

Agreement for lease

Sydney Science Park

Penrith City Council
Council

Celestino Developments SSP Pty Limited
Developer

Clayton Utz
Level 15 1 Bligh Street
Sydney NSW 2000
GPO Box 9806
Sydney NSW 2001
Tel +61 2 9353 4000
Fax +61 2 8220 6700
www.claytonutz.com

Our reference 21184/80198254

Contents

Reference Schedule	4
1. Interpretation	5
1.1 Definitions	5
1.2 Lease Definitions Imported	6
1.3 Interpretation	6
2. Conditions Precedent to lease for Premises	7
3. Completion of the Lease	8
3.1 Grant of Lease	8
3.2 Authority to complete	9
3.3 Execution and registration	9
4. GST	10
4.1 Definitions	10
4.2 Consideration GST exclusive	10
4.3 Payment of GST	10
4.4 Tax invoice	10
4.5 Adjustment event	10
4.6 Reimbursements	10
5. Dispute resolution	10
5.1 Reference to a dispute	10
5.2 Notice of Dispute	11
5.3 Representatives of parties to meet	11
5.4 Legal proceedings	11
5.5 Urgent interlocutory proceedings	11
5.6 Continuing performance	12
6. Notices	12
6.1 Form of Notices	12
6.2 Change of Address	12
6.3 Service of Notices	12
6.4 Timing of notices by fax or email	12
6.5 Email signing	13
7. Assignment by Celestino	13
8. Consultative Committee	13
9. Security	14
9.1 Developer to give Bank Guarantee	14
9.2 Particulars of Bank Guarantee	14
9.3 Bond	14
9.4 Adjustments to Secured Amount	14
9.5 Tenant in default	15
9.6 Developer not to interfere with payment	15
9.7 Replacement Bank Guarantee or Bond	15
9.8 Landlord's rights	15
9.9 Return of Bank Guarantee or Bond	15
10. General Provisions	15
10.1 Confidentiality	15
10.2 Costs	16
10.3 Counterparts	16
10.4 Governing law	16
10.5 Invalidity	16
10.6 No merger and survival	16
10.7 Variations	17

10.8 No waiver17

10.9 Further assurance.....17

10.10 Whole agreement17

Reference Schedule**Item 1****Council**

Penrith City Council ABN 43 794 422 563

Address: 601 High Street, Penrith NSW 2750

Attention:

Email:

Item 2**Developer**

Celestino Developments SSP Pty Limited ACN 607 351 842

Address: 642 Great Western Highway, Pendle Hill NSW 2145

Attention: The Directors

Email: legal@celestino.net.au with a copy to contracts@celestino.net.au

Item 3**Premises [clause 1.1]**

The part of the Dedication Land or the Publicly Accessible Road nominated as the land the subject of the Lease pursuant to this Agreement.

Agreement for lease

Date

Parties Penrith City Council ABN 43 794 422 563 and Celestino
Developments SSP Pty Limited ACN 607 351 842

1. Interpretation

1.1 Definitions

In this Agreement unless the contrary intention appears:

Agreement means this agreement and includes any annexures, exhibits and schedules to this agreement.

Authorised Officer means:

- (a) a director, secretary or an officer whose title contains the word "manager";
- (b) a person performing the functions of any of them; or
- (c) any other person appointed to act as an Authorised Officer for the purpose of this Agreement.

Authority includes any government or semi-government, statutory, public or other authority or body with jurisdiction over the Premises or any matter or thing in relation to the Premises.

Bank means an APRA approved trading bank carrying on business in New South Wales.

Bank Guarantee means a bank's or an insurer's irrevocable, unconditional undertaking to pay on demand the Secured Amount and includes any replacement or addition to it under clause 9.7.

Business Day means any day in New South Wales which is not a Saturday, Sunday or public holiday.

Celestino Group means:

- (a) any corporation that has E.J. Cooper & Son Pty. Limited ACN 000 269 750 as its ultimate holding company; or
- (b) any corporation that is a Related Entity or Related Body Corporate of the Developer.

Claims includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

Commencing Date means the date that the Premises are dedicated to the Council pursuant to the VPA.

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid).

CPI means the consumer price index published by the Australian Statistician for Sydney All Groups or the index that replaces it under clause 9.4(b).

CPI Increase Date means the 5th, 10th, 15th, 20th, 25th, 30th and 35th anniversaries of the commencing date of the First Lease.

Current CPI means the CPI number for the quarter ending immediately before the relevant CPI Increase Date.

Dedication Land means any land referred to in Table C of Schedule 5 of the VPA.

First Lease means the first lease entered into pursuant to this Agreement.

Landlord means the Council in its capacity as landlord under the Lease.

Law means common law, principles of equity and all statutes, rules, regulations, proclamations, ordinances or by-laws, present or future and includes applicable Australian Standards and Codes of Practice.

Lease means the lease to be entered into in accordance with this Agreement the form of which is attached in Annexure A.

Liability means each and every cost, expense, liability, obligation, action, demand, loss, claim and all damages.

Premises means the premises the subject of a Lease, as referred to in clause 3.2(c).

Previous CPI means the CPI number for the quarter ending immediately before the previous CPI Increase Date (or if there has not been one, the commencing date of the First Lease).

Publicly Accessible Road has the meaning given to it in the VPA.

Secured Amount means \$1,000,000, as adjusted in accordance with clause 9.4.

Tenant means the party nominated by the Developer by notice to the Council to enter into the Lease, being a member of the Celestino Group, as nominated by the Developer.

Tenant Nomination Notice means a notice in or substantially in the form of the notice set out in Annexure B, duly completed and signed by the Developer and the Tenant.

Terminating Date means the date being 40 years after the commencing date of the First Lease.

VPA means the planning agreement between Celestino Developments SSP Pty Limited ACN 607 351 842 and Penrith City Council executed on 9 September 2016, as amended.

VPA Designation means the classification of the Dedication Land by reference to the categories set out in the first column of the table in Table C of Schedule 5 of the VPA.

1.2 Lease Definitions Imported

With the exception of terms defined elsewhere in this Agreement and unless the contrary intention appears, terms in this Agreement which are defined in the Lease have the meaning given in the Lease.

1.3 Interpretation

The following apply in the interpretation of this Agreement:

- (a) A reference to this Agreement means either the agreement set out in this document or the document itself, as varied from time to time.
- (b) A reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.

- (c) A reference to the singular includes the plural number and vice versa.
- (d) A reference to a gender includes a reference to each gender.
- (e) A reference to a party means a person who is named as a party to this Agreement.
- (f) Person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (g) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Agreement, their substitutes and assigns.
- (h) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally.
- (i) Includes means includes without limitation.
- (j) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (k) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (l) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Agreement.
- (m) A reference to dollars or \$ is to Australian currency.
- (n) A heading is for reference only. It does not affect the meaning or interpretation in this Agreement.
- (o) Any schedule attached to this Agreement forms part of it. If there is any inconsistency between any clause of this Agreement and any provision in any schedule or attachment, the clause of this Agreement will prevail unless the contrary intention appears.
- (p) No rule of construction applies to the disadvantage of a party to this Agreement only because that party was responsible for the preparation of this Agreement.
- (q) If a party's approval is required in connection with this Agreement:
 - (i) the party requiring the approval must obtain the approval in writing; and
 - (ii) unless this Agreement provides otherwise, the approving party must not unreasonably delay or withhold its approval or unreasonably attach conditions to its approval.

2. Conditions Precedent to lease for Premises

- (a) The following matters are conditions precedent to the grant of the Lease:
 - (i) clause 9.3(d)(iii) or 10.3(c)(iii) of the VPA (as relevant to the type of Premises) applying to this Agreement;
 - (ii) there is no Insolvency Event of the Developer;
 - (iii) there are no outstanding payments under the VPA in respect of the Premises as at the date of the Developer's notice that it requires a Lease of the Premises;

- (iv) dedication of the nominated part of the Dedication Land or the Publicly Accessible Road to the Council by the Developer in accordance with the terms of the VPA;
 - (v) classification of the land comprising the Premises as operational land under the Local Government Act 1993 (NSW); and
 - (vi) there is an Asset Renewal Plan relevant to the type of Premises.
- (b) There may be a lengthy period of time between the date on which clause 9.3(d)(iii) or 10.3(c)(iii) of the VPA (as relevant to the type of Premises) apply to this Agreement and the Commencing Date, during which time circumstances may change and a Lease of the relevant Premises may no longer be required by the Commencing Date. The Developer may elect to withdraw from proceeding with a Lease before the Commencing Date by giving notice to the Landlord, in which case clause 3.1 will not apply to that particular Lease or Premises and the Landlord will not be required to designate the relevant Premises as 'operational land' for the purposes of section 26 of the Local Government Act 1993 (NSW).
- (c) Before the Commencing Date, the Developer may give a Tenant Nomination Notice. For the purposes of the Tenant Nomination Notices, Council and the Developer agree that, in relation to each precinct or, where relevant, sub-precinct, it is the intention of the Developer and Council that all assets within a particular asset type or class (for example, parks or roads) shall be leased by the same nominee of the Developer (or a Related Entity or Related Body Corporate of that nominee). On and from the date of the Tenant Nomination Notice, the Tenant is bound by and entitled to the benefits and the provisions of clause 3 of this Agreement as if it were a party to this Agreement. The Developer will use reasonable endeavours to ensure that all Tenants the subject of a Tenant Nomination Notice will have the same contact person for ease of administration for the Landlord.
- (d) The Developer may request the Council to notify the Developer of whether or not there is an Asset Renewal Plan relevant to the type of Premises. If the Council notifies the Developer that there is no Asset Renewal Plan for the type of Premises (it being agreed that the Council will provide such a notice within 20 Business Days after request (including reasonable details of the particular assets) by the Developer), the Developer will submit a draft Asset Renewal Plan to Council for Council's approval. If Council notifies the Developer that it approves the draft Asset Renewal Plan, the draft Asset Renewal Plan shall become the Asset Renewal Plan for the purposes of clause 2(a)(vi) and the Lease. If Council notifies the Developer that it does not approve the draft Asset Renewal Plan or fails to respond to the draft Asset Renewal Plan within a reasonable time (for the purposes of this clause 2(d) not exceeding 20 Business Days), a dispute shall be taken to have arisen between the parties in relation to the draft Asset Renewal Plan and either party may invoke the dispute resolution process in clause 5. The draft Asset Renewal Plan agreed upon at the conclusion of the dispute resolution process in clause 5 shall become the Asset Renewal Plan for the purposes of the Lease.

3. Completion of the Lease

3.1 Grant of Lease

Provided that this Agreement is not terminated before the Commencing Date:

- (a) on the Commencing Date, the Landlord must grant, and the Tenant must take, the Lease, completed in accordance with this clause 3, and the Landlord irrevocably authorises the Tenant to complete the Lease in accordance with this clause 3;
- (b) the Term will commence on the Commencing Date; and
- (c) on and from the Commencing Date, the person registered or entitled to be registered as proprietor of the Premises and the Tenant will be bound by the terms

of the Lease as if the Lease had been duly completed and delivered, and stamped and registered.

3.2 Authority to complete

Promptly on or after the Commencing Date, the Tenant (and failing completion by the Tenant, the Landlord) must complete the Lease by inserting where necessary:

- (a) the name of the person then registered or entitled to be registered as proprietor of the Land;
- (b) the name of the Tenant as tenant;
- (c) the then current description of that part of the Dedication Land or the Publicly Accessible Road that the Developer has elected by notice to the Landlord to be subject to a Lease (**Premises**);
- (d) the Commencing Date, the Terminating Date and any other dates which are consequent on the Commencing Date;
- (e) the Maintenance Contribution;
- (f) the particular maintenance standards for the Premises for inclusion at Schedule 1 of the Lease, as provided by the Landlord, which must be consistent with the then existing Penrith City Council maintenance standards for premises similar to the Premises and which standards have been adopted by Penrith City Council for use at its own premises similar to the Premises;
- (g) the general intended use of the Premises in clause 9.1 of the Lease with reference to the VPA Designation of the Premises specified in a notice given by the Developer;
- (h) the emergency call out service phone number in clause 11.3;
- (i) the:
 - (i) Asset Renewal Plan at Schedule 2;
 - (ii) list of Landlord's Property as at the Commencing Date at Schedule 3; and
 - (iii) list of Tenant's Equipment as at the Commencing Date at Schedule 4; and
- (j) such other details as may be necessary to complete the Lease in accordance with this Agreement and enable it to be stamped and registered, if required by Law or by the Landlord,

and otherwise make any amendment to the Lease to comply with any formal requirement for registration or as otherwise may be agreed in writing by the parties.

3.3 Execution and registration

As soon as possible after the Commencing Date:

- (a) the Landlord and the Tenant must execute the Lease in duplicate;
- (b) the Tenant must provide evidence of insurances that are required to be taken out by the Tenant under the Lease and a cheque for registration fees;
- (c) if the Lease is of a nature that is normally registered, the Landlord must lodge the Lease for registration provided that the Tenant has complied with clause 3.3(b); and

- (d) the Landlord must return the Tenant's counterpart of the Lease to the Tenant.

4. GST

4.1 Definitions

In this clause 4:

- (a) GST Law has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
- (b) terms used in this clause which are not defined in this Lease, but which are defined in the GST Law, have the meanings given in the GST Law.

4.2 Consideration GST exclusive

Unless otherwise stated in this Agreement, amounts payable, and consideration to be provided, under any other provision of this Agreement exclude GST.

4.3 Payment of GST

If GST is payable on a supply made in connection with this Agreement, the recipient must pay the party making the supply (supplier) an amount equal to the GST payable on that supply at the time the recipient pays or provides any part of the consideration for the supply.

4.4 Tax invoice

The supplier must give a tax invoice to the recipient no later than the time when the recipient is required to pay or provide any part of the consideration for the supply.

4.5 Adjustment event

If an adjustment event arises in connection with a supply made in connection with this Agreement:

- (a) the supplier must recalculate the GST payable to reflect the adjustment event;
- (b) the supplier must give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event; and
- (c) the adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient as the case requires.

4.6 Reimbursements

Where a party must pay to another party (other party) an outgoing of the other party, the amount payable is the sum of:

- (a) the amount of the outgoing less any input tax credit in respect of it to which the other party, or its GST group representative member, is entitled; and
- (b) if the amount payable is subject to GST, an amount equal to that GST.

5. Dispute resolution

5.1 Reference to a dispute

If a dispute arises between the parties in relation to this Agreement, then neither party may commence proceedings, except in compliance with this clause 5.

5.2 Notice of Dispute

The party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying party wishes to achieve (if practicable).

5.3 Representatives of parties to meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the written notice provided in accordance with clause 5.2) meet to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the parties will agree to a timetable for resolution);
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree to a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute. Once the parties have agreed upon the alternative dispute resolution model, the parties must promptly engage the agreed person or body to adjudicate the dispute in accordance with the agreed model and adhere to the rules of dispute resolution imposed by that person or body.

5.4 Legal proceedings

If:

- (a) at least one meeting has been held in accordance with clause 5.3, or, the parties have failed to meet within the period prescribed in clause 5.3(a); and
- (b) the parties have been unable to reach an outcome identified in clauses 5.3(b)(i) to 5.3(b)(iii), within 30 Business Days of the date on which a notice is served in accordance with clause 5.2; and
- (c) either of the parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 5.3,

then, that party may, by 15 Business Days written notice to the other party, terminate the dispute resolution process in respect of the relevant dispute, and thereafter, commence legal proceedings.

5.5 Urgent interlocutory proceedings

At any time, a party may, without inconsistency with anything in this clause 5, seek urgent interlocutory relief in respect of a dispute under this Agreement from any court having jurisdiction.

5.6 Continuing performance

Despite the parties being in dispute or taking steps to comply with this clause 5, the parties must continue to perform their respective obligations under this Agreement in a timely manner (including those pre-existing obligations the subject of the dispute or disagreement to the extent possible).

6. Notices

6.1 Form of Notices

Any notice or other communication required to be given by this Agreement before a right can be exercised (notice) must be:

- (a) in legible writing;
- (b) signed by the party giving it (**sender**) or by its Authorised Officer; and
- (c) delivered by hand or sent by post (air mail if sent to an address in another country) to the relevant address set out in the Reference Schedule section of this Agreement; or
- (d) sent to the relevant fax number or email set out in the Reference Schedule section of this Agreement.

6.2 Change of Address

A party may change its address or fax number for the purpose of notices by giving notice of that change to each other party in accordance with the provisions of clause 6.1.

6.3 Service of Notices

Notices are taken to be given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, on the fifth (ninth, if sent to an address in another country) day after the date of posting;
- (c) in the case of delivery by fax, at the time shown on a transmission report by the machine which sent the fax confirming the notice was sent (uninterrupted) in its entirety to the fax number of the recipient; and
- (d) in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

6.4 Timing of notices by fax or email

If a notice by fax or email is given:

- (a) on a day in which business is not generally carried on in the place in which the fax or email is received, or
- (b) after 5.00 pm (local time) on a day in which business is generally carried on in the place in which the fax or email is received,

the notice will be taken to have been given at the commencement of business on the next day in which business is generally carried on in the place in which the fax or email is received.

6.5 Email signing

For the purposes of clause 6.1(b), a notice by email is taken to be signed by the sender if the notice is in the form of a signed document in Portable Document Format (pdf) and attached to the email.

7. Assignment by Celestino

- (a) The Developer must not assign, encumber or deal with any right, obligation or interest under this Agreement without the prior written consent of the Council, such consent not to be unreasonably withheld.
- (b) Approval is reasonably withheld if the proposed assignee or person is not solvent and reputable and the assignment or encumbrance will materially adversely affect the obligations of the Developer and the rights of the Council.

8. Consultative Committee

- (a) Promptly after the date of this Agreement, the Council and the Developer must establish a Consultative Committee (CC) and must cause the CC to meet at intervals of 6 months until the Lease is granted.
- (b) Meetings of the CC may be held by means of video conference or other electronic communication.
- (c) The Developer will give the Council at least one months' advance notice of each meeting of the CC, including as to the time and location of each meeting and the agenda to be followed at each meeting. The Council may submit items for inclusion on the agenda to be followed at a meeting of the CC by notice to the Developer no later than 10 Business Days after the Council receives notice of the date of the relevant CC meeting.
- (d) The role of the CC will be to discuss:
 - (i) the administration of this Agreement and if there needs to be adjustments or improvements made;
 - (ii) any issues affecting the Premises raised with the Council by members of the general public;
 - (iii) any material issues encountered by the Developer in its development of the Premises;
 - (iv) any other matter agreed between the Developer and the Council.
- (e) The parties must act promptly, reasonably and in good faith to implement any matters agreed at the CC meetings.
- (f) The Developer must at its expense prepare and provide to each other member of the CC written minutes of the business conducted at each CC meeting no more than 10 Business Days following the conclusion of the relevant CC meeting.
- (g) The parties agree that the deliberations of the CC are confidential, except to the extent that there is a legal obligation on a person to disclose any information or documents.

9. Security

9.1 Developer to give Bank Guarantee

On or before the date of the First Lease, the Developer must give the Bank Guarantee to the Landlord.

9.2 Particulars of Bank Guarantee

The Bank Guarantee must:

- (a) be from a bank or an insurer the Landlord approves, in which regard the Landlord must act reasonably;
- (b) have an expiry date no earlier than the date being 3 months after the Terminating Date;
- (c) be in the form the Landlord reasonably requires; and
- (d) undertake to pay to the Landlord without notice to the Developer.

9.3 Bond

- (a) In lieu of the Bank Guarantee, the Developer may pay the Landlord by cash or unendorsed bank cheque the Secured Amount (**Bond**).
- (b) If the Developer pays the Landlord the Secured Amount by way of Bond in accordance with clause 9.3(a), the Developer must invest the Bond in joint names with a Bank in an interest-bearing account in New South Wales with interest to be reinvested. The Landlord must provide the Developer with a Tax File Number promptly after being requested to do so.

9.4 Adjustments to Secured Amount

- (a) If the Current CPI for a CPI Increase Date is more than the Previous CPI, the Secured Amount on and from that CPI Increase Date is the Secured Amount immediately before that CPI Increase Date multiplied by the Current CPI and divided by the Previous CPI.
- (b) If the CPI is no longer published, either party may ask the President of the Australian Property Institute Incorporated (New South Wales Division) to nominate an appropriate index published quarterly and "CPI" then means that index.
- (c) If the Secured Amount changes by operation of this clause 9.4, the Landlord may notify the Developer that the Landlord requires the Developer to increase the security so that the amount of the security is the Secured Amount as adjusted in accordance with this clause 9.4 and, no later than 40 Business Days after the date upon which the Developer receives the Landlord's notice under this clause 9.4(c), the Developer must give the Landlord:
 - (i) if the security is in the form of a Bank Guarantee, an additional or replacement Bank Guarantee so that the amount of the Bank Guarantee is the Secured Amount as adjusted in accordance with this clause 9.4; or
 - (ii) if the security is in the form of a Bond, cash or an unendorsed bank cheque so that the amount of the Bond (including interest reinvested in accordance with clause 9.3(b) less any tax deducted) is the Secured Amount as adjusted in accordance with this clause 9.4.

9.5 Tenant in default

If the Tenant has been issued with a Further Breach Notice under a Lease and the Tenant has failed to comply with the Further Breach Notice within the time required by the Further Breach Notice (provided that such time is in compliance with the Lease), the Landlord may call on the Bank Guarantee or the Bond (as applicable) to the extent of the Landlord's liability, loss, damages, costs and expenses arising from or incurred in connection with the Default (subject to any obligation the Landlord may have to mitigate its loss).

9.6 Developer not to interfere with payment

The Developer must not do anything which could prevent or delay payment by the bank or the insurer to the Landlord under the Bank Guarantee.

9.7 Replacement Bank Guarantee or Bond

If the Landlord receives a payment under the Bank Guarantee or Bond (as applicable) under clause 9.5, the Landlord may notify the Developer that the Landlord requires the Developer to add to or replace the security so that the amount of the security is the Secured Amount and, no later than 40 Business Days after the date upon which the Developer receives the Landlord's notice under this clause 9.7, the Developer must give the Landlord:

- (a) if the security is in the form of a Bank Guarantee, an additional or replacement Bank Guarantee so that the amount of the Bank Guarantee is the Secured Amount; or
- (b) if the security is in the form of a Bond, cash or an unendorsed bank cheque so that the amount of the Bond (including interest reinvested in accordance with clause 9.3(b)) is the Secured Amount.

9.8 Landlord's rights

The Landlord's rights under this clause 9 are in addition to the other rights the Landlord has in connection with a Tenant's Default.

9.9 Return of Bank Guarantee or Bond

Within 20 Business Days after the Terminating Date or holding over if applicable (or sooner determination of all of the Leases), the Landlord must return the Bank Guarantee or Bond (as applicable) to the Developer, including any interest earned on the Bond less any amount claimed.

10. General Provisions

10.1 Confidentiality

- (a) Subject to clause 10.1(b), each party must keep the terms of this Agreement and all information received from the other party confidential.
- (b) Despite clause 10.1(a), a party may make any disclosures in relation to this Agreement:
 - (i) as, in its absolute discretion, it thinks necessary to:
 - A. its professional advisers, bankers, financial advisers, auditors and potential or actual financiers, potential or actual investors, potential or actual purchasers or assignees and agents to whom it is reasonably necessary to disclose the information;
 - B. comply with any applicable Law or requirement of any regulatory body (including any relevant stock exchange); or

- C. any of its employees to whom it is reasonably necessary to disclose the information;
- (ii) if the information is generally and publicly available other than as a result of that party's breach of clause 10.1(a); and
- (iii) with the written consent of the other party.
- (c) The obligations of the parties under this clause 10.1 will survive the expiration or termination of this Agreement.

10.2 Costs

- (a) The Developer must pay the reasonable costs of the Council in respect of the preparation, negotiation and finalisation of this Agreement, capped at \$10,000.
- (b) The Developer will bear any stamp duty (including fines and penalties other than those incurred due to the default of the Council) chargeable on this Agreement and on any instruments executed under this Agreement.

10.3 Counterparts

This Agreement may be executed in any number of counterparts, each of which is taken to be an original.

10.4 Governing law

This agreement is governed by the laws of New South Wales. The parties submit to the jurisdiction of its courts.

10.5 Invalidity

The following provisions apply in respect of reading down or severing the provisions of this Agreement:

- (a) a word or provision must be read down if:
 - (i) this Agreement or provision is void, voidable, or unenforceable if it is not read down; and
 - (ii) the word or provision is capable of being read down;
- (b) a word or provision must be severed if, despite the operation of clause 10.5(a), this Agreement or provision is void, voidable or unenforceable if the word or provision is not severed; and
- (c) the remainder of this Agreement has full effect even if clause 10.5(b) applies.

10.6 No merger and survival

A party's right or obligation which is of a continuing nature or which is not fully satisfied and discharged on completion of any transaction contemplated by this Agreement:

- (a) does not merge on completion of that transaction;
- (b) continues in favour of the party to which it is owed; and
- (c) remains in full effect.

10.7 Variations

No provision of this Agreement or a right conferred by it can be varied except in writing signed by the parties to it.

10.8 No waiver

The following provisions apply in respect of waiving rights under this Agreement:

- (a) a party does not waive a right or remedy in connection with this Agreement if it:
 - (i) fails to exercise its right or remedy;
 - (ii) only partially exercises the right or remedy; or
 - (iii) delays in exercising the right or remedy;
- (b) a party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
 - (i) further exercise the right or remedy; or
 - (ii) exercise another right or remedy; and
- (c) a waiver is effective only:
 - (i) to the extent that the party giving it expressly states in writing;
 - (ii) in the specific instance in which it is given; and
 - (iii) for the purpose for which it is given.

10.9 Further assurance

Each party must do everything necessary, or reasonably required, by another party, to give effect to this Agreement and the transactions contemplated by this Agreement.

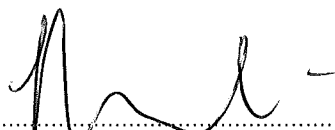
10.10 Whole agreement

This document together with the VPA (and any easement for services granted under clause 10 of the VPA) and the Lease:

- (a) records the entire agreement between the parties; and
- (b) supersedes all previous negotiations, understandings, representations and agreements.

Signed as an agreement.

Signed by Celestino Developments SSP
Pty Limited ACN 607 351 842 by its
attorney under Power of Attorney dated 21
August 2015 Book 4693 No 620 who is
personally known to me:



Witness

PENNY LEE DIXON
Solicitor

Name of Witness (print)



Signature of Attorney

GEORGE TSEKOURAS

Name of Attorney (print)

Name of Attorney (print)

By executing this document the attorney states that the
attorney has received no notice of revocation of the
Power of Attorney

Signed by Penrith City Council ABN 43
794 422 563 by its duly appointed officer in
the presence of:

Signature of witness

Officer

Print name

Name of Officer (print)

Annexure A – Lease

This is the Annexure A referred to in this Lease between Penrith City Council ABN 43 794 422 563 (Landlord) and [insert Celestino entity as Tenant] ABN [insert ABN of Tenant] (Tenant)
dated 20

Contents

Reference Schedule	1
1. Defined terms and interpretation	2
1.1 Defined terms	2
1.2 Interpretation	7
2. Demise.....	8
3. Services	8
4. Option renewal term	8
4.1 Option	8
4.2 New Lease.....	8
5. Interest on overdue money	9
6. GST	9
6.1 Definitions	9
6.2 Consideration GST exclusive	9
6.3 Payment of GST	9
6.4 Tax invoice.....	9
6.5 Adjustment event	9
6.6 Reimbursements.....	9
7. Procedure to swap Premises	10
8. Tenant to grant access to public.....	10
8.1 Access to be granted to public	10
8.2 Tenant may make and enforce reasonable rules	11
8.3 Access to services	11
8.4 Access for emergency services.....	11
8.5 Access for waste management	11
9. Use of Premises and Building Work	11
9.1 Use of Premises	11
9.2 Tenant may lodge DAs or other applications	12
9.3 Tenant may carry out any work on, above or below surface.....	12
9.4 Tenant may derive commercial benefit.....	12
9.5 Unfettered discretion of statutory powers	12
9.6 Works subject to consent	12
10. Consultative Committee	12
11. Tenant's covenants.....	13
11.1 General and specific maintenance standards	13
11.2 Asset renewal	13
11.3 Emergency call-out service	14
11.4 Subject to clause 18	14
12. Landlord maintenance check	14
12.1 Landlord to perform annual maintenance check	14
12.2 Landlord may give notice if not maintained in accordance with requirements	15
12.3 Landlord to contribute for maintenance	15
12.4 General right of inspection.....	15

14.	Premises are Public Places	17
14.1	Landlord may erect notices under s. 632 LG Act	17
14.2	Landlord to remove notice on request of Tenant.....	17
15.	Ownership of improvements and Tenant's Equipment	17
15.1	Ownership.....	17
15.2	Removal of Tenant's Equipment	17
15.3	Improvements.....	18
15.4	Community Expectation.....	18
16.	Assignment, sub-letting, occupation rights and sale of shares	19
16.1	Tenant has right to sub-lease or licence without approval	19
16.2	Landlord approval required for novation or assignment	19
16.3	No consent required for dealing within corporate group.....	19
16.4	Corporate Ownership.....	20
16.5	Unit Trust	20
17.	Tenant has right to contract with third parties for maintenance, operation, management, provision of services and amenities.....	20
18.	Damage or destruction of Premises	21
18.1	Damage	21
18.2	Substantial damage and total destruction	22
18.3	Landlord's Notice	22
18.4	Landlord may terminate	22
18.5	Rebuilding and reinstatement.....	22
18.6	Tenant's Default.....	23
18.7	Landlord need not repair	23
18.8	Resumption.....	23
18.9	No claim on termination	23
19.	Insurance, release and indemnity	23
19.1	Insurance	23
19.2	Release.....	24
19.3	Tenant indemnifies Landlord	24
19.4	Exception	24
20.	Costs, charges and expenses	25
20.1	Lease preparation costs	25
20.2	Tenant's costs.....	25
21.	Dispute resolution.....	25
21.1	Reference to a dispute	25
21.2	Notice of Dispute	25
21.3	Representatives of parties to meet.....	26
21.4	Legal proceedings	26
21.5	Urgent interlocutory proceedings.....	26
21.6	Continuing performance	26
22.	Landlord ability to carry out maintenance or renewal if not adequately maintained or renewed	27
23.	Force Majeure	27
24.	Termination and procedures for termination	27
24.1	Significant breaches or event of Insolvency	27
24.2	Further Breach Notice.....	27
24.3	Termination	28
24.4	Force majeure.....	28
24.5	Dedication	28
25.	Notices	28

25.1	Form of Notices	28
25.2	Change of Address	28
25.3	Service of Notices.....	28
25.4	Timing of notices by fax.....	28
25.5	Email signing	29
26.	Miscellaneous.....	29
26.1	Exclusion of statutory provisions	29
26.2	Application of legislation	29
26.3	Tenant to recognise superior or concurrent interest.....	29
26.4	Landlord's statement prima facie evidence	29
26.5	Tenant's Associates.....	29
26.6	Entire agreement	29
26.7	Governing Law.....	30
26.8	No waiver.....	30
26.9	Variation.....	30
26.10	Invalidity.....	30
26.11	Further Assurance	30
26.12	No merger and survival	31
	Schedule 1 – Maintenance Standards	33
	Schedule 2 - Asset Renewal Plan	40
	Schedule 3 - Landlord's Property	41
	Schedule 4 - Tenant's Equipment.....	42

Reference Schedule

Item 1	Landlord Penrith City Council ABN 43 794 422 563 Address: 601 High Street, Penrith NSW 2750 Attention: [To be inserted] Email: [To be inserted]
Item 2	Tenant [Insert Tenant's name and ACN/ARBN] Address: 642 Great Western Highway, Pendle Hill NSW 2145 Attention: The Directors Email: legal@celestino.net.au with a copy to contracts@celestino.net.au
Item 3	Premises [clause 1.1] The whole of the land comprised in Lot [#] in Deposited Plan [#]
Item 4	Commencing Date [clause 2] [Insert the Commencing Date of the Lease]
Item 5	Terminating Date [clause 2] [Insert the Terminating Date of the Lease]
Item 6	Term [clause 2] [Insert term of lease] [Drafting Note: The first lease to be granted will have a term of 40 years and all subsequent leases will have the same terminating date as the first lease, with the term of those subsequent leases adjusted (reduced) accordingly. The mechanism in clause 3.2(d) of the agreement for lease will allow for this term to be calculated and inserted, noting that the definition of "Terminating Date" in the agreement for lease is "the date being 40 years after the commencing date of the First Lease".]
Item 7	Option to renew [clause 4] 1 x 40 years [Insert the Commencing Date of the Option Lease] [Insert the Terminating Date of the Option Lease]
Item 8	Amount of public risk insurance [clause 19] \$20 million

1. Defined terms and interpretation

1.1 Defined terms

The following are defined terms in this Lease:

Asset Renewal Contribution means the amount incurred by the Tenant for renewing the assets forming part of the Premises (excluding the Tenant's Equipment) in accordance with the requirements of the Asset Renewal Plan.

Asset Renewal Plan means the plan setting out the renewal cycles and requirements for the Premises (excluding the Tenant's Equipment), a copy of such plan as at the Commencing Date is at Schedule 2 of this Lease.

Asset Renewal Review Date means the date for asset renewal as set out in the Asset Renewal Plan.

Authorised Officer means:

- (a) a director, secretary or an officer whose title contains the word "manager";
- (b) a person performing the functions of any of them; or
- (c) any other person appointed to act as an Authorised Officer for the purpose of this Lease.

Authority includes any government or semi-government, statutory, public or other authority or body with jurisdiction over the Premises or any matter or thing in relation to the Premises.

Breach Notice has the meaning given in clause 24.1.

Building means the building, buildings or part of the building(s) constructed on the Premises and any building or part of a building subsequently constructed on the Premises.

Business Day means any day in New South Wales on which banks generally are open for business which is not a Saturday, Sunday or public holiday.

Celestino Group means:

- (a) any corporation that has E.J. Cooper & Son Pty. Limited ACN 000 269 750 as its ultimate holding company; or
- (b) any corporation that is a Related Entity or Related Body Corporate to the Tenant.

Claims includes any claim, demand, remedy, suit, injury, damage, loss, Cost, liability, action, proceeding, right of action, claim for compensation and claim for abatement of rent obligation.

Commencing Date means the first day of this Lease set out on in Item 4.

Community Expectation means when services of a similar nature as those provided by the Tenant's Equipment are provided by Penrith City Council at other public spaces within the Penrith City Council local government area (excluding Sydney Science Park).

Cost includes any cost, charge, expense, outgoing, payment or other expenditure of any nature (whether direct, indirect or consequential and whether accrued or paid).

Current LGCI means the LGCI number for the year ending immediately before the relevant 1 July.

Dedication Land means any land referred to in Table C of Schedule 5 of the VPA.

Default means a breach of this Lease by the Tenant, including the following events of default:

- (a) any other money payable by the Tenant under this Lease is not paid when due and is not paid within 90 days of demand by the Landlord;
- (b) the Tenant or the Tenant's Associates do not comply with any other obligation under this Lease within a reasonable time after the Landlord asks the Tenant to remedy a breach of that obligation;
- (c) the Tenant (not being a company) becomes bankrupt or assigns the Tenant's estate or enters into a deed of arrangement for the benefit of creditors;
- (d) if the Tenant is a company, an Insolvency Event occurs; or
- (e) the Tenant repudiates this Lease.

Developer means Celestino Developments SSP Pty Limited ACN 607 351 842.

Development Applications means any development application or planning proposal, variation or modification to any existing development application or planning proposal, any application to modify any development consent or planning instrument, or the making of any planning agreement, in relation to the development, use of, or applicable controls at, the Premises.

Force Majeure means any event or circumstance (or a combination of events or circumstances) which is beyond the control of the Tenant and which delays or prevents the Tenant from complying with its obligations under this Lease, including any acts of God, natural disasters, infectious diseases, fire and explosions, riots, civil commotion, damage to the Premises, war, attack or other acts of hostility by foreign enemies, terrorism, revolution, radioactive contamination, strikes or similar labour disturbances, shortage of critical materials and action or inaction by any Authority having jurisdiction over the Premises.

Insolvency Event means:

- (a) a receiver, receiver and manager, administrator, trustee or inspector, or other person with similar powers, is appointed in respect of the Tenant or over all or any part of that party's assets;
- (b) an application for the winding up of the Tenant is presented and not withdrawn or dismissed within 21 days or an order is made or resolution is passed for the winding up of the Tenant;
- (c) an application is made to dissolve the Tenant and not withdrawn or dismissed within 21 days;
- (d) the Tenant resolves to enter into, or enters into, a scheme of arrangement, deed of company arrangement, a composition with its creditors or an assignment for their benefit; or
- (e) the Tenant is unable to pay all of its debts as and when they become due and payable or is deemed to be insolvent under any provision of the Corporations Act 2001 (Cth) or any statute or any other law.

Interest Rate means 2% above the rate quoted on the day a payment under this Lease is due by the Landlord's principal banker (as nominated by the Landlord) on unsecured overdraft accommodation in excess of \$100,000.

Item means an item in the Reference Schedule.

Landlord means the lessor named in Item 1.

Landlord's Property means all plant, equipment, fixtures, fittings, furniture and other property the Landlord supplies to the Premises. A list of such property as at the Commencing Date is at Schedule 3 of this Lease.

Law means common law, principles of equity and all statutes, rules, regulations, proclamations, ordinances or by-laws, present or future and includes applicable Australian Standards and Codes of Practice.

LGCI means the Local Government Cost Index for councils in New South Wales calculated and published by the Independent Pricing and Regulatory Tribunal of New South Wales established by the Independent Pricing and Regulatory Tribunal Act 1992 (NSW).

Liability means each and every cost, expense, liability, obligation, action, demand, loss, claim and all damages.

Maintenance Contribution means the amount for the Maintenance Review Period calculated by applying the following rates (current as at 1 September 2020 and increased each 1 July thereafter in accordance with clause 12.3(c)) to the assets comprising the Premises, provided that if a Maintenance Review Period is less than 12 months, the contribution for that period is calculated at a daily rate based on the number of days in the relevant Maintenance Review Period:

- Pathpaving and cycleway maintenance \$343.30 per km pa
- Signage Maintenance \$41.76 per sign pa
- Street Sweeping \$796.24 per km pa
- Litter Patrol \$691.82 per km pa
- Bus Shelters \$4346 per site pa
- Skate Parks (if intended) \$23,691.42 per site pa

Specific Park Maintenance Rates are as follows –

- Broad Open Space \$0.72 per sqm
- Pocket and Local Parks \$1.69 per sqm
- Playing Fields \$2.61 per sqm
- Wetlands \$3.26 per sqm
- Playgrounds \$4,698.47
- Road Side Mowing \$0.11 per sqm
- Landscaping \$0.20 per sqm

COUNCIL MAINTENANCE STANDARDS FOR ROADS

The following budget is allocated annually when new assets are created:

- Road pavement maintenance - \$2,370.22 per km per annum
- Kerb and gutter maintenance - \$325.81 per km per annum

- Path paving and cycleway maintenance - \$351.20 per km per annum
- Carparks: \$6,402.93 per site per annum
- Signage maintenance - \$42.73 per sign per annum
- Linemarking - \$546.14 per km per annum
- Guardrail maintenance - \$26.71 per km per annum
- Street furniture - \$40.06 per item per annum
- Street lighting Charges - \$3,152.55 per km per annum
- Bus shelters - \$4,466.66 per site per annum
- Drainage pits and headwalls - \$23.77 each
- Pipelines - \$169.58 per km
- Pit litter baskets - \$153.56 each
- Street sweeping - \$814.55 per km per annum
- Litter patrol - \$707.73 per km per annum.

Maintenance Review Date means 1 July every year.

Maintenance Review Period means:

- (a) in relation to the first year of the Term, the period beginning on the Commencing Date and ending on the following 30 June;
- (b) in relation to the last year of the Term, the period beginning on the last 1 July in the Term and ending on the Terminating Date; and
- (c) for all other years during the Term, the period beginning on the Maintenance Review Date in each year and ending 12 months later.

Permitted Use means the use in clause 9.1.

Publicly Accessible Road has the meaning given to in the VPA.

Premises means the premises described in Item 3, comprising:

- (a) all structures and improvements within the premises described in Item 3, including any Building;
- (b) the air space; and
- (c) the sub-surface;

and includes the Landlord's Property.

Previous LGCI means the LGCI number for the year ending immediately before the previous 1 July.

Reference Schedule means the reference schedule which forms part of this Lease.

Related Body Corporate has the meaning given in section 50 of the Corporations Act 2001 (Cth).

Related Entity has the meaning given in section 9 the Corporations Act 2001 (Cth).

Related Lease means a lease of premises at Sydney Science Park from the Landlord (as landlord) to the Tenant or another member of the Celestino Group (as tenant), other than this Lease.

Requirements means any requirements, notices, orders or directions received from or given by any Authority.

Road Rules means the Road Rules (2014).

Roads Regulation means the Roads Regulation (2018).

Services means the services provided by Authorities, the Landlord or others to the Premises, including electricity, water, sewerage and fire safety and control together with all plant and equipment relating to those services.

Significant Breach means one or more of the following:

- (a) a failure to provide public access to the Premises where it is so required in accordance with clause 8.1 of this Lease, for a continuous period of more than one month;
- (b) assignment of this Lease other than in accordance with the terms of this Lease;
- (c) a failure to maintain the Premises described in clause 12.2, other than where the Landlord has elected to exercise its rights to step-in under clause 22;
- (d) a failure to renew the Premises described in clause 13.2, other than where the Landlord has elected to exercise its rights to step-in under clause 22; and
- (e) a failure to perform any provisions of this lease after a Breach Notice is given and the Default has not been rectified in accordance with clause 24.

Sydney Science Park means the land comprised in Lots 1, 2 and 4 in Deposited Plan 1242470 and Lots 4 and 5 in Deposited Plan 1255721 and any other land forming part of the development known as "Sydney Science Park".

Tenant means the lessee named on the front page of this Lease.

Tenant's Associates means the Tenant's employees, officers, agents, contractors, consultants, subtenants, licensees and invitees (and which for the avoidance of doubt does not include members of the general public who do not fall within one of the preceding categories in this definition).

Tenant's Equipment means the partitions, plant, equipment, fixtures, fittings, furnishings and other property in, on or fixed to the Premises which is not Landlord's Property. A list of such property as at the Commencing Date is at Schedule 4 of this Lease.

Term means the term of this Lease set out in Item 6 and any extension or renewal of that term.

Terminating Date means the last day of the term of this Lease set out in Item 5.

VPA means the planning agreement between the Developer and Penrith City Council in relation to Sydney Science Park executed on 9 September 2016, as amended.

VPA Designation means the classification of the Dedication Land by reference to the categories set out in the first column of the table in Table C of Schedule 5 of the VPA.

1.2 Interpretation

The following apply in the interpretation of this Lease:

- (a) A reference to this Lease means either the agreement set out in this document or the document itself, as varied from time to time.
- (b) A reference to any Act, regulation, rule or similar instrument includes any consolidations, amendments or re-enactments of it, any replacements of it, and any regulation or other statutory instrument issued under it.
- (c) A reference to the singular includes the plural number and vice versa.
- (d) A reference to a gender includes a reference to each gender.
- (e) A reference to a party means a person who is named as a party to this Lease.
- (f) Person includes a firm, corporation, body corporate, unincorporated association and a governmental authority.
- (g) A reference to a party or a person includes that party's or person's executors, legal personal representatives, successors, liquidators, administrators, trustees in bankruptcy and similar officers and, where permitted under this Lease, their substitutes and assigns.
- (h) An agreement on the part of, or in favour of, two or more persons binds or is for the benefit of them jointly and severally.
- (i) Includes means includes without limitation.
- (j) Where a word or expression has a defined meaning, its other grammatical forms have a corresponding meaning.
- (k) A reference to doing something includes an omission, statement or undertaking (whether or not in writing) and includes executing a document.
- (l) A reference to a clause, schedule or annexure is a reference to a clause of, or a schedule or an annexure to this Lease.
- (m) Item numbers refer to those in the Reference Schedule.
- (n) A reference to dollars or \$ is to Australian currency.
- (o) A heading is for reference only. It does not affect the meaning or interpretation in this Lease.
- (p) Any schedule attached to this Lease forms part of it. If there is any inconsistency between any clause of this Lease and any provision in any schedule or attachment, the clause of this Lease will prevail unless the contrary intention appears.
- (q) No rule of construction applies to the disadvantage of a party to this Lease only because that party was responsible for the preparation of this Lease.
- (r) If a party's approval is required in connection with this Lease:
 - (i) the party requiring the approval must obtain the approval in writing; and

- (ii) unless this Lease provides otherwise, the approving party must not unreasonably delay or withhold its approval or unreasonably attach conditions to its approval.

2. Demise

- (a) The Landlord grants a lease of the Premises to the Tenant for the Term, subject to the terms and conditions set out in this Lease.
- (b) Subject to:
 - (i) the rights of the Landlord under this Lease; and
 - (ii) other rights of the Landlord at Law;

as long as the Tenant complies with its obligations under this Lease, the Tenant may use and occupy the Premises without any disturbance from the Landlord or any person claiming under the Landlord.

3. Services

Subject to clause 16, the Tenant must pay:

- (a) all charges for Services and utilities connected to the Premises (if separately metered and, where multiple meters are installed or connected to the Premises in relation to a Service or utility, the charges in respect of all meters) to the proper Authorities; and
- (b) all charges for Services and utilities connected to the Premises (if not separately metered) to the Landlord, as reasonably notified by the Landlord; and
- (c) the reasonable cost of installing separate meters in the Premises, if required by the Landlord.

4. Option renewal term

4.1 Option

The Landlord must grant the Tenant a new lease for the term set out in Item 7 if:

- (a) the Tenant gives the Landlord a notice stating that it wants a new lease of the Premises at any time during the 24 month period before the Terminating Date; and
- (b) the Tenant has not been given more than two notices of Default per annum during the Term with which the Tenant has failed to comply.

4.2 New Lease

The new lease is to be on the same terms as this Lease (as varied during the Term) except that:

- (a) the term, commencing date and terminating date are to be those first specified in Item 7;
- (b) if particulars of more than one new lease are specified in Item 7, the particulars of the new lease first specified are deleted from Item 7; and

- (c) if the particulars of the new lease are the only particulars specified in Item 7, clause 4 and Item 7 are deleted and any reference to an option to renew on the front page will be deleted.

5. Interest on overdue money

If any amount payable by the Tenant is not paid on its due date, then the Tenant must pay to the Landlord interest on that money at the Interest Rate calculated from the due date to the date of payment.

6. GST

6.1 Definitions

In this clause 6:

- (a) GST Law has the meaning given in the A New Tax System (Goods and Services Tax) Act 1999 (Cth); and
- (b) terms used in this clause which are not defined in this Lease, but which are defined in the GST Law, have the meanings given in the GST Law.

6.2 Consideration GST exclusive

Unless otherwise stated in this Lease, amounts payable, and consideration to be provided, under any other provision of this Lease exclude GST.

6.3 Payment of GST

If GST is payable on a supply made in connection with this Lease, the recipient must pay the party making the supply (supplier) an amount equal to the GST payable on that supply at the time the recipient pays or provides any part of the consideration for the supply.

6.4 Tax invoice

The supplier must give a tax invoice to the recipient no later than the time when the recipient is required to pay or provide any part of the consideration for the supply.

6.5 Adjustment event

If an adjustment event arises in connection with a supply made in connection with this Lease:

- (a) the supplier must recalculate the GST payable to reflect the adjustment event;
- (b) the supplier must give the recipient an adjustment note as soon as reasonably practicable after the supplier becomes aware of the adjustment event; and
- (c) the adjustment amount must be paid without delay either by the recipient to the supplier or by the supplier to the recipient as the case requires.

6.6 Reimbursements

Where a party must pay to another party (other party) an outgoing of the other party, the amount payable is the sum of:

- (a) the amount of the outgoing less any input tax credit in respect of it to which the other party, or its GST group representative member, is entitled; and

- (b) if the amount payable is subject to GST, an amount equal to that GST.

7. Procedure to swap Premises

- (a) By notice to the Landlord, the Tenant may nominate alternative premises within Sydney Science Park (**Replacement Premises**) and require, the Landlord, at the cost of the Tenant, to accept a surrender of this Lease and grant a new lease over the Replacement Premises on the same terms as this Lease to move, remove, modify, replace or decommission the Premises, but only if:
- (i) that action will not result in a breach of the Developer's obligations under the VPA to contribute Dedication Land or Publicly Accessible Roads;
 - (ii) the Tenant uses reasonable endeavours to minimise disruption to an ordinary user of the Premises;
 - (iii) the Premises under the new lease are available for the Permitted Use at the time the surrender operates from.
- (b) The parties must promptly sign all documentation that is required to reflect the replacement of the Premises with the Replacement Premises.
- (c) The Tenant may request a surrender of this Lease by notice to the Landlord. The Landlord must not unreasonably refuse any such request made by the Tenant and may impose reasonable conditions on any such consent. The parties must promptly sign all documentation that is required to reflect the surrender of this Lease.

8. Tenant to grant access to public

8.1 Access to be granted to public

- (a) The Tenant must ensure that the Premises are at all times available for access by members of the public, including all residents and tenants within Sydney Science Park, and in respect of roads, to any Authority providing public transport, except:
- (i) temporary restriction or exclusion of access will be appropriate in the case of:
 - A. maintenance or necessary repairs;
 - B. modification of, or addition to, any improvements to the Premises;
 - C. the Tenant or relevant Authorities accessing services;
 - D. hazards, incidents or other safety issues; or
 - E. in any other circumstances as the parties may agree;
 - (ii) for so long as Force Majeure occurs;
 - (iii) if clause 7 applies;
 - (iv) if the Premises are damaged or destroyed as contemplated by clause 18; or
 - (v) any circumstances where the Tenant, acting reasonably, considers it necessary to temporarily restrict public access.

Subject to clause 8.1(a), the Tenant must ensure that any owner of land adjoining the Premises is entitled to access across the boundary between the land and the Premises, for example a nature strip between the boundary of a parcel of land and the road used to access that parcel of land.

8.2 Tenant may make and enforce reasonable rules

The Tenant may make and enforce any reasonable rules and requirements in relation to the entry, access, and use of, the Premises that it considers necessary or appropriate for the proper management or safety of the Premises, including by excluding or removing from the Premises any persons that do not comply with the Tenant's reasonable rules and requirements.

8.3 Access to services

To the extent reasonably possible, the Tenant must ensure that the Premises has access to any utility infrastructure (including water supply and facilities for the removal and disposal of sewage) that are essential for such a property.

8.4 Access for emergency services

The Tenant must ensure that the Premises is reasonably accessible by emergency services by a road, shared pathway or other access, except in circumstances where the relevant road, shared pathway or other access is closed temporarily in accordance with clause 8.1(a)(i).

8.5 Access for waste management

The Tenant must ensure that the Premises is reasonably accessible by waste management services by a road, shared pathway or other access, except in circumstances where the relevant road, shared pathway or other access is closed temporarily in accordance with clause 8.1(a)(i).

9. Use of Premises and Building Work

9.1 Use of Premises

- (a) The Tenant must allow for the use of the Premises as follows:
 - (i) If the Premises is a road (including any footpaths): as a means of access for members of the public in a vehicle or on foot or for any Authority to provide public transport, both at no cost;
 - (ii) If the Premises is not a road: as a public area that is not inconsistent with the VPA Designation corresponding to the Premises, including as a *[if necessary, complete in accordance with clause 3.2(g) of the AFL]*.
- (b) Provided that the Tenant complies with clause 9.1(a), the Tenant may use the Premises for any other lawful purpose, including running services under, on or above the Premises surface.
- (c) The Tenant must comply with all Laws and hold all necessary licences, authorisations and approvals from the relevant Authorities for use of the Premises under this clause 9.1
- (d) The Tenant must (and must require that the Tenant's Associates) not do anything which would be in breach of the Road Rules and Roads Regulation.
- (e) Any rules in respect of any part of the Premises used as a road must be in accordance with and may not be inconsistent with the *Roads Act 1993 (NSW)*,

Roads Regulation and all the legislation and regulations that control the use of roads as if the Premises was a local or public road.

9.2 Tenant may lodge DAs or other applications

The Tenant may lodge any Development Application that the Tenant considers necessary or desirable with the relevant Authority. The Landlord (as registered proprietor of the Premises) must provide any letter of consent that is required by any Authority with respect to such Development Application within 5 Business Days of request by the Tenant.

9.3 Tenant may carry out any work on, above or below surface

The Tenant may carry out any works to the Premises, provided that the Tenant obtains all necessary approvals from the relevant Authority to undertake those works. For the avoidance of doubt, the Landlord in its capacity as landowner is not a relevant Authority.

9.4 Tenant may derive commercial benefit

Except for any explicit restriction in this Lease, nothing in this Lease restricts the Tenant's ability to utilise any part of the Premises for commercial gain.

9.5 Unfettered discretion of statutory powers

This Lease does not fetter or limit the exercise of any statutory regulatory functions by the Landlord in its capacity as an Authority with respect to the Premises. The Tenant will not be given any preferential treatment by the Landlord in its capacity as an Authority when exercising its statutory or regulatory functions by virtue of the existence or terms of this Lease. However, this clause does not limit or prejudice the contractual obligations of the Landlord in its capacity as a contracting party under this Lease.

9.6 Works subject to consent

- (a) If the Tenant is required by the terms of this Lease to undertake works to the Premises and those works require consent from the relevant Authority, the Tenant will use reasonable endeavours to obtain that consent.
- (b) Until such time as the relevant Authority provides the necessary consent referred to at clause 9.6(a), the Tenant is not obliged to undertake the works that require the consent of the relevant Authority.
- (c) As soon as reasonably practicable after the relevant Authority provides the necessary consent referred to at clause 9.6(a), the Tenant will undertake the required works.

10. Consultative Committee

- (a) Promptly after the date of this Lease, the Landlord and the Tenant must establish a Consultative Committee (CC) and must cause the CC to meet at intervals of 6 months during the Term.
- (b) Meetings of the CC may be held by means of video conference or other electronic communication.
- (c) The Tenant will give the Landlord at least one month's advance notice of each meeting of the CC, including as to the time and location of each meeting and the agenda to be followed at each meeting. The Landlord may submit items for inclusion on the agenda to be followed at a meeting of the CC by notice to the Tenant no later than 10 Business Days after the Landlord receives notice of the date of the relevant CC meeting.

- (d) The role of the CC will be to discuss:
 - (i) the administration of this Lease or any Related Lease and if there needs to be adjustments or improvements made;
 - (ii) any issues affecting the Premises raised with the Landlord by members of the general public;
 - (iii) any material issues encountered by the Tenant in its management of the Premises;
 - (iv) any planned changes to the Premises by the Tenant and, with respect to any planned changes to the specific use of a recreation space forming part of the Premises, the community consultation process that is required before such changes are implemented by the Tenant;
 - (v) any other matter agreed between the Tenant and the Landlord.
- (e) The parties must act promptly, reasonably and in good faith to implement any matters agreed at the CC meetings.
- (f) The Tenant must at its expense prepare and provide to each other member of the CC written minutes of the business conducted at each CC meeting no more than 10 Business Days following the conclusion of the relevant CC meeting.
- (g) The parties agree that the deliberations of the CC are confidential, except to the extent that there is a legal obligation on a person to disclose any information or documents.

11. Tenant's covenants

11.1 General and specific maintenance standards

The Tenant must maintain the Premises (excluding the Tenant's Equipment) in accordance with:

- (a) the standard set out in Schedule 1 (as may be amended as agreed by the parties at meetings of the CC); and
- (b) in any other case, an equivalent standard to that which would apply from time to time, were the Premises (excluding the Tenant's Equipment) required to be maintained by the Landlord.

The Tenant will also be responsible for the timely removal or fixing of hazards, such as removing fallen trees from, or fixing defective lighting on, the Premises.

11.2 Asset renewal

- (a) The Tenant must undertake a periodic renewal of the Premises (excluding the Tenant's Equipment) in accordance with the timing and standards as set out in the Asset Renewal Plan.
- (b) The Landlord and the Tenant intend to update the Asset Renewal Plan approximately every four years from the commencement date of the first lease the Landlord grants at Sydney Science Park.
- (c) The Landlord and the Tenant will use all reasonable endeavours to agree to any proposed amendments or updates to the Asset Renewal Plan, and failing agreement either party may invoke the dispute resolution process set out in clause 21. The Tenant cannot object to changes that do not impose greater obligations on

the Tenant than provided for in the previous Asset Renewal Plan (the plan existing at the date of the review) or to any increase in obligations in the Asset Renewal Plan that arises as a result of, and is consistent with, a Community Expectation which is otherwise provided for by Penrith City Council across the rest of the City of Penrith, provided that:

- (i) clause 13.3(b) continues to apply to the new Asset Renewal Plan; and
- (ii) any maintenance and upkeep costs for the Premises payable by the Tenant (and not reimbursable by the Landlord under clause 12.3) as a consequence of the proposed new Asset Renewal Plan will not increase by more than 5% from the maintenance and upkeep costs for the Premises payable by the Tenant (and not reimbursable by the Landlord under clause 12.3) as at the date of the review.
- (d) Subject to the terms of this clause, if the Tenant does not accept the proposed amendments or updates to the Asset Renewal Plan, does not wish to participate in any part of the dispute resolution process set out in clause 21 in connection with the proposed amendments or updates to the Asset Renewal Plan or does not accept the outcome of the dispute resolution process set out in clause 21 in connection with the proposed amendments or updates to the Asset Renewal Plan, by notice to the Landlord the Tenant may surrender (and the Landlord is deemed to accept a surrender of) this Lease with effect from the date being 40 Business Days after the date of the Tenant's notice under this clause 11.2(d).

11.3 Emergency call-out service

The Tenant must at its cost provide for and maintain during the Term a 24 hour per day, 7 days per week emergency call-out service for the Premises to address occurrences such as fallen trees, safety hazards, service breakdown or defective lighting within the Premises. The emergency call out phone number for this service will be [insert], or such other number the Tenant notifies the Landlord of in accordance with clause 25

11.4 Subject to clause 18

For the avoidance on doubt, this clause 11 is subject to clause 18.

12. Landlord maintenance check

12.1 Landlord to perform annual maintenance check

- (a) Every year, within 14 days after the Maintenance Review Date, a representative of the Landlord is to inspect the Premises, and confirm whether or not they have been maintained to the standard required under clause 11.
- (b) Prior to carrying out an inspection referred to in clause 12.1(a), the Landlord must give reasonable prior notice of this inspection to the Tenant, provided further that any inspection must not be conducted during a time that the Premises is unavailable, or that it has been booked for a function or event by a third party user.
- (c) During an inspection referred to in clause 12.1(a):
 - (i) a representative of the Tenant may accompany the Landlord's representative on the inspection;
 - (ii) the Landlord must comply with any safety and other reasonable requirements of the person with operational control of the Premises when accessing the Premises.

12.2 Landlord may give notice if not maintained in accordance with requirements

- (a) If the Premises have not been maintained to the standard required under clause 11, the Landlord may give the Tenant written notice (with supporting evidence) requiring those areas to be brought up to the required standard within such period as is reasonable in the circumstances, not to be less than one month except in the case of an emergency or potential emergency in the reasonable opinion of the Landlord. Following the expiry of that period, the Landlord is to carry out a further inspection of those areas within 7 days after the date for rectification and determine whether or not those areas have been maintained to the standard required under clause 11.
- (b) To the extent that, upon further inspection under clause 12.2(a), the Landlord considers that the relevant failure to maintain has not been rectified, that failure will constitute a Significant Breach.

12.3 Landlord to contribute for maintenance

- (a) In acknowledgement that the Landlord would bear the costs of maintenance and upkeep of the Premises, but for this Lease, and the public good served by free access to the Premises, the Landlord agrees to contribute to the maintenance and upkeep of the Premises as provided for in clause 12.3(b).
- (b) If the Premises has been maintained to the standard required under clause 11 (whether prior to its first inspection under 12.1(a), or prior to its further inspection under 12.2(a)), then the Landlord will provide to the Tenant the Maintenance Contribution in respect of the Premises within 30 days after the first inspection or the further inspection (as applicable).
- (c) The rates set out in the definition of "Maintenance Contribution" in clause 1.1 are current as at 1 September 2020 and shall be increased each 1 July thereafter to be the higher of:
 - (i) the rates immediately before that 1 July multiplied by the Current LGCI and divided by the Previous LGCI; and
 - (ii) the rates determined by Penrith City Council in its then most recent annual maintenance budget.
- (d) For the purposes of clause 12.3(c)(i), if the LGCI is no longer published, either party may ask the President of the Australian Property Institute Incorporated (New South Wales Division) to nominate an appropriate index published yearly (which may be the index then used to set the rate peg for councils in New South Wales) and "LGCI" then means that index.
- (e) If the Tenant undertakes maintenance in accordance with clause 11.1 for which there is no rate set out in the definition of "Maintenance Contribution" in clause 1.1, the rate for the purposes of the Maintenance Contribution will be the rate generally adopted by Penrith City Council or, if there is no such rate, the rate reasonably incurred by the Tenant.

12.4 General right of inspection

Despite clauses 12.1 and 13.1, a representative of the Landlord may inspect the Premises from time to time at times agreed with the Tenant or by 5 Business Days' notice to the Tenant. The Landlord is not required to give notice to the Tenant of any proposed inspection of the Premises in the event of an emergency.

13. Landlord asset renewal check

13.1 Landlord to perform asset renewal check

- (a) Within 14 days after each Asset Renewal Review Date, a representative of the Landlord is to inspect the Premises, and confirm whether or not they have been renewed to the standard required under clause 11.2(a).
- (b) Prior to carrying out an inspection referred to in clause 13.1(a), the Landlord must give reasonable prior notice of this inspection to the Tenant, provided further that any inspection must not be conducted during a time that the Premises is unavailable, or that it has been booked for a function or event by a third party user.
- (c) During an inspection referred to in clause 13.1(a):
 - (i) a representative of the Tenant may accompany the Landlord's representative on the inspection;
 - (ii) the Landlord must comply with any safety and other reasonable requirements of the person with operational control of the Premises when accessing the Premises.

13.2 Landlord may give notice if not renewed in accordance with requirements

- (a) If the Premises have not been renewed to the standard required under clause 11.2(a), the Landlord may give the Tenant written notice (with supporting evidence) requiring those areas to be brought up to the required standard within such period as is reasonable in the circumstances, not to be less than 60 days except in the case of an emergency or potential emergency in the reasonable opinion of the Landlord. Following the expiry of that period, the Landlord is to carry out a further inspection of those areas within 7 days after the date for rectification and determine whether or not those areas have been renewed to the standard required under clause 11.2(a).
- (b) To the extent that, upon further inspection under clause 13.2(a), the Landlord considers that the relevant failure to renew has not been rectified, that failure will constitute a Significant Breach.

13.3 Landlord to contribute to asset renewal

- (a) In acknowledgement that the Landlord would bear the costs of renewal of the Premises, but for this Lease, and the public good served by free access to the Premises, the Landlord agrees to contribute to the renewal of the Premises as provided for in clause 13.3(b).
- (b) If the Premises has been renewed to the standard required under clause 11.2(a) (whether prior to its first inspection under 13.1(a), or prior to its further inspection under 13.2(a)), then the Landlord will provide to the Tenant the Asset Renewal Contribution in respect of the Premises within 30 days after the first inspection or the further inspection (as applicable).

14. Premises are Public Places

14.1 Landlord may erect notices under s. 632 LG Act

- (a) The parties agree that, for the purposes of section 632 of the Local Government Act 1993, the Premises is a "public place".
- (b) The Tenant may request that the Landlord erect a notice under section 632 of the Local Government Act 1993 in respect of the Premises. The Landlord and the Tenant must work together to determine the terms of that notice, each party acting reasonably.
- (c) Following a request being made by the Tenant under clause 14.1(b), and so long as the Tenant's request remains current, the Landlord must:
 - (i) erect a notice under section 632 of the Local Government Act 1993 to give effect to the request of the Tenant, including the agreed terms of the notice; and
 - (ii) enforce the notice in accordance with its powers under section 623 of the Local Government Act 1993.

14.2 Landlord to remove notice on request of Tenant

If the Tenant requests that the Landlord remove a notice previously erected in respect of the Premises under this clause 14, then:

- (a) the Landlord must remove the notice as soon as is reasonably feasible or the Tenant may do so if the Landlord does not remove the notice as required; and
- (b) the Landlord will no longer be able to enforce the notice under section 632 of the Local Government Act 1993, with respect to the Premises.

15. Ownership of improvements and Tenant's Equipment

15.1 Ownership

All improvements constructed, altered or added to by the Tenant (or any subtenant) to the Premises after the grant of this Lease are owned by the Tenant and form part of the Tenant's Equipment for the purposes of this Lease.

15.2 Removal of Tenant's Equipment

Before the Terminating Date or, where the Lease is terminated earlier, within 40 Business Days of termination, the Tenant:

- (a) may remove from the Premises all of the Tenant's Equipment; and
- (b) must if requested by the Landlord remove from the Premises such of the equipment, fixtures and fittings and other property belonging to the Landlord and provided for the exclusive use of the Tenant (which for the avoidance of doubt excludes improvements provided for the public benefit, such as roads and footpaths),

and must make good all damage and disfigurement caused to the Premises by such removal.

15.3 Improvements

The Tenant is not required to remove any improvements, alterations or additions to the Premises made by or on behalf of the Tenant.

15.4 Community Expectation

(a) If there is a Community Expectation that certain Tenant's Equipment will remain on the Premises after the Terminating Date or date of earlier determination to enable Penrith City Council to provide to the public continuity of the relevant service provided by that Tenant's Equipment, the Tenant may give 4 months written notice to the Landlord of the pending Terminating Date and ask the Landlord whether it requires the Tenant's Equipment to remain on the Premises. The Landlord must, give to the Tenant notice as to whether the Landlord requires that Tenant's Equipment remain on the Premises, any such notice to be given not less than 40 Business Days prior the Terminating Date or on the date of earlier determination, and if the Landlord does give the Tenant notice in accordance with this clause 15.4(a) then:

- (i) if the Tenant has received any public funding for that Tenant's Equipment (for example from an Authority, including from Penrith City Council or from levies charged by the Tenant or its Related Entities or Related Bodies Corporate to residents within the development known as Sydney Science Park or its replacement name), the Tenant must not remove that Tenant's Equipment from the Premises and that Tenant's Equipment shall on the Terminating Date or date of earlier determination become Landlord's Property at no cost to the Landlord; and
- (ii) if the Tenant has not received public funding for that Tenant's Equipment, the Tenant may notify the Landlord of the amount of consideration the Tenant will accept for not removing that Tenant's Equipment from the Premises such amount not to exceed the depreciated value of the Tenant's Equipment. If within 10 Business Days of the Tenant's notice under this clause 15.4(a)(ii), the Landlord notifies the Tenant that the Landlord agrees to pay the consideration specified in the Tenant's notice, the Tenant must not remove that Tenant's Equipment from the Premises and all risk in and responsibility for the Tenant's Equipment passes to the Landlord on the Terminating Date, date of earlier determination or date upon which the consideration specified in the Tenant's notice is paid (whichever occurs first). Upon payment of the consideration specified in the Tenant's notice (which amount must be paid by the Landlord to the Tenant within a reasonable time of demand), that Tenant's Equipment shall become Landlord's Property.

(b) If the Tenant has not received public funding for Tenant's Equipment and the Tenant does not notify the Landlord of the amount of consideration the Tenant will accept for not removing that Tenant's Equipment from the Premises or if the Tenant does so notify and the Landlord either:

- (i) does not notify the Tenant that the Landlord agrees to pay the consideration specified in the Tenant's notice under clause 15.4(a)(ii) 15.4(a)(i); or
- (ii) notifies the Tenant that it does not agree to pay the consideration specified in the Tenant's notice under clause 15.4(a)(ii),

within the 10 Business Days referred to in clause 15.4(a)(ii), the Tenant may, before the Terminating Date or, where the Lease is terminated earlier, within 40 Business

Days of termination, remove from the Premises that Tenant's Equipment to which this clause 15.4(b) applies.

- (c) Notwithstanding the forgoing, any Tenant's Equipment that is owned by persons other than the Tenant is to be excluded from the operation of this clause 15.4.
- (d) The Tenant may indicate to members of the public (through signage and other means) what is Tenant's Equipment so that the public develops an understanding that the Tenant's Equipment is not owned and provided by Penrith City Council.

16. Assignment, sub-letting, occupation rights and sale of shares

16.1 Tenant has right to sub-lease or licence without approval

The Tenant may grant a sublease or a licence over the Premises (in whole or in part) to another party without the approval of the Landlord.

16.2 Landlord approval required for novation or assignment

- (a) Subject to clause 16.3, the Tenant may assign or transfer its interest in this Lease to another party (**New Tenant**) if:
 - (i) the Tenant is not in Default or the Landlord has expressly waived any rights and obligations arising from the Default;
 - (ii) the Tenant gives to the Landlord at least 1 month's notice if the Tenant wants to exercise its rights under this clause and discloses in that notice the full name, address and occupation or principal business of the New Tenant and particulars of the proposed dealing;
 - (iii) the Landlord consents to the proposed dealing, it being agreed that, in relation to each precinct or, where relevant, sub-precinct in which the Premises are located, it is the intention of the Landlord and the Tenant that all assets within a particular asset type or class (for example, parks or roads) shall be leased by the same person (or a Related Entity or Related Body Corporate of that person);
 - (iv) the Tenant and the New Tenant comply with the Landlord's reasonable requirements in relation to the documentation, stamping and registration of the proposed assignment or transfer.
- (b) The Landlord may at its absolute discretion withhold its consent or impose any conditions in granting its consent to the assignment or transfer of the Tenant's interest in this Lease.
- (c) The Tenant and the New Tenant must enter into a deed in the form reasonably required by the Landlord under which:
 - (i) the Tenant releases the Landlord from all claims which the Tenant may have against the Landlord in connection with this Lease;
 - (ii) the New Tenant agrees to be bound by this Lease as if the New Tenant was the Tenant; and
 - (iii) the Tenant remains obliged to comply with this Lease and any renewal of this Lease as if the assignment or transfer had not taken place.

16.3 No consent required for dealing within corporate group

The Tenant may assign or transfer its interest in this Lease to a member of the Celestino Group without complying with clause 16.2. Notwithstanding the forgoing, the Tenant must comply with clause 16.2(c) and honour the intention of the Landlord and the Tenant that all assets within a particular asset type or class (for example, parks or roads) shall be leased by the same person (or a Related Entity or Related Body Corporate of that person).

16.4 Corporate Ownership

If:

- (a) the Tenant is a company which is not listed or wholly owned by a company which is listed on the Australian Securities Exchange; and
- (b) there is a proposed change in the shareholding of the Tenant or its holding company so that a different person or group of persons from that existing at the date the Tenant acquired its interest in this Lease will control the composition of the board of directors or more than 50% of the shares giving a right to vote at general meetings,

then that proposed change in control is taken to be a proposed transfer of this Lease. The person or group of persons acquiring control is taken to be the proposed New Tenant and clause 16.2 (except for clause 16.2(c)) applies.

16.5 Unit Trust

If the Tenant is the trustee of a unit trust, unless the unit trust is listed on an Australian Stock Exchange, any change, or series of changes, in the ownership of units in the unit trust or a holding trust effectively altering the control of the unit trust from that existing at the date the Tenant acquired its interest in this Lease is taken to be an assignment of this Lease. In that case the Tenant and the holding trust must not:

- (a) register, record or enter in their books any transfer of any unit or units in the Unit Trust or the holding trust;
- (b) deal with any beneficial interest in any such unit or units;
- (c) issue any new unit or units; or
- (d) take or attempt to take any action having the effect:
 - (i) of altering the control of the unit trust;
 - (ii) that the unitholders in the unit trust at the date the Tenant acquired its interest in this Lease at any time cease to beneficially hold or control at least 51% of the units in the unit trust,

until after the Tenant has complied with the conditions of clause 16.2 (except for clause 16.2(c)).

17. Tenant has right to contract with third parties for maintenance, operation, management, provision of services and amenities

The Tenant may enter into an agreement(s) with third parties to exercise any of its functions under this Lease. This includes:

- (a) the maintenance, operation and management of the Premises;

- (b) subleasing or licensing the Premises to third parties to allow them to maintain, operate or manage the Premises; and
- (c) the provision of services and amenities to the Premises.

However, if it does so, the Tenant will still remain liable for the failure to perform its duties under this Lease.

18. Damage or destruction of Premises

18.1 Damage

- (a) Subject to clause 18.1(b), if the Premises is damaged but not to the extent that the Premises is:

- (i) unfit or substantially unfit for the use by the Tenant; or
- (ii) having regard to the normal means of access to the Premises, substantially inaccessible,

(in which case clause 18.2 will apply) the Tenant must as soon as reasonably practicable commence and carry out the works necessary to make good the damage, provided that it has first obtained all necessary approvals, consents, licences and permits from all relevant Authorities to commence and carry out the works necessary to make good the damage.

- (b) If:

- (i) the damage referred to in clause 18.1(a) is not suffered as a result of default of the Tenant and occurs during the last ten years of the Term ; or
- (ii) the insurance policy or policies in relation to damage to the Premises have been voided, or payment of the policy money refused, other than as a result of the default of the Tenant,

the Tenant may elect in accordance with clause 18.1(c) not to commence and carry out the works necessary to make good the damage to the Premises.

- (c) If clause 18.1(b)(i) or 18.1(b)(ii) applies, the Tenant must as soon as reasonably practicable (having regard to, amongst other relevant factors, the insurance claims process) notify the Landlord that it either elects to:

- (i) commence and carry out the works necessary to make good the damage; or
- (ii) not commence and carry out the works necessary to make good the damage to the Premises in which case the Tenant is released from the obligations set out in clause 18.1(a) and is not liable to commence and carry out the works necessary to make good the damage to the Premises.

- (d) If the Tenant elects in accordance with clause 18.1(c)(ii) not to commence and carry out the works necessary to make good the damage to the Premises (other than in circumstances where the insurance policy or policies in relation to damage to the Premises have been voided, or payment of the policy money refused through no fault of the Tenant), the Tenant must pay to the Landlord such part of the insurance proceeds to replace or repair the Premises and the Tenant's rights under clause 4 are waived and may not be exercised on and from the date upon which the Tenant makes its election in accordance with clause 18.1(c)(ii) or if the option to renew has

been exercised, the lease arising from the renewal is null and void and of no effect. For the avoidance of doubt, if the Tenant elects in accordance with clause 18.1(c)(ii) not to commence and carry out the works necessary to make good the damage to the Premises (in circumstances where the insurance policy or policies in relation to damage to the Premises have been voided, or payment of the policy money refused through no fault of the Tenant), the Tenant's rights under clause 4 are preserved and may be exercised by the Tenant in accordance with clause 4.

18.2 Substantial damage and total destruction

If the Premises is:

- (a) destroyed; or
- (b) damaged so that the Premises is unfit or substantially unfit for the use by the Tenant or (having regard to the normal means of access to the Premises) are substantially inaccessible,

the Tenant must give the Landlord a notice within 2 months of the damage occurring, which either:

- (c) terminates this Lease on a date not less than 7 days after the date the Tenant gives the notice; or
- (d) states that the Tenant will restore or repair the Premises or make them fit for the use of or render them accessible to the Tenant as the case requires (**Restoration Notice**).

Subject to clause 18.6, if the Premises is destroyed or damaged to the extent set out in this clause 18.2, the Tenant's obligations (other than its obligations under this clause 18.2) and the Landlord's rights and remedies under this Lease are suspended and do not apply for the period from the date upon which the destruction or damage occurs until the date upon which the Tenant gives the Landlord a notice under this clause 18.2.

18.3 Landlord's Notice

If the Tenant gives a Restoration Notice to the Landlord and the Tenant does not within a reasonable time after delivery of the Restoration Notice comply with it, the Landlord may serve a notice on the Tenant requiring the Tenant to comply with the Restoration Notice within a reasonable time (which must not be less than 3 months).

18.4 Landlord may terminate

If the Tenant does not comply with clause 18.2 or with the Landlord's notice given under clause 18.3, the Landlord may terminate this Lease by giving not less than 7 days' notice to the Tenant.

18.5 Rebuilding and reinstatement

- (a) This clause 18.5 applies in circumstances where the Tenant is to carry out works in accordance with clause 18.1 or if the Tenant makes an election under clause 18.2(d).
- (b) In the circumstances referred to in clause 18.5(a), the Tenant must:
 - (i) use reasonable endeavours to obtain all necessary approvals, consents, licences and permits from all relevant Authorities to rebuild and restore the Premises;

- (ii) subject to obtaining the approvals, consents, licences and permits referred to in clause 18.5(b)(i), carry out the repair, rebuilding and restoration works in a good and workmanlike manner and so that the standard and quality of the completed works are not less than the standard of the Premises before the damage occurred; and
- (iii) subject to obtaining the approvals, consents, licences and permits referred to in clause 18.5(b)(i), complete the works within a reasonable time after the damage or destruction.

18.6 Tenant's Default

Despite the other provisions of clause 18, the Tenant must not stop performing its obligations under this Lease or terminate this Lease if:

- (a) the damage is caused or contributed to by; or
- (b) rights under an insurance policy in connection with the Premises are prejudiced or a policy is cancelled or payment of a premium or a claim is refused by an insurer because of,

the negligent or other wrongful act, omission or default of the Tenant or the Tenant's Associates. This does not affect any rights the Landlord may have in connection with the events specified in this clause 18.6.

18.7 Landlord need not repair

Clause 18 does not oblige the Landlord to rebuild or repair the Premises.

18.8 Resumption

- (a) If the whole of the Premises is resumed for any public purpose, either party may terminate this Lease by giving 1 months' notice to the other party.
- (b) If part of the Premises is resumed for any public purpose, the Tenant may elect by giving 1 months' notice to the Landlord to:
 - (i) terminate this Lease; or
 - (ii) partially surrender the Lease in respect of the part of the Premises resumed for any public purposes.
- (c) Nothing in this Lease restricts the Tenant from sharing in any compensation payable to the Tenant or the Landlord if the Tenant is entitled to any such compensation under any relevant legislation.

18.9 No claim on termination

If the Lease is terminated under this clause 18, the termination is without prejudice to any rights relating to any previous breach under this Lease.

19. Insurance, release and indemnity

19.1 Insurance

The Tenant must take out and maintain the following insurances in relation to the Premises:

- (a) public and products liability insurance policy which is occurrence based, for the amount specified in Item 8, for liability arising out of or connected with the Premises:
 - (i) for loss of, loss of use of, or damage to real or personal property, and injury to, disease, illness (including mental illness) or death of any person; and
 - (ii) for loss of, loss of use of, or damage to property;
- (b) property insurance policy for the Premises for insurable property for an annual amount not less than full reinstatement and replacement value;
- (c) workers compensation insurance as required by Law; and
- (d) motor vehicle insurance for liability arising out of the use by or on behalf of the Tenant of motor vehicles in connection with the Premises.

All insurance policies must:

- (a) be in the name of the Tenant;
- (b) include the Landlord as an additional insured (other than the policy referred to in clause 19.1(c));
- (c) be on terms reasonably acceptable to the Landlord; and
- (d) be with an insurer approved by the Landlord.

The Tenant must give the Landlord a certificate of currency for each insurance required to be held under this Lease annually.

19.2 Release

The Tenant uses the Premises at the Tenant's sole risk. The Tenant releases the Landlord to the full extent permitted by law from and against all Liabilities which arise in respect of the Tenant's use of the Premises.

19.3 Tenant indemnifies Landlord

The Tenant indemnifies the Landlord against all Liabilities in connection with:

- (a) the negligent use by the Tenant or the Tenant's Associates of the Premises or any of the Services;
- (b) any faulty Tenant's Equipment;
- (c) any accident or damage to or loss of property or injury or death suffered by any person arising in or near the Premises by reason of any act, omission or default by the Tenant or the Tenant's Associates;
- (d) any accident or damage to or loss of property or injury or death suffered by any person from any cause arising by reason of the use of the Premises by the Tenant or the Tenant's Associates;
- (e) any accident or damage to or loss of property or injury or death suffered by any person from any cause arising by reason of the use of the Premises by members of the public but only to the extent that the Landlord (in its capacity as an Authority) would have been entitled to statutory protection in accordance with the *Civil Liability Act 2002 (NSW)* if the Premises had been dedicated as a public road; and

- (f) any Default.

19.4 Exception

A release or indemnity in clauses 19.2 and 19.3 does not apply to the extent that any Liability or accident, damage, injury or death is caused or contributed to by the negligence, or other wrongful act or default of the Landlord or the Landlord's employees, agents or contractors.

20. Costs, charges and expenses

20.1 Lease preparation costs

- (a) Subject to clause 20.1(b), the Tenant must pay the costs of the Landlord in relation to the negotiation (if any), preparation and execution of this Lease.
- (b) The Landlord will accept from the Tenant's solicitors a certification that a lease is consistent with the form of pro-forma lease agreed between the Landlord and the Developer with the exception of amendments (if any) set out in the certification. The Tenant shall only be required to pay the reasonable legal costs of the Landlord in relation to:
 - (i) the negotiation (if any) of that lease; and
 - (ii) the review of the certification and the amendments (if any) set out in the certification.

20.2 Tenant's costs

The Tenant must promptly pay:

- (a) for everything it must do;
- (b) all stamp duty and registration fees in connection with this Lease;
- (c) all costs, charges and expenses which the Landlord becomes liable for arising out of any Default including all solicitors' and other consultants' fees on a full indemnity basis;
- (d) all reasonable costs incurred by the Landlord in relation to:
 - (i) any approval required (including any consultants' fees);
 - (ii) any actual or proposed assignment or subletting; and
 - (iii) any surrender or determination of this Lease other than by effluxion of time; and
- (e) all reasonable legal costs connected to the exercise or attempted exercise of any right or remedy by the Landlord in relation to a Default,

in connection with this Lease.

21. Dispute resolution

21.1 Reference to a dispute

If a dispute arises between the parties in relation to this Lease, then neither party may commence proceedings, except in compliance with this clause 21.

21.2 Notice of Dispute

The party wishing to commence the dispute resolution processes must notify the other in writing of:

- (a) the intent to invoke this clause;
- (b) the nature or subject matter of the dispute, including a summary of any efforts made to resolve the dispute other than by way of this clause; and
- (c) the outcomes which the notifying party wishes to achieve (if practicable).

21.3 Representatives of parties to meet

- (a) The representatives of the parties must promptly (and in any event within 20 Business Days of the written notice provided in accordance with clause 21.2) meet to attempt to resolve the notified dispute.
- (b) The parties may, without limitation:
 - (i) resolve the dispute during the course of that meeting;
 - (ii) agree that further material, expert opinion or consideration is needed to effectively resolve the dispute (in which event the parties will agree to a timetable for resolution);
 - (iii) agree that the parties are unlikely to resolve the dispute and, in good faith, agree a form of alternative dispute resolution (including expert determination, arbitration or mediation) which is appropriate for the resolution of the relevant dispute. Once the parties have agreed upon the alternative dispute resolution model, the parties must promptly engage the agreed person or body to adjudicate the dispute in accordance with the agreed model and adhere to the rules of dispute resolution imposed by that person or body.

21.4 Legal proceedings

If:

- (a) at least one meeting has been held in accordance with clause 21.3, or, the parties have failed to meet within the period prescribed in clause 21.3(a); and
- (b) the parties have been unable to reach an outcome identified in clause 21.3(b)(ii) to 21.3(b)(iii), within 30 Business Days of the date on which a notice is served in accordance with clause 21.2; and
- (c) either of the parties, acting in good faith, forms the view that the dispute is reasonably unlikely to be resolved in accordance with a process agreed under clause 21.3,
- (d) then, that party may, by 15 Business Days written notice to the other party, terminate the dispute resolution process in respect of the relevant dispute, and thereafter, commence legal proceedings.

21.5 Urgent interlocutory proceedings

At any time, a party may, without inconsistency with anything in this clause 21, seek urgent interlocutory relief in respect of a dispute under this Lease from any court having jurisdiction.

21.6 Continuing performance

Despite the parties being in dispute or taking steps to comply with this clause 21, the parties must continue to perform their respective obligations under this Lease in a timely manner (including those pre-existing obligations the subject of the dispute or disagreement to the extent possible).

22. Landlord ability to carry out maintenance or renewal if not adequately maintained or renewed

- (a) If the Tenant does not maintain or renew the Premises to the standard required under clause 11, the Landlord may carry out maintenance to or renewal of the Premises in place of the Tenant following compliance with clauses 12.1 and 12.2 (in the case of maintenance) and clauses 13.1 and 13.2 (in the case of renewal). Any costs incurred in complying with this clause must be reasonable and proper, and the Landlord must provide reasonable evidence of the costs incurred upon request by the Tenant. Subject to clause 22(b), the Tenant will pay such amount within 14 days of receipt of a tax invoice from the Landlord.
- (b) For the purposes of clauses 12.3 and 13.3, the Landlord is entitled to set off any money that the Landlord expends in carrying out maintenance or renewal in accordance with this clause 21 against the money to otherwise be contributed to the Tenant under clauses 12.3 and 13.3.
- (c) The Landlord releases the Tenant from all Claims that arise in connection with the Landlord exercising its rights under this clause 22.
- (d) The Landlord will carry out any maintenance or renewal work in a proper and workmanlike manner and in doing so will not cause any damage to the Premises. The Landlord will take particular care not to damage any Tenant's Equipment.
- (e) The Landlord indemnifies the Tenant against any damage to the Premises or the Tenant's Equipment to the extent caused or contributed to by the Landlord or its employees, agents or contractors in exercising the Landlord's rights under this clause 22. The Landlord's indemnity does not apply to the extent any damage is caused or contributed to by the Tenant or the Tenant's Associates.

23. Force Majeure

The Tenant is not required to comply with its obligations under this Lease to the extent that, and for so long as, a Force Majeure occurs.

24. Termination and procedures for termination

24.1 Significant breaches or event of Insolvency

In the case of:

- (a) an Insolvency Event by the Tenant; or
- (b) a Significant Breach of the Lease by the Tenant;

the Landlord may give the Tenant a notice requiring the Tenant to rectify that event/breach within a period that is reasonable in the circumstances, not to be less than 60 days (**Breach Notice**).

24.2 Further Breach Notice

If the Tenant does not rectify the event/breach within the period specified in the Breach Notice and the Tenant does not dispute the Breach Notice or otherwise initiate the dispute resolution process, then the Landlord may serve a further notice on the Tenant providing the Tenant with a further, and final, opportunity to rectify the relevant event/breach within such period as is reasonable in the circumstances, not to be less than one month (**Further Breach Notice**).

24.3 Termination

If the Tenant does not rectify the event/breach within the period specified in the Further Breach Notice and the Tenant does not contest the Further Breach Notice or otherwise initiate the dispute resolution process, the Landlord may terminate this Lease.

24.4 Force majeure

Despite clauses 24.2 and 24.3, the Tenant is not responsible for any failure to comply with the Breach Notice or Further Breach Notice, and the Landlord is not entitled to terminate this Lease under clause 23.3, due to any Force Majeure.

24.5 Dedication

If the Premises is a road, the Tenant acknowledges that if this Lease is terminated, the Landlord may dedicate the Premises as a road under the *Roads Act 1993 (NSW)*.

25. Notices

25.1 Form of Notices

Any notice or other communication required to be given by this Lease before a right can be exercised (notice) must be:

- (a) in legible writing;
- (b) signed by the party giving it (sender) or by its Authorised Officer; and
- (c) delivered by hand or sent by post (air mail if sent to an address in another country) to the relevant address set out in Item 1 or Item 2 (as applicable); or
- (d) sent to the relevant fax number or email set out in Item 1 or Item 2 (as applicable).

25.2 Change of Address

A party may change its address or fax number for the purpose of notices by giving notice of that change to each other party in accordance with the provisions of clause 25.1.

25.3 Service of Notices

Notices are taken to be given:

- (a) in the case of delivery by hand, when delivered;
- (b) in the case of delivery by post, on the fifth (ninth, if sent to an address in another country) day after the date of posting;
- (c) in the case of delivery by fax, at the time shown on a transmission report by the machine which sent the fax confirming the notice was sent (uninterrupted) in its entirety to the fax number of the recipient; and

- (d) in the case of delivery by email, when sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.

25.4 Timing of notices by fax

If a notice by fax is given:

- (a) on a day in which business is not generally carried on in the place in which the fax is received, or
- (b) after 5.00 pm (local time) on a day in which business is generally carried on in the place in which the fax is received,

the notice is given at the commencement of the next business day in the place in which the fax is received.

25.5 Email signing

For the purposes of clause 25.1(b), a notice by email is taken to be signed by the sender if the notice is in the form of a signed document in Portable Document Format (pdf) and attached to the email.

26. Miscellaneous

26.1 Exclusion of statutory provisions

The covenants powers and provisions implied in leases by virtue of sections 84, 85 and 86 of the Conveyancing Act 1919 (NSW) do not apply to this Lease.

26.2 Application of legislation

To the extent permitted by law, the application to this Lease of any moratorium or other Act, ordinance or the like, whether state or federal, having the effect of extending the Term, reducing or postponing any payments or otherwise affecting the operation of this Lease is expressly excluded.

26.3 Tenant to recognise superior or concurrent interest

The Tenant must permit any person having any interest in the Premises superior to or concurrent with the Landlord to exercise or perform that person's or the Landlord's rights and obligations under this Lease.

26.4 Landlord's statement prima facie evidence

In the absence of manifest error on its face, any statement by the Landlord or the Landlord's agent certifying the amount payable by the Tenant under any of the provisions of this Lease is prima facie evidence of the amount payable.

26.5 Tenant's Associates

The Tenant must ensure that the Tenant's Associates do not cause the Tenant to breach its obligations under this Lease. Any act or omission by the Tenant's Associates in connection with the Premises is taken to be an act or omission of the Tenant.

26.6 Entire agreement

This Lease:

- (a) records the entire agreement between the parties; and
- (b) supersedes all previous negotiations, understandings, representations and agreements,

in relation to the subject matter of this Lease.

26.7 Governing Law

This agreement is governed by the laws of New South Wales. The parties submit to the jurisdiction of its courts.

26.8 No waiver

The following provisions apply in respect of waiving rights under this Lease:

- (a) a party does not waive a right or remedy in connection with this Lease if it:
 - (i) fails to exercise its right or remedy;
 - (ii) only partially exercises the rights or remedy; or
 - (iii) delays in exercising the right or remedy;
- (b) a party which exercises a single right or remedy or partially exercises a right or remedy maintains its right to:
 - (i) further exercise the right or remedy; or
 - (ii) exercise another right or remedy; and
- (c) a waiver is effective only:
 - (i) to the extent that the party giving it expressly states in writing;
 - (ii) in the specific instance in which it is given; and
 - (iii) for the purpose for which it is given.

26.9 Variation

No provision of this Lease nor a right conferred by it can be varied except in writing signed by the parties.

26.10 Invalidity

The following provisions apply in respect of reading down or severing the provisions of this Lease:

- (a) a word or provision must be read down if:
 - (i) the Lease or provision is void, voidable, or unenforceable if it is not read down; and
 - (ii) the word or provision is capable of being read down;
- (b) a word or provision must be severed if, despite the operation of clause 26.10(a), the Lease or provision is void, voidable or unenforceable if the word or provision is not severed; and

- (c) the remainder of this Lease has full effect even if clause 26.10(b) applies.

26.11 Further Assurance

Each party must do everything necessary, or reasonably required, by another party, to give effect to this Lease and the transactions contemplated by this Lease.

26.12 No merger and survival

A party's right or obligation which is of a continuing nature or which is not fully satisfied and discharged on completion of any transaction contemplated by this Lease:

- (a) does not merge on completion of that transaction;
- (b) continues in favour of the party to which it is owed; and
- (c) remains in full effect.

Executed as a deed.

I certify that I am an eligible witness and that the person(s) signing opposite signed this dealing in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the person(s) named below who signed this dealing pursuant to the power of attorney specified.

Signature of witness

Signature of attorney

Name of witness

Attorney's Name:
Signing on behalf of: **[TENANT ENTITY]**
Power of Attorney Book:
No:

Address of witness

I certify that I am an eligible witness and that the person(s) signing opposite signed this dealing in my presence.

Certified correct for the purposes of the Real Property Act 1900 by the authorised officer named below.

Signature of witness

Signature of authorised officer

Name of witness

Name of authorised officer:
Authority of officer:
Signing on behalf of: Penrith City Council
ABN 43 794 422 563

Address of witness

Schedule 1 – Maintenance Standards

[Drafting Note: Insert per Agreement for Lease. The following are indicative standards only and will need to be tailored to the particular use of the Premises. Also attach indicative document entitled "Intervention Levels and Responses Times for the Activity Specifications which relates to road maintenance activities. Council to provide]

The following asset classes will require future maintenance –

- Local and Park Edge Streets
- Town Centre Core
- Open Space
- Wetlands / Detention Basins
- Community Urban Garden
- Structured Sport and Recreation
- Regional Play
- Landscape Buffer to Luddenham Road
- Pedestrian / Cycle network

Grass Mowing

- Prior to grass mowing, all loose litter, rubbish or debris is removed for the area to avoid possible injury to persons or damage to plant.
- Mowing of the grass to set heights with the grass clippings being evenly distributed over the whole area
- Trimming of all grassed edges and the cleaning off the sealed areas (e.g. pathway)

Sportsfields

- "summer" sporting fields at 25-50mm on each visit. Typically cut on a weekly basis.
- open space" areas at 50-75mm on each visit
- Frequency at cuts varies at different sites based on profile and priority
- On sporting fields no windrows or debris should remain after grass cutting operations
- On open space areas no windrows or piles of grass clippings in excess of 50-60mm should remain after grass cutting operations
- No rubbish, litter or debris during or immediately after grass cutting operations
- No permanent wheel indentations or other damage caused by machinery or equipment used shall remain after works on sporting fields
- Fields are to remain closed during the mowing operation

Winter Sportsfields

- “winter” sporting fields (Sports 2 cut) at 40-60mm on each visit
- “open space” areas at 50-75mm on each visit
- Frequency of cuts vary at different sites
- On sporting fields no windrows or debris should remain after grass cutting operations
- On open space areas no windrows or piles of grass clippings in excess of 50-60mm should remain after grass cutting operations
- No rubbish, litter or debris during or immediately after grass cutting operations
- No permanent wheel indentations or other damage caused by machinery or equipment used shall remain after works on sporting fields
- Fields are to remain closed during the mowing operation

Topsoiling

- This activity , sometimes referred to as topdressing, removes any uneven surfaces, provides a level sporting fields surface, in addition to enhancing grass/turf growth
- All sporting field surfaces remain level to suit the sporting activity played upon , and any areas ponding water are eliminated
- Only topsoil conforming to AS4419-2003 “Soils for Landscaping and Garden Use” shall be used
- At the completion of the top soiling activity all surplus materials and other items shall be removed from the site, ensuring no wheel marks, etc remain.

Weed Management

- This activity covers the spraying of herbicide or related treatment such as hand weeding and hot water or direct chemical application to provide a weed free surface area to recreational sporting field surfaces, open space areas, along boundary fences of Council properties, around park furniture and landscaped area edging.
- Weed treatment shall be carried out within 28 days of the weed growth attracting a complaint from adjacent landowners, staff notification, sports grounds or open space area users.
- All 'chemical spraying' personnel have appropriate training.
- No concerns or complaints from the public about herbicides spray "drifts" or equivalent

Landscaping

- Garden and landscaping maintenance is required to keep areas, which are not mown or retained as natural areas, visually attractive in appearance and to promote optimum growth of the plants and shrubs.
- Any observed deteriorating condition of a garden or landscaped area, shall be addressed within 30 working days of notification.
- Adopted "intervention level" requiring maintenance attention shall be 5% pest or weed invasion of a garden or landscaped area, intrusion of rubbish on the area, or constituting a health or environmental hazard.
- No adjacent paved areas shall have any surplus materials or rubbish left upon it, upon completion of the landscaping maintenance work.

Wetlands Maintenance

This activity aims to ensure that the natural areas, including native bush and wetland areas, are preserved as a natural area for the community's benefit.

The work includes:-

a) Wetland Areas (Terrestrial Areas)

- Monitoring water levels, any erosion or structural damage, mosquito larvae and algae blooms

- Managing the plant diversity (e.g. limited growth of Typha)
- Weed control
- Pest and disease control

Litter Management

This activity aims to provide a litter free, visually pleasing, healthy and safe active recreation and open space areas for users.

This activity covers emptying of all litter collection (except for dead animals) and proper disposal of the litter collected (either by recycling or legal tipping).

This work includes:-

- Collecting litter bins from sporting grounds and other nominated sites, and emptying them into "garbage compactor" vehicle
- At certain sites the bins are locked in buildings, etc so bins needs moving for litter emptying
- Any litter within 2 metres of a bin is also collected
- The litter/rubbish collected is disposed of at an approved waste transfer depot.
- Replacing damaged or missing locks on all litter bins

Irrigation Maintenance

This activity is to provide the necessary maintenance to irrigation system equipment to ensure the timely delivery of a full coverage of water to the areas (e.g. sporting field) in order to maintain the good health of the vegetation and to ensure adequate moisture regimes.

This activity covers the maintenance of irrigation systems equipment in parks, sports grounds, landscaped areas, gardens and other open space areas.

- Ideally, all watering systems shall provide 25mm of coverage on sporting field playing surfaces per week.
- Ensure that all heads for pop-up, fixed sprays and dripper sprinklers are unobstructed in order to provide full water distribution
- Inspections to be carried out by trained personnel at least twice a year to ensure system is operating to required standard
- Ensure no damage to sprinkler heads or equipment, and that the sprinkler heads are level with adjacent grassed surface.
- All irrigation systems using potable water supplied by Sydney Water, shall fully comply with the Water Restriction regulations.

Sportsfield Lighting

This activity is to ensure that field floodlighting and park lighting is provided at a high standard for staging sporting events and training on the sports fields. It also is required to provide a safe and secure environment for parks and recreation area users at night.

- Lighting for all sporting fields be maintained to a minimum level of 100 lux (training and safety level)
- Lighting for outdoor public areas within "parks" areas conform with Category C of AS 158 (SAA Public Lighting Code)
- Low level of sporting field lighting preventing sports activities and evidence of short circuit, bare wires, arcing and other unsafe situation will be responded to within 5 working days
- Low level of other recreation lighting affecting usage, safety of users, and evidence of short circuit, bare wires, arcing and other unsafe situation will be responded to within 10 working days

When notified of a possible unsafe situation caused by “park” lighting, the emergency callout procedures will be used to shut the electrical power off and make the area safe to the public

Park Furniture

Park furniture is provided to ensure the comfort, protection and safety of active recreation and open space area users. Repairs are necessary to maintain the use of the facility and reduce the risk of injury to users caused by unsafe park furniture.

This activity covers the inspection and maintenance of park furniture such as seats, tables, shelters, barbecuing equipment, monuments and plaques, bubblers and taps, to ensure they continue to provide the function for which they were installed. Frequency of inspection is determined by location and level of facility utilisation. BBQ facilities cleaned daily.

Signage

Signage is provided on sports grounds and open space areas to provide necessary information to the users of that facility.

This activity covers the inspection and maintenance of this signage to ensure they continue to provide the function for which they were installed.

The work includes:-

- Routine Inspections
- Inspections and appropriate action on any complaints concerning ‘park’ signage
- Recommending any additional signage that could assist the users of the facility and/or the council.

Maintenance on existing signage to ensure they remain in a high quality standard and appearance

Playgrounds

This activity is to ensure that maintenance of playground equipment and associated soft fall area, is carried out to minimize the risk of equipment failure or injury occurring and to provide a continuing high level of operation and safety for playground users.

- The "mowing" crew's routine visual inspection is conducted as per schedule (daily, weekly, monthly) to identify obvious hazards ,e.g. damaged parts, presence of broken bottles or loss of soft fall mulch
- Technical inspections check equipment safety (e.g. Loose nuts and bolts, worn moving parts) as well as its foundations and surfaces (e.g. presence of rust).
- Playground areas must be made safe as soon as possible after notification of an unsafe situation. The action must be carried out within 1 working day.
- Provide temporary closure, with flexible mesh safety fencing or equivalent, any item of playground equipment found to be unsafe pending a decision by the Asset Co-coordinator on repair, remove and/or replace.
- Remove all foreign debris from soft fall areas, and ensure the soft fall material is evenly distributed under the play equipment

Skate Parks

This activity aims to ensure that maintenance of the skate "bowls" and skate facilities is carried out to minimize the risk of injury occurring and to provide a continuing high level of operation and safety for the skate "bowls" and skate park facility users. Bowl cleaning and inspection undertaken on a daily basis.

This activity covers the reporting of safety issues relating to the skate "bowls" and skate park facilities. Maintenance of the skating surface and surrounds are carried out by the Asset Management Department in accordance with the Community Management Safety Plan (Stage 1).

Schedule 2 - Asset Renewal Plan

Schedule 3 - Landlord's Property

Schedule 4 - Tenant's Equipment

Annexure B – Tenant Nomination Notice

To Penrith City Council
601 High Street, Penrith NSW 2750
(Council)

Notice is given by Celestino Developments SSP Pty Limited ACN 607 351 842 (**Developer**) to the Council under the Agreement for Lease dated *[insert]* between the Council and the Developer (**Agreement**) that the Developer nominates *[insert Tenant name]* (**Tenant**) to be the Tenant under the Lease.

Capitalised terms are defined in the Agreement.

DATED this _____ day of _____ 20____

[Insert execution clause of Developer]

If the Council accepts this Tenant Nomination Notice, I the Tenant am bound by the terms of the Agreement in accordance with clause 2(b) of the Agreement.

[Insert execution clause of Tenant]

The Tenant's address for service is *[insert address]*.

Contact name _____

Address _____

Phone _____

Fax _____

