is posted) after posting;
 - (2) if sent by post to an address outside Australia or sent by post from outside Australia, on the 5th Business Day (at the address to which it is posted) after posting;
 - (3) if sent by facsimile before 5pm on a Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt; or
 - (4) if otherwise delivered before 5pm on a Business Day at the place of delivery, upon delivery, and otherwise on the next Business Day at the place of delivery.
- 28.5 Despite clause 28.4(3):
- (1) a facsimile is not treated as given or received unless at the end of the transmission the sender's facsimile machine issues a report confirming the transmission of the number of pages in the Notice;
 - (2) a facsimile is not treated as given or received if it is not received in full and in legible form and the addressee notifies the sender of that fact within 3 hours after the transmission ends or by 12 noon on the Business Day on which it would otherwise be treated as given and received, whichever is later.
- 28.6 If a Notice is served by a method which is provided by law but is not provided by clause 28.2, and the service takes place after 5pm on a Business Day, or on a day which is not a Business Day, it must be treated as taking place on the next Business Day.
- 28.7 A Notice sent or delivered in a manner provided by clause 28.2 must be treated as validly given to and received by the party to which it is addressed even if:
- (1) the addressee has been liquidated or deregistered or is absent from the place at which the Notice is delivered or to which it is sent; or
 - (2) the Notice is returned unclaimed.
- 28.8 Council's address for service and facsimile number are:
- | | | |
|--------------|---|-------------------------------|
| Name | : | City of Parramatta Council |
| Attention | : | # insert # |
| Address | : | 126 Church Street, Parramatta |
| Facsimile no | : | # insert # |

28.9 Developer's address for service and facsimile number are:

Name : Landmark East Pty Ltd
Attention : # insert #
Address : Level 2, 72 Macquarie Street, Parramatta
Facsimile no : # insert #

28.10 A party may change its address for service or facsimile number by giving Notice of that change to each other party.

28.11 If the party to which a Notice is intended to be given consists of more than 1 person then the Notice must be treated as given to that party if given to any of those persons.

28.12 Any Notice by a party may be given and may be signed by its solicitor.

29 Force majeure – unforeseen events causing delay

29.1 If a party (**Affected Party**):

- (1) is prevented from or delayed in performing an obligation (other than to pay money) by a Prescribed Event;
- (2) as soon as possible after the Prescribed Event occurs, notifies the other party of full particulars of:
 - (a) the Prescribed Event;
 - (b) the effect of the Prescribed Event on performance of the Affected Party's obligations;
 - (c) the anticipated period of delay; and
 - (d) the action (if any) the Affected Party intends to take to mitigate or remove the effect and delay; and
- (3) promptly and diligently acts to mitigate or remove the Prescribed Event and its effect;

then:

- (4) the obligation is suspended during, but for no longer than, the period the Prescribed Event continues and such further period as is reasonable in the circumstances; and
- (5) if the Affected Party is prevented from or delayed in performing the obligation by the Prescribed Event for at least 90 days, any party may by notice to the other party terminate this Deed.

29.2 The party which is not the Affected Party must use reasonable endeavours to remove or mitigate the Prescribed Event and its effects.

29.3 Nothing in clause 29.1(3) or clause 29.2 obliges either party to settle any strike, lockout, ban, limitation of work or other industrial disturbance.

29.4 In this clause 29 **Prescribed Event** means any of the following events:

- (1) act of God;

- (2) war, terrorism, riot, insurrection, vandalism or sabotage;
- (3) strike, lockout, ban, limitation of work or other industrial disturbance; or
- (4) law, rule or regulation of any government or governmental agency, and executive or administrative order or act of general or particular application;

which:

- (5) is unforeseen by the Affected Party;
- (6) is beyond the control of the Affected Party; and
- (7) occurs without the fault or negligence of the Affected Party.

30 **Governing law and jurisdiction**

30.1 The law of New South Wales governs this Deed.

30.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

Schedule 1 Creation of Interests

Easement

Definitions

For the purposes of this Instrument, the following words have the following meanings:

Easement means any Easement created by this Instrument.

Owner of the Lot Burdened means the registered proprietor of the Lot Burdened from time to time.

Council means the City of Parramatta Council and its successors.

Lot Burdened means that part of the land having the burden of the Easement which the Plan indicates is the site of the Easement.

Plan means the plan to which this Instrument relates.

1. *Easement for Access variable width (A)*

Terms of Easement

- 1.1 Full right for the public at all times to enter, pass and repass over the Lot Burdened on foot without vehicles (and not using rollerblades, skateboards, scooters or similar items or equipment) and only within the site of the Easement.
- 1.2 Access for public access may be temporarily suspended or cancelled by the Owner of the Lot Burdened without the consent of any other person, for reasonable periods for the following reasons:
 - (a) safety;
 - (b) security;
 - (c) emergency;
 - (d) maintenance; and/or
 - (e) construction.
- 1.3 The Owner of the Lot Burdened acting reasonably (and having proper regard to the nature of use or activity carried out on the Lot Burdened), may refuse entry to any person entitled to exercise a right under this easement if that person:
 - (f) is not adequately clothed; or
 - (g) is drunk or under the influence of illegal drugs; or
 - (h) behaves in an antisocial manner or a manner likely to cause alarm, offence or embarrassment to persons on the Lot Burdened; or
 - (i) has damaged or is likely to damage the Lot Burdened.

- 1.4 Full right for the Council and the servants, agents and contractors of the Council at all times to enter, pass and repass over the Lot Burdened (in common with the public) with or without vehicles, plant and equipment and to remain on the Lot Burdened but only within the site of the Easement for so long as may be necessary for the purpose of performing the Council's rights under clause 1.6 and the Council's obligations under clause 1.7.
- 1.5 The Owner of the Lot Burdened must at all times at its expense:
 - (a) keep the Lot Burdened (including any services in, on or under the Lot Burdened) in good repair and condition;
 - (b) keep the Lot Burdened clean and free from rubbish; and
 - (c) maintain appropriate public liability insurance in the name of the Owner of the Lot Burdened and notify Council's interest in the Land.
- 1.6 If the Owner of the Lot Burdened does not perform any obligation under clause 1.5, the Council may undertake the required work and recover the costs of all such work from the Owner of the Lot Burdened. Before commencing any work or incurring any costs described in this clause 1.6, the Council must notify the Owner of the Lot Burdened of its intention to do so at least 21 days prior, to allow the Owner of the Lot Burdened the opportunity to complete the works.
- 1.7 If the Owner of the Lot Burdened does not perform any obligation under clause 1.5, the Council may undertake the required work and recover the costs of all such work from the Owner of the Lot Burdened. Before commencing any work or incurring any costs described in this clause 1.6, the Council must notify the Owner of the Lot Burdened of its intention to do so at least 21 days prior, to allow the Owner of the Lot Burdened the opportunity to complete the works.
- 1.8 The Council must at its expense, promptly make good and remedy any damage caused to the Lot Burdened arising from any exercise of the rights under clauses 1.1, and 1.4 and/or performance of any of the obligations under clause 1.6.
- 1.9 If the Council does not rectify any damage under clause 1.7 then the Owner of the Lot Burdened may undertake the required work and recover the costs of all such work from the Council. Before commencing any work or incurring any costs described in this clause 1.8, the Owner of the Lot Burdened must notify the Council of its intention to do so at least 21 days prior to allow the Council the opportunity to complete the works.
- 1.10 The Council may at its expense, effect and maintain in force at all times, a public liability or broad form liability policy of insurance for \$20,000,000 against liability arising in respect of personal injury to or death of any person and loss of and damage to any personal property on or about the Lot Burdened arising from any exercise of the rights under clauses 1.1, and 1.4 and/or performance of any of the obligations under clause 1.5.
- 1.11 The Council is solely empowered to release the Easement.
- 1.12 The Easement may only be varied by written agreement between the Council and the Owner of the Lot Burdened.
- 1.13 To the extent not implied by law, the terms of any Easement bind the Council and the Owner of the Lot Burdened and their successors and assigns as mutual covenants entered into between them and as legal rights and obligations annexed to the land.

- 1.14 If any part of the Lot Burdened is transferred or dedicated as a public road, then from the date of that dedication, this easement is extinguished in respect of the part so transferred or dedicated.

DRAFT

Schedule 2 Compliance Table

Provision of the Act	This Deed
Under section 7.4, Developer has:	
(a) sought a change to an environmental planning instrument.	(a) Yes
• made, or proposes to make, a development application.	(b) Yes
• entered into an Deed with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.	(c) No
Description of the land to which this Deed applies- (7.4(3)(a))	Land as defined in clause 1.1.
Description of the instrument change to which this Deed applies- (Section 7.4 (3)(b))	The Instrument Change as defined in clause 1.1.
The scope, timing and manner of delivery of Development Contributions required by this Deed - (Section 7.4 (3)(c))	See Schedule 3.
Applicability of Section 7.11 of the Act - (Section 7.4(3)(d))	The application of section 7.11 is not excluded.
Applicability of Section 7.12 of the Act - (Section 7.4(3)(d))	The application of section 7.12 is not excluded.
Applicability of Section 7.24 of the Act - (Section 7.4(3)(d))	The application of section 7.24 is not excluded.
Applicability of Section 7.4(3)(e) of the Act	Any benefits under this Deed for a Public Purpose may be taken into consideration in determining a Development Contribution under section 7.11 or 7.12 of the Act.
Mechanism for Dispute resolution - (Section 7.4(3)(f))	See clause 17
Enforcement of this Deed - (Section 7.4(3)(g))	See clause 9
No obligation to grant consent or exercise functions - (Section 7.4(9))	See clause 21

Schedule 3 Contributions Table

Item no	Item	Contribution type	Description	Timing of delivery	Estimated Value
1	Public Open Space	Creation of Interests	Grant rights of public access to areas within the Plaza, determined in accordance with clause 12. The granted rights will provide for reasonable restrictions to be imposed to ensure public safety and security. This land will remain in the ownership of the Developer and will not be transferred to Council.	Easement to be granted upon practical completion of the public domain works.	(value of the right of access not yet determined)
2	Public Open Space	Public Domain Works	<p>Embellishment of new public open space, public squares and shared lanes such as landscaping, amenities, furniture, seating, and including public art and heritage interpretation.</p> <p>The qualitative standard of the design and finishes for the public squares and shared lanes shall be generally in accordance with the Design Competition Scheme, Council's Public Domain Guidelines and</p>	Public Domain Works to be completed prior to Final OC for final stage of the development.	(value not determined)

Item no	Item	Contribution type	Description	Timing of delivery	Estimated Value
			any other relevant policies or guidelines and the relevant Australian Standards.		
3	Monetary Contribution	Monetary contribution	A monetary contribution to the value of the Monetary Contribution Amount, to be applied by Council in accordance with clause 7	In three equal amounts, payable prior to the issue of construction certificate for each Tower comprising part of the Development, as set out in clause 6.2.	\$4,743,370.50 at the date of this Deed
4	Dedication of Land	Dedication	Dedication of part of the Land (524.125m ²) for the purpose of widening Macquarie Street	To be effected by Registration prior to the issue of any construction certificate for the Development of the Land.	[Value to be determined]
5	Licence to carry out works and use land	Creation of access rights	Grant licence to carry out road or light rail works and use the land for those purposes until the land is dedicated in accordance with Access Licence at Annexure D	At the time of execution of this Deed	[value to be determined]

DRAFT

Executed as a Deed.

Signed sealed and delivered for and on behalf of **City of Parramatta Council**:

.....
Mayor of City of Parramatta Council

.....
Acting Chief Executive Officer

.....
.....

Executed by **Landmark East Pty Ltd** (ACN 166 816 011) in accordance with section 127 of the *Corporations Act 2001*:

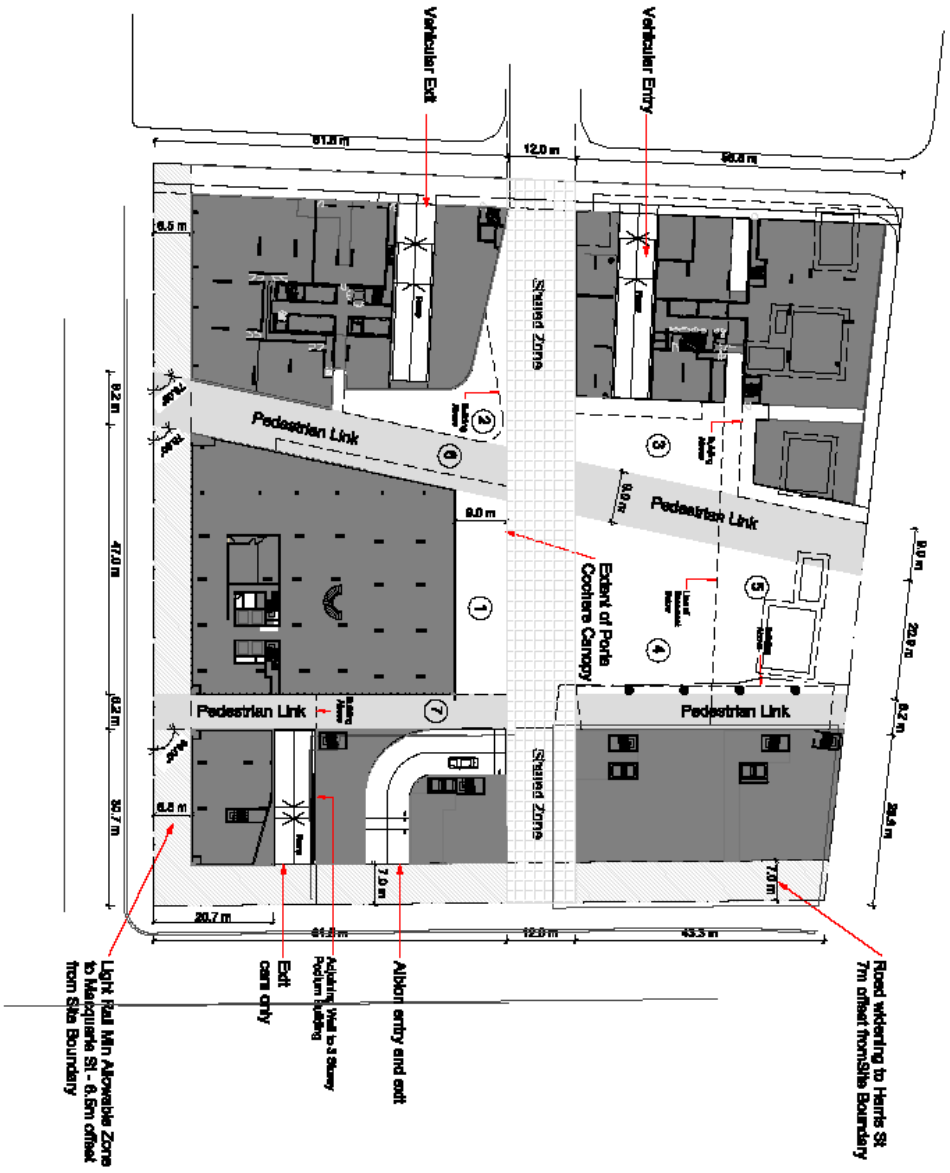
.....
Director/company secretary

.....
Director

.....
Name of director/company secretary
(BLOCK LETTERS)

.....
Name of director
(BLOCK LETTERS)

Annexure A– Indicative Plan Public Open Space



Legend

- Site Boundary
- Light Rail Max Allowable Zone
- Site Through Pedestrian Link
- Shared Zone (24h access)
- SSB Setback Dimension
- 1 Porta Cooliers
- 2 Indigenous Plaza
- 3 Market / Event Plaza
- 4 Main Square / Kitchen Garden
- 5 Heritage College Pavilion
- 6 Laneway 1
- 7 Laneway 2
- Area 1 to 5 = 2550m²
- Area 6 and 7 = 690m²
- Shared Area = 1000m²

Annexure B - Deed of novation (cl 16.1(1)(b))

Deed dated

Parties **City of Parramatta Council** (ABN 49 907 174 773
of 126 Church Street Parramatta
(**Council**)

Landmark East Pty Ltd (ACN 166 816 011)
of Level 2, 72 Macquarie Street, Parramatta
(**Developer**)

**# Full name of Purchaser # # Purchaser's ACN (if
applicable) #
of # address of Purchaser #
(Purchaser)**

Introduction

The parties agree to novate the Planning Agreement on the terms of this Deed.

It is agreed

1 Definitions and interpretation

1.1 Definitions

In this Deed, unless the contrary intention appears:

- (1) **Act** means the Environmental Planning and Assessment Act 1979 (NSW)
- (2) **Business Day** means a day that is not a Saturday, Sunday or any other day which is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made;
- (3) **Claim** includes a claim, damage, Loss, cost, expense or liability incurred by or to or made or recovered by or against any person, however arising, whether present, unascertained, immediate, future or contingent, and whether made by a party to the Planning Agreement or a third person;
- (4) **Deed** means this Deed, including any schedule or annexure to it;
- (5) **Effective Date** means # insert the date on which the Purchaser takes over the rights, obligations and liabilities

of the Developer under the contract for the sale of the Sale Land #;

- (6) **Loss** includes any damage, loss, cost, liability (including a present, prospective or contingent liability or expense);
- (7) **Planning Agreement** means the Planning Agreement dated 17 July 2018 between the Developer and the Council which is governed by Subdivision 2 of Division 6 of Part 4 of the Act, including all amendments or supplements to, or replacements, assignments or novations of it; and
- (8) **Sale Land** means # description of land being sold #.

1.2 Interpretation

- (1) Unless the context otherwise requires, any term used in this Deed which is a defined term in the Planning Agreement has the same meaning in this Deed as in the Planning Agreement.
- (2) Reference to:
 - (a) one gender includes the others;
 - (b) the singular includes the plural and the plural includes the singular;
 - (c) a person includes a body corporate;
 - (d) a party includes the party's executors, administrators, successors and permitted assigns;
 - (e) a thing includes the whole and each part of it separately;
 - (f) a statute, regulation, code or other law or a provision of any of them includes:
 - (i) any amendment or replacement of it; and
 - (ii) another regulation or other statutory instrument made under it, or made under it as amended or replaced; and
 - (g) dollars means Australian dollars unless otherwise stated.
- (3) "Including" and similar expressions are not words of limitation.
- (4) 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.
- (5) Headings and any table of contents or index are for convenience only and do not form part of this Deed or affect its interpretation.

- (6) A provision of this Deed must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of this Deed or the inclusion of the provision in this Deed.
- (7) If an act must be done on a specified day which is not a Business Day, it must be done instead on the next Business Day.

1.3 Parties

- (1) If a party consists of more than 1 person, this Deed binds each of them separately and any 2 or more of them jointly.
- (2) An obligation, representation or warranty in favour of more than 1 person is for the benefit of them separately and jointly.
- (3) A party which is a trustee is bound both personally and in its capacity as a trustee.

2 Novation of the Planning Agreement

- 2.1 On and from the Effective Date a reference in the Planning Agreement to the Developer must be read as a reference to the Purchaser in respect of rights and obligations of the Developer under the Planning Agreement arising on and after the Effective Date.

3 Assumption of rights and liabilities by Purchaser

- 3.1 On and from the Effective Date, the Purchaser:
 - (1) enjoys all the Developer's rights and benefits under the Planning Agreement;
 - (2) assumes all the Developer's obligations under the Planning Agreement arising on or after the Effective date; and
 - (3) assumes all the Developer's liability for Claims under the Planning Agreement arising on or after the Effective date, other than those arising out of acts or omissions of the Developer before the Effective Date,

in so far as the Planning Deed applies to the Sale Land.

4 Release of the Developer from obligations

- 4.1 On and from the Effective Date:
 - (1) the Council accepts the Purchaser's assumption of the Developer's obligations in accordance with clause 3.1(2) and liability for Claims in accordance with clause 3.1(3);
 - (2) each of the Council and the Developer releases the other from any obligations under the Planning Agreement in connection with the Sale Land arising on or after the Effective date;

- (3) each of the Council and the Developer releases the other from any other Claims arising on or after the Effective date in connection with the Sale Land arising under the Planning Agreement other than those arising out of acts or omissions of the other before the Effective date.

5 Representations and warranties

5.1 Each party represents and warrants to each other party that:

- (1) It has full power and authority to enter into and perform its obligations under this Deed, whether express or implied;
- (2) It has taken all necessary action to authorise the execution, delivery and performance of this Deed in accordance with its terms; and
- (3) this Deed constitutes its legal, valid and binding obligations and is enforceable in accordance with its terms subject to any necessary stamping and registration and to equitable principles and laws generally affecting creditors' rights.

6 Costs and outlays

6.1 Each party must pay its own costs and outlays connected with the negotiation, preparation and execution of this Deed.

6.2 The Purchaser must pay all stamp duty and other government imposts payable in connection with this Deed and all other Deeds and matters referred to in this Deed when due or earlier if requested in writing by any other party.

7 Governing law and jurisdiction

7.1 The law of New South Wales governs this Deed.

7.2 The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia.

Executed as a deed and delivered on the date shown on the first page.

Signed sealed and delivered for and on behalf of **City of Parramatta Council**:

.....
Mayor of City of Parramatta Council

.....
Chief Executive Officer

.....

.....

Executed by **Landmark East Pty Ltd** (ACN 166 816 011) in accordance with section 127 of the *Corporations Act 2001*:

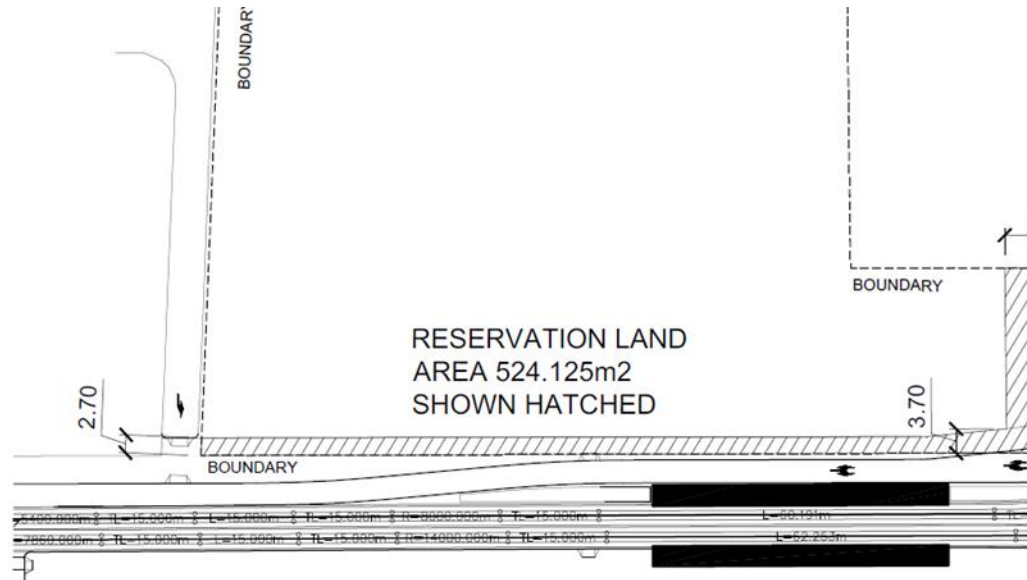
.....
Director/company secretary

.....
Director

.....
Name of director/company secretary
(BLOCK LETTERS)

.....
Name of director
(BLOCK LETTERS)

Annexure C- Plan showing proposed dedication land



142-154 MACQUARIE STREET PARRAMATTA
LAND DEDICATION - PART PLAN

Annexure D– Access Licence

Access Licence

Dated

Landmark East Pty Ltd (ACN 166 816 011) (“**Licensor**”)
[**Insert Licensee#**] (“**Licensee**”)

Contents

Details	1
General terms	2
1 Definitions and interpretation	2
1.1 Definitions	2
1.2 Interpretation	3
1.3 Business Days	4
2 Licence	4
2.1 Grant of non-exclusive Licence	4
2.2 Access Term	5
2.3 Licence Fee	Error! Bookmark not defined.
2.4 Licence only	5
3 Carrying out the Activities	5
3.1 Work health and safety	5
3.2 Approvals and statutes	6
4 Licensor Access	6
5 Insurance	7
6 Indemnity and Release	7
6.1 Indemnity	7
6.2 No merger	8
7 Warranties	8
7.1 Capacity and authorisation	8
7.2 Transfer or disposals are subject to Licensee's consent and rights	8
8 General	8
8.1 Governing law and jurisdiction	8
8.2 Public authorities	8
8.3 Replacement Body	8
8.4 No merger	9
8.5 Severance	9
8.6 Entire agreement	9
8.7 Amendments	9
9 Relationship	9
10 Dispute resolution	9
10.1 Intention to resolve disputes	9
10.2 Process	9
11 GST	10
11.1 General provisions relating to GST	10

12	General	11
12.1	Stamp duty	11
12.2	Costs	11
Schedule 1	Licenced Area	12
Schedule 2	Activities	13
Signing page		1

Details

Parties		
<hr/>		
Licensor	Name	Landmark East Pty Ltd
	ACN	166 816 011
	Address	126 Church Street, Parramatta NSW 2124
	Telephone	[#To be inserted#]
	Attention	[#To be inserted#]
<hr/>		
Licensee	Name	[#Insert Licensee#]
	ABN	[#To be inserted#]
	Address	[#To be inserted#]
	Telephone	[#To be inserted#]
	Attention	[#To be inserted#]
<hr/>		
Governing law	New South Wales	
<hr/>		
Business Day place (s)	Sydney	
<hr/>		
Recitals	<p>The Licensor is the registered proprietor of the Licenced Area.</p> <p>The Licensee and the Licensee's Authorised Persons require accessing the Licenced Area to carry out Activities, in connection with the VPA and the Project.</p> <p>Pursuant to clause 13 of the VPA, the Licensor agrees to grant to the Licensee and the Licensee's Authorised Persons, and the Licensee accepts the grant of a licence for access to the Licenced Area subject to the terms of this licence.</p>	

General terms

1 Definitions and interpretation

1.1 Definitions

In this agreement:

Activities means those activities referred to in 0.

Approval includes approval, consent, licence, permission, or determination to carry out an activity or work or the like.

Assets includes light poles, car parking meters, benches, rubbish receptacles, public art/sculptures, stormwater assets and public roads.

Authorised Persons means each of the Licensee's employees, officers, agents, contractors, service suppliers, licensees, invitees (other than the Licensor and the Licensor's Employee and Agents) and includes any public authority nominated by the Licensee.

Business Day means a day on which banks are open for general banking business in Sydney (not being a Saturday, Sunday or public holiday).

Commencement Date means 1 February 2020.

CoPC means City of Parramatta Council (ABN 49 907 174 773).

Dedication of Land has the meaning given to that term in the VPA.

Emergency means an emergency due to an actual or potential occurrence (such as fire, flood, storm, earthquake, explosion, accident, epidemic or war like action) which endangers or threatens to endanger the safety or health of persons, or destroys or damages property (actual or potential).

Expiry Date means the early of the following events, being either:

- (a) **ten** years after the Commencement Date, unless otherwise on the date of any extension of that **10**-year period as agreed to by the parties; or
- (b) the date on which the Dedication of Land occurs in respect of the entirety of the Licensed Area.

Licensed Area means the land identified in the plan comprising Schedule 1, which includes the airspace above and sub-surface areas below that part of the Property, subject to this licence expiring in respect of any part of the Licensed Area on an Expiry Date.

Licence Fee means \$1.00

Licence Period has the meaning given in clause 2.2(a).

Licensee means the Licensee and the Licensee's Authorised Persons, as the context requires.

Light Rail means any light rail system within the meaning set out in Section 104N of the *Transport Administration Act 1988* (NSW).

Management Representative means, in respect of the Licensor [#insert#] and in respect of Licensee, [#insert#] or any person exercising those persons' functions.

Project means:

the financing, design, construction, manufacture, installation, commissioning, operation and maintenance of a new Light Rail service in the Parramatta LGA, including any decommissioning activities in relation to the Light Rail service in the Parramatta LGA; and

the design and construction of the utilities relocations, network alterations, property access works and critical works arising out of the works or activities described in paragraph 0.

Property means Lot 22 in Deposited Plan 790287, described or known as, 142 – 154 Macquarie Street, Parramatta NSW.

Regulatory Authority means a government, semi government, local government, statutory, public, ministerial, civil, administrative, fiscal or judicial body or other authority or body including a joint regional planning panel, and, where applicable, an accredited certifier accredited under section 109T of the *Environmental Planning and Assessment Act 1979* (NSW).

Senior Management Representative means, in respect of the Licensor [#insert#] and in respect of Licensee, [#insert#] or any person exercising those persons' functions. ,

VPA means the 'Planning Agreement: 142-155 Macquarie Street Parramatta' dated [#insert#] between CoPC and the Licensor.

WHS Legislation means legislation relating to health and safety at work including:

the *Work Health and Safety Act 2011* (NSW); and

the *Work Health and Safety Regulation 2011* (NSW).

1.2 Interpretation

In this licence headings are for convenience only and do not affect interpretation and, unless the contrary intention appears:

- (a) a word importing the singular includes the plural and vice versa, and a word of any gender includes the corresponding words of any other gender;
- (b) the word "including" or any other form of that word is not a word of limitation;
- (c) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
- (d) a reference to a person includes an individual, the estate of an individual, a corporation, a Regulatory Authority, an incorporated or unincorporated association or parties in a joint venture, a partnership and a trust;
- (e) a reference to a party includes that party's executors, administrators, successors and permitted assigns, including persons taking by way of

novation and, in the case of a trustee, includes any substituted or additional trustee;

- (f) a reference to a document or a provision of a document (including this licence) is to that document or provision as varied, novated, ratified or replaced from time to time;
- (g) a reference to a statute includes any regulations or other instruments made under it (delegated legislation) and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements;
- (h) a reference to \$ or dollar is to Australian currency;
- (i) headings and bold type are for guidance only and do not affect the construction of this licence; and
- (j) this licence must not be construed adversely to a party just because that party prepared it or caused it to be prepared.

1.3 Business Days

If the day on which any act is to be done under this licence is a day other than a Business Day, that act must be done on or by the immediately preceding Business Day except where this licence expressly specifies otherwise.

2 Licence

2.1 Grant of non-exclusive Licence

- (a) The Licensor grants to the Licensee and the Licensor's Authorised Persons a non-exclusive licence to access, use and occupy the Licenced Area during the Licence Period:
 - (i) to do all things reasonably necessary to carry out the Activities as described in 0 in accordance with the Licensee's obligations under this licence; and
 - (ii) for any other uses which the Licensor approves (acting reasonably).
- (b) The Licensor must not restrain or hinder the Licensee or the Authorised Persons from accessing the Licenced Area for the Activities in accordance with their right to do so, as expressly set out in this licence.
- (c) The Licensor must not grant any third party rights in the Licenced Area during the Licence Period that will impede or adversely impact upon the Activities or derogate from the Licensor's rights under this licence, without first obtaining the Licensee's consent.
- (d) The Licensor will not do anything, or permit anything to be done, on or adjacent to the Licence Area which causes or may cause delay to the Activities.
- (e) The Licensee may erect any hoarding or structure, or otherwise restrict access to the Licenced Area to any person in circumstances where the Licensee considers erecting the hoarding or structure, or restricting access, is necessary to ensure safety, protect any assets on the Licenced Area or to carry out the Activities.
- (f) Notwithstanding paragraph (e) above, any such hoarding or structure erected and/or maintained by the Licensee, must not inhibit, prevent or

otherwise unreasonably restrict the Licensor's access provided for under clause 3.1(e) and clause 4 of this agreement, unless that hoarding or structure is necessary to ensure safety.

- (g) The Licensor acknowledges and agrees that the rights of access, use and occupation granted to the Licensee under this clause 2.1 may be exercised on behalf of the Licensee or the Licensee's Authorised Persons, or by one or more third party contractors.

2.2 Access Term

- (a) This licence:
 - (i) commences on the Commencement Date; and
 - (ii) expires on the Expiry Date,
(Licence Period).
- (b) The Licensor and the Licensee can at any time mutually agree in writing to reduce or extend the Licence Period.

2.3 [Licence Fee

The Licensee must pay to the Licensor the Licence Fee for the Licence Period on demand.

2.4 Licence only

The rights given by this licence are solely contractual and nothing in this licence:

- (a) confers on the Licensee any rights as a tenant of any part of the Licenced Area;
- (b) creates the relationship of landlord and tenant between the parties; or
- (c) creates or gives to the Licensee any estate or interest in the Licenced Area.

3 Carrying out the Activities

3.1 Work health and safety

- (a) The Licensee and the Licensee's Authorised Persons must carry out the Activities and otherwise exercise its rights under this licence:
 - (i) safely and in a manner that does not put the health and safety of persons at risk;
 - (ii) in a manner that protects property; and
 - (iii) to standards generally accepted in the transport infrastructure sector.
- (b) The Licensee must comply, and must ensure that all Authorised Persons comply, with the WHS Legislation (including the obligation under the WHS Legislation to consult, cooperate and coordinate activities with all other persons who have a work health and safety duty in relation to the same matter).

- (c) The Licensee must ensure that it does not do anything or fail to do anything that would cause the Licensor to be in breach of the WHS Legislation.
- (d) For the avoidance of doubt, the Activities carried out by the Licensee and the Licensee's Authorised Persons are being carried out by the Licensee and the Licensee's Authorised Persons on its own behalf, and have not been commissioned by the Licensor.
- (e) The Licensee acknowledges that the Licensor may require access to its Assets during the term of the Licence for the purposes of exercising its functions (as agreed with the Licensor) in respect of the Licenced Area, provided that at all times the Licensor provides reasonable notice to the Licensee and the Licensor agrees to comply with the Licensee's reasonable requirements to discharge any obligations under WHS Legislation.

3.2 Approvals and statutes

The Licensee or the Licensee's Authorised Persons as the context requires will:

- (a) obtain all necessary Approvals in respect of the Activities;
- (b) observe all Approvals, statutory requirements, regulations and by-laws of all relevant authorities relating to the Activities; and
- (c) carry out the Activities in a safe, proper and workmanlike manner.

4 Licensor Access

- (a) Subject to the remainder of this clause 4, the Licensor may access the Licenced Area from time to time for the purpose of undertaking any works or activities necessary to respond to any Emergency (having regard to the nature of the Emergency) or to undertake routine repair and maintenance work of the Licensor's Assets, which either remain on the Licenced Area or must be accessed via the Licenced Area.
- (b) The Licensee must not unreasonably restrict, prevent or inhibit the Licensor's right of access over the Licenced Area for the purpose of undertaking any site investigations, demolition work or construction work undertaken on the Property, otherwise than in accordance with the provisions under this clause, clause 2.1(e) and clause 3.1(e).
- (c) The right for the Licensor to access the Licenced Area under clause 4(a) is only applied to the extent that the necessary activities or works do not relate to the Activities or the Project. In accessing the Licenced Area the Licensor undertakes not to remove any survey markers installed by the Licensee or the Licensee's Authorised Persons.
- (d) The Licensor will, at its cost, repair any damage to the Activities, the Project or the Licenced Area caused in exercising its rights under clause 4(a).
- (e) The Licensor will give notice to the Licensee:
 - (i) in relation to access for an Emergency, as soon as practicable (before or after as the case may be) on all occasions on which the Licensor enters the Licenced Area under clause 4(a); and
 - (ii) in relation to any activity or work which is not an Emergency, at least 20 Business Days prior to exercising such access. On

receipt of this notice, the Licensee will seek to arrange the period of access as requested by the Licensor or an acceptable alternate time and date.

- (f) If the Licensor enters the Licenced Area for any purpose (including under clause 4(a) or 4(d)):
 - (i) the Licensor will not interfere with the Licensee or the Licensee's Authorised Persons carrying out the Activities;
 - (ii) the Licensor will co-operate with the Licensee and the Licensee's Authorised Persons who are on the Licenced Area;
 - (iii) any such access is at the Licensor's risk and cost;
 - (iv) the Licensor is liable for any act or omission of the Licensor's employees and agents and shall indemnify the Licensee and the Licensee's Authorised Persons against all damage, expense, loss (including consequential economic loss and pure economic loss) or liability of any nature suffered or incurred by the Licensee or the Licensee's Authorised Persons as a result of such an act or omission; and
 - (v) the Licensee will comply with all reasonable directions of the Licensee and the Licensee's Authorised Persons, including in relation to safety, in accessing the Licenced Area.
- (g) If the Licensor enters the Licenced Area to undertake any activity or work referred to in 4(e)(ii), the Licensor's employees and agents exercising such access must:
 - (i) be accompanied by a representative of the Licensee at all times; and
 - (ii) comply with all safety and other access requirements applying to the Licenced Area.

5 Insurance

Prior to accessing the Licenced Area for the Activities the Licensee or the Licensee's Authorised Persons must obtain and maintain during the Licence Period a public liability policy of insurance for an amount of not less than \$20,000,000 in respect of any one occurrence.

6 Indemnity and Release

6.1 Indemnity

- (a) Subject to clause 6.1(b), the Licensee indemnifies the Licensor in relation to:
 - (i) personal injury to, or the death of any person (excluding any person who at the time of the injury or death is defined as a worker of the Licensee under any statute relating to workers' or accident compensation insurance); and
 - (ii) loss, destruction or damage to any property (other than relating to the Activities or the Project),

which arises out of or is caused by the construction of the Activities on the Licenced Area.

- (b) The liability of the Licensee pursuant to this clause will be reduced to the extent the personal injury, death, loss, destruction or damage was caused or contributed to by the Licensor or any person for whom the Licensor is directly responsible.

6.2 No merger

This clause does not merge on completion of this licence.

7 Warranties

7.1 Capacity and authorisation

Each party warrants that it has the legal right and full power and capacity to:

- (a) execute and deliver this licence; and
- (b) perform its obligations under this licence and each transaction effected by or made under this licence,

and has obtained all necessary authorisations and consents and taken all other actions necessary to enable it to do so.

7.2 Transfer or disposals are subject to Licensee's consent and rights

The Licensor must not transfer any of its interest in the Licenced Area or otherwise dispose of any interest which the Licensee considers will affect its rights under this licence, without the Licensee's consent. In any event, the Licensor must ensure that any transfer of any such interest is subject to the Licensee's rights under this licence.

8 General

8.1 Governing law and jurisdiction

This licence is governed by the law applying in New South Wales. Each party irrevocably:

- (a) submits to the non-exclusive jurisdiction of the courts having jurisdiction in that state and the courts competent to determine appeals from those courts, with respect to any proceedings that may be brought at any time relating to this licence; and
- (b) waives any objection it may have now or in the future to the venue of any proceedings, and any claim it may have now or in the future that any proceedings have been brought in an inconvenient forum, if that venue falls within this clause 8.1.

8.2 Public authorities

- (a) The parties acknowledge and agree that nothing in this licence will in any way unlawfully restrict or otherwise unlawfully affect the unfettered discretion of any other party to exercise any of its functions and powers pursuant to any legislation.
- (b) Nothing in this licence will be taken to restrict or in any way limit either party's statutory rights, privileges and powers.

8.3 Replacement Body

Where a reference is made to any body or authority which ceases to exist, including a reference to a party to this licence, (**Former Body**), that reference will be to that body or authority (**Replacement Body**) which then serves substantially

the same functions as the Former Body. The rights and obligations of this licence are immediately and automatically novated from a party that was a Former Body to any Replacement Body.

8.4 No merger

A party's rights and obligations do not merge on completion of any transaction under this licence.

8.5 Severance

If any provision or part of a provision of this licence is held or found to be void, invalid or otherwise unenforceable (whether in respect of a particular party or generally), it will be deemed to be severed to the extent that it is void or to the extent of violability, invalidity or unenforceability, but the remainder of that provision will remain in full force and effect.

8.6 Entire agreement

To the extent permitted by law, this licence constitutes the entire licence between the parties in relation to its subject matter and supersedes all previous agreements and understandings between the parties in relation to its subject matter.

8.7 Amendments

This licence may only be varied, and or otherwise amended, by a document signed by or on behalf of each party.

9 Relationship

The parties:

- (a) acknowledge that the Project is a significant public project;
- (b) acknowledge that this licence deals with matters which relate to the Project; and
- (c) agree to work cooperatively and in good faith to achieve the completion of the Project.

10 Dispute resolution

10.1 Intention to resolve disputes

The parties agree that:

- (a) successful project outcomes depend on the early resolution of disputes;
- (b) every effort will be made to resolve disputes that arise at the project level; and
- (c) every effort will be made to resolve disputes as expeditiously as possible.

10.2 Process

Any dispute between the parties arising in connection with this licence is to be resolved in accordance with the following process:

- (a) the disputing party's Management Representative must give the other party's Management Representative a notice identifying and providing details of the subject of the dispute;

- (b) Management Representatives from each party will meet and attempt to resolve the dispute as soon as possible and in any event within 10 Business Days (or any longer period agreed by both parties in writing) of the notice being received; and
- (c) if not resolved, then the dispute will be escalated to the Senior Management Representatives who will meet to resolve the dispute as soon as possible, and in any event within 20 Business Days of the notification of the dispute or, in the event a longer period is agreed to in clause 10.2(b), within 10 Business Days of the Management Representatives meeting in accordance with clause 10.2(b).

11 GST

11.1 General provisions relating to GST

- (a) In this clause 11:
 - (i) **"GST"** or **"Goods and Services Tax"** means the tax payable on taxable supplies under the GST Legislation;
 - (ii) **"GST Legislation"** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and any related Act imposing such tax or legislation that is acted to validate, recapture or recoup such tax;
 - (iii) terms defined in GST Legislation have the meaning given to them in GST Legislation; and
 - (iv) any part or progressive or periodic component of a supply that is treated as a separate supply for GST purposes (including attributing GST to tax periods) will be treated as a separate supply.
- (b) The parties acknowledge that unless otherwise expressly stated all amounts of monetary consideration in this Licence are exclusive of GST.
- (c) If GST is or becomes payable on a supply made by a party ("**Supplier**") under or in connection with this Licence, including in relation to the Works, the party providing consideration for the supply ("**Recipient**") must pay an additional amount to the Supplier equal to the GST payable by the Supplier (or representative member of a GST group of which the Supplier is a member) in relation to the supply.
- (d) Any amount payable under clause 11.1(c) will be paid to the Supplier at the same time as the consideration for the supply is paid to the Supplier.
- (e) If any party is required under this licence to reimburse or pay to the other party an amount calculated by reference to a cost, expense, or an amount paid or incurred by that party, the amount of the reimbursement or payment will be reduced by the amount of any input tax credits to which that party (or representative member of a GST group of which that party is a member) is entitled in respect of any acquisition relating to that cost, expense or other amount.
- (f) Notwithstanding any other provision of this licence, the Recipient will not be obliged to pay any amount in respect of GST in respect of a taxable supply unless the Supplier issues to the Recipient a tax invoice that complies with the GST Legislation in respect of that taxable supply.

- (g) The parties agree that unless otherwise agreed in writing, the following will apply to all taxable supplies made by the Licensor to the Licensee under or in connection with this licence:
- (i) The Licensee will issue to the Licensor a recipient created tax invoice ("**RCTI**") for each taxable supply made by the Licensor to the Licensee under this Licence;
 - (ii) The Licensee will issue to the Licensor an adjustment note for any adjustment event;
 - (iii) The Licensor will not issue a tax invoice in respect of any taxable supply it makes to the Licensee; and
 - (iv) The Licensee may notify the Licensor that it will no longer issue a RCTI for each taxable supply made by the Licensor under this Licence, in which case, from that point in time, the Licensee will not be required to issue RCTIs in respect of such supplies and the Licensor will be required to issue tax invoices to the Licensee as a condition precedent to the Licensee being obliged to pay any amount in respect of GST to the Licensor in respect of any such taxable supply.
- (h) Each party acknowledges and warrants that at the time of entering into this licence it is registered for GST and will notify the other party if it ceases to be registered for GST or ceases to comply with any of the requirements of any taxation ruling issued by a taxation authority relating to the creation of RCTIs.
- (i) If the GST payable in relation to a supply made by the Supplier under this licence varies from the additional amount paid by the other party under this clause 11 in respect of that supply, then the Supplier will provide a corresponding refund or credit to or will be entitled to receive the amount of that variation from the other party (as appropriate).

12 General

12.1 Stamp duty

The Licensee must pay all stamp duties and any related fines and penalties in respect of this licence, the performance of this licence and each transaction effected by or made under this licence.

12.2 Costs

Each party will be responsible for payment of their costs incurred in relation to the review of all plans and documents associated with the Activities and the preparation and execution of this licence.

EXECUTED as a deed

Schedule 1 Licenced Area

[Note: Parties to insert a Plan, prepared by a registered Surveyor, clearly identify that part of the Property, which this Licence will be granted over.]

-

Activities

Activities

All works and activities reasonably necessary to deliver the Project on and adjacent to the Licenced Area, including (for the avoidance of doubt and without limitation) testing, commissioning, operation and maintenance of the Light Rail and all related systems.

All works and activities reasonably necessary to deliver road works on and adjacent to the Licenced Area.

Use of the Licenced Area as a road, for the passage of both pedestrians and vehicles.

Any other uses reasonably necessary to:

comply with CoPC's obligations; and

exercise CoPC's rights,

under the VPA.

Any other uses which the Licensor approves (acting reasonably).

Signing page

DATED: _____

[#Insert execution clauses#]

DRAFT