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Gore Hill Technology Business Park Development Planning Agreement

Willoughby City Council

Lindsay Bennelong Developments Pty Limited

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Parties

1. **Willoughby City Council** (ABN 47 974 826 099) of Level 4, 31 Victor Street, Chatswood, New South Wales (**Council**); and
2. **Lindsay Bennelong Developments Pty Limited** (ACN 002 133 931) of 21 Solent Circuit, Baulkham Hills, New South Wales (**Developer**).

Recitals

- A The Developer lodged a Development Application to carry out the Development.
- B The Development Application was accompanied by a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act which excludes the application of sections 94 and 94A (but not the application of section 94EF) of the Act to the Development.
- C Council granted Development Consent to the Development. A condition of the Development Consent required the Parties to enter into the planning agreement.
- D On 13 August 2010, the Parties executed a deed which was a planning agreement (**Original Planning Agreement**).
- E The Developer has partially completed the Development in compliance with the Development Consent and the planning agreement. The Developer has lodged a planning proposal (**Planning Proposal**) in respect of the remainder of the Development (**Remainder**), which requires a new planning agreement.
- F The Planning Proposal seeks rezoning of Lot 5 and Lot 6 to B7 Business Park, additional gross floor area and seeks a height increase for the whole of Lot 6 to RL 136.
- G This deed amends the Original Planning Agreement insofar as it relates to the Community Sporting and Recreation Facility.

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It is agreed as follows.

PART 1 – Formal Matters

1. Definitions and interpretation

1.1 Dictionary

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

Act means the *Environmental Planning & Assessment Act 1979* (NSW).

Australian Standards means any current applicable standard published by Standards Australia International Limited trading as Standards Australia.

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

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

Business Hours means 6 am to 6 pm on a Business Day.

Car Park Works means the works required to provide the car parking requirements set out in clause 14

Commencement Date means **[Date of execution of this deed]**.

Community Sporting and Recreation Facility Works means the works described in Annexure D.

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

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

CPI means the Consumer Price Index (All Groups Index) for Sydney as published by the Australian Bureau of Statistics.

Default Notice has the meaning given in clause 4.1.

Development means the development as described in Development Application 2008/42, as modified from time to time, being the use of the Land for the purposes of a high technology business park.

Development Application means an application for Development Consent under Part 4 of the Act to carry out the Development.

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Development Consent means consent to Development Application 2008/42, as modified from time to time.

Development Contributions has the meaning given in clause 9(a).

Disability Discrimination Act means the *Disability Discrimination Act 1992* (Cth)

Discretion has the meaning given in clause 1.2.

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

GFA means gross floor area as defined under the LEP.

Independent Certifier means an appropriately qualified and experienced property professional who is a member or is eligible to be a member of an appropriate professional association and who has been approved by Council (which approval must not be unreasonably withheld or delayed) prior to engagement by the Developer.

Index means the CPI, but if that index ceases to be published, such other index as Council and the Developer may agree or, failing agreement, as determined under clause 5.

Land means Lots 1 to 6 in Deposited Plan 270714 as shown on the Plan.

Law means the relevant requirements of all statutes, rules, ordinances, regulations, proclamations, by-laws or consents issued by an Authority, present or future, including applicable principles of common law.

LEADR means the body known as LEADR being Lawyers Engaged in Alternative Dispute Resolution or any body which substantially replaces it.

LEP means the *Willoughby Local Environmental Plan 2012*.

LG Act means the *Local Government Act 1993* (NSW).

Local Government Area means an area proclaimed under section 204(1) of the LG Act.

Option Land means the land described in clause 10.3(b).

Original Planning Agreement means the planning agreement attached to the Development as current at the date of this deed.

Owner means Gore Hill Developments No 1 Pty Limited (ACN 124 879 367), Gore Hill Developments No 2 Pty Limited (ACN 124 879 465) and Gore Hill Developments No 3 Pty Limited (ACN 124 879 536) and their successors or assigns.

Plan means the plan which is attached in Annexure A.

Part means a Part of this deed.

Party means a party to this deed. **Parties** has a corresponding meaning.

Practical Completion means the practical completion of works as set out in clause 15.

Register means the Torrens title register maintained by the Registrar General under the *Real Property Act 1900* (NSW).

Remainder means the remainder of the Development as described in Development Application 2008/42, as modified from time to time, being the use of the Land for the purposes of a high technology business park.

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Related Body Corporate has the same meaning given to that term in the *Corporations Act 2001* (Cth).

Representatives has the meaning given to that term in clause 5.1.

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

State Government means the government of the State, including its elected and appointed representatives.

Works means the construction of the Community Sporting and Recreation Facility.

Works Completion Date means the date for completion of an item of Work as set out in Annexure D.

1.2 Deed does not fetter discretion

- (a) This deed is not intended to operate to fetter, in any unlawful manner:
 - (i) the power of Council to make any Law; or
 - (ii) the exercise by Council of any statutory power or discretion,(all referred to in this deed as a **Discretion**).
- (b) No provision of this deed is intended to, or does, constitute any unlawful fetter on any Discretion. If, contrary to the operation of this clause, any provision of this deed is held by a court of competent jurisdiction to constitute an unlawful fetter on any Discretion, the Parties agree:
 - (i) they will take all practical steps, including the execution of any further documents, to ensure the objective of this clause 1.2 is substantially satisfied; and
 - (ii) in the event that clause 1.2(b)(i) cannot be achieved without giving rise to an unlawful fetter on a Discretion, the relevant provision is to be severed and the remainder of this deed has full force and effect; and
 - (iii) to endeavour to satisfy the common objectives of the Parties in relation to the provision of this deed which is held to be an unlawful fetter to the extent that is possible having regard to the relevant court judgment.
- (c) Where a Law permits Council to contract out of a provision or gives Council power to exercise a Discretion, then if Council has in this deed contracted out of a provision or exercised a Discretion under this deed, then to that extent this deed is not to be taken to be inconsistent with that Law.

1.3 Interpretation Act 1987

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

1.4 Annexures, headings and textual notes

- (a) The Annexures form part of this deed.

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

1.5 Subject to applicable Laws

This deed is to be read and performed subject to any law, which relates to the subject matter of this deed, and any act, matter or thing which is required or forbidden to be done by such a Law does not constitute a breach of this deed even if it is contrary to this deed.

1.6 Compliance with Laws

If a Law is changed or a new Law comes into force (both referred to as **New Law**) and the Developer is obliged by the New Law to:

- (a) do something or pay an amount which it is already contractually obliged to do or pay under this deed then, to the extent only that the relevant obligation is required under both the New Law and this deed, compliance with the New Law will constitute compliance with the relevant obligation under this deed; or
- (b) make a further contribution not contemplated by this deed, the Developer may subject to clause 1.2, require that the provisions of this deed and the contributions to be made under it be taken into account in the assessment of that further contribution.

1.7 Conflicting interpretations

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

- (a) is consistent with clause 1.2 ; and
- (b) best meets the purposes of this deed,

is to be preferred.

1.8 Severance of invalid provisions

Subject to clause 1.2, if a provision of this deed is declared to be invalid by a court, the remainder of this deed will, to the fullest extent possible, be read and performed as if the invalid provision did not form part of this deed.

1.9 Several liability

Any entity or entities comprising the Developer are each severally liable only for their respective proportional share of the Developer interests (including rights and obligations) under this deed.

1.10 Approvals and consents

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

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1.11 Indexation of amounts payable by the Parties

All amounts referred to in this deed are to be increased (with the calculation to be made as from the date any such amount is due to be paid under this deed) in accordance with increases in the Index in accordance with the following formula:

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

where:

- A** = the indexed amount;
- B** = the relevant amount as set out in this deed;
- C** = the Index most recently published before the date that the relevant payment or the calculation with respect to the relevant amount is to be made; and
- D** = the Index most recently published before the Commencement Date.

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

1.12 Effect of this deed

- (a) The Parties agree that this deed is a planning agreement governed by Subdivision 2 of Division 6 of Part 4 of the Act which excludes the application of sections 94 and 94A (but not the application of section 94EF) of the Act to the Development.
- (b) This deed applies to the Remainder.
- (c) Any explanatory note prepared in relation to this deed is not to be used to assist in construing this deed.

1.13 Developer and the Land

The Developer warrants in favour of the Council that it is authorised by the Owner to enter into this deed and carry out the Development of the Land.

2. Commencement, term and amendment of this deed

2.1 Commencement of this deed

This deed commences on the Commencement Date.

2.2 Term of this deed

This deed will remain in force from the Commencement Date until:

- (a) it is terminated by operation of Law; or
- (b) all obligations are performed or satisfied.

2.3 Amendment of this deed

The Parties agree that, subject to section 93G of the Act, this deed can be reviewed and amended at any time by mutual agreement.

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2.4 Effect of this deed on the Original Planning Agreement

On commencement of this deed the Parties agree that all the obligations under the Original Planning Agreement have been performed and satisfied.

3. Confidentiality and public announcements

3.1 This deed not confidential

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

3.2 Other information confidential

- (a) The Parties acknowledge that:
 - (i) Confidential Information may have been supplied to some or all of the Parties in the negotiations leading up to the making of this deed; and
 - (ii) the Parties may disclose to each other further Confidential Information in connection with the subject matter of this deed.
- (b) Subject to paragraphs (c) and (d), each Party agrees:
 - (i) not to disclose any Confidential Information received before or after the making of this deed to any person without the prior written consent of the Party who supplied the Confidential Information; and
 - (ii) to take all reasonable steps to ensure all Confidential Information received before or after the making of this deed is kept confidential and protected against unauthorised use and access.
- (c) A Party may disclose Confidential Information in the following circumstances:
 - (i) in order to comply with the Law, State Government policy or local government policy or any listing rule; or
 - (ii) to any of their employees, consultants, advisers, financiers or contractors to whom it is considered necessary to disclose the information, if the employees, consultants, advisers, financiers or contractors undertake to keep the information confidential.
- (d) The obligations of confidentiality under this clause do not extend to information which is public knowledge other than as a result of a breach of this clause.

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4. Default

4.1 Notice of default

In the event a Party considers another Party has failed to perform and fulfil an obligation under this deed, before it takes any action it must give notice in writing to that Party (**Default Notice**) giving full particulars of the matters in respect of which it considers default has occurred and by such notice require the default to be remedied within a reasonable time not being less than 20 Business Days.

4.2 Reasonable time

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

4.3 Suspension of time – dispute

If a Party, as it is entitled to do, refers the Default Notice to dispute resolution, clause 5.2 will apply.

5. Dispute resolution

5.1 Notice of dispute

If a dispute or lack of certainty between the Parties arises in connection with this deed or its subject matter (a **dispute**), then either Party (the **First Party**) must give to the other (the **Second Party**) a notice of dispute in writing adequately identifying and providing details of the dispute and designating as its representative a person to negotiate the dispute. The Second Party must, within 5 Business Days of service of the notice of dispute, provide a notice to the First Party designating as its representative a person to negotiate the Dispute (the representatives designated by the Parties being together, the **Representatives**).

5.2 Conduct pending resolution

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

5.3 Further steps required before proceedings

Subject to clause 5.14 and except as otherwise expressly provided in this deed, any dispute between the Parties arising in connection with this deed or its subject matter must, as a condition precedent to the commencement of litigation, mediation under clause 5.5 or determination by an expert under clause 5.6, first be referred to the Representatives. The Representatives must endeavour to resolve the dispute within 5 Business Days.

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5.4 Disputes for mediation or expert determination

If the Representatives have not been able to resolve the dispute, then the Parties must agree within 5 Business Days to either refer the matter to mediation under clause 5.5 or expert resolution under clause 5.6.

5.5 Disputes for mediation

- (a) If the Parties agree in accordance with clause 5.4 to refer the dispute to mediation, the mediation must be conducted by a mediator agreed by the Parties and, if the Parties cannot agree within 5 Business Days, then by a mediator appointed by LEADR.
- (b) If the mediation referred to in paragraph (a) has not resulted in settlement of the dispute and has been terminated, the Parties may agree to have the matter determined by expert determination under clause 5.6.

5.6 Choice of expert

- (a) If the Parties agree to have the matter determined by expert determination, this clause 5.6 applies.
- (b) The dispute must be determined by an independent expert in the relevant field:
 - (i) agreed between and appointed jointly by the Parties; or
 - (ii) in the absence of agreement within 5 Business Days after the date that the Parties agree to have the matter determined by expert determination, appointed by the President or other senior officer for the time being of the body administering or expert in the relevant field.
- (c) If the Parties fail to agree as to the relevant field within 5 Business Days after the Parties agree to have the matter determined by expert determination, either Party may at any time refer the matter to the President of the New South Wales Bar Association (or the President's nominee) whose decision as to the relevant field is final and binding on the Parties.
- (d) The expert appointed to determine a dispute:
 - (i) must have a technical understanding of the issues in dispute;
 - (ii) must not have a significantly greater understanding of one Party's business, functions or operations which might allow the other side to construe this greater understanding as a bias; and
 - (iii) must inform the Parties before being appointed of the extent of the expert's understanding of each Party's business or operations and, if that information indicates a possible bias, then that expert must not be appointed except with the written approval of the Parties.
- (e) The Parties must promptly enter into an agreement with the expert appointed under this clause 5.6 setting out the terms of the expert's determination and the fees payable to the expert.

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5.7 Directions to expert

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- (a) In reaching a determination in respect of a dispute under clause 5.6, the independent expert must give effect to the intent of the Parties entering into this deed and the purposes of this deed.
 - (b) The expert must:
 - (i) act as an expert and not as an arbitrator;
 - (ii) proceed in any manner as the expert thinks fit without being bound to observe the rules of natural justice or the rules of evidence;
 - (iii) not accept verbal submissions unless both Parties are present;
 - (iv) on receipt of a written submission from one Party, ensure that a copy of that submission is given promptly to the other Party;
 - (v) take into consideration all documents, information and other material which the Parties give the expert which the expert in its absolute discretion considers relevant to the determination of the dispute;
 - (vi) not be expected or required to obtain or refer to any other documents, information or material (but may do so if the expert so wishes);
 - (vii) issue a draft certificate stating the expert's intended determination (together with written reasons), giving each Party 10 Business Days to make further submissions;
 - (viii) issue a final certificate stating the expert's determination (together with written reasons); and
 - (ix) act with expedition with a view to issuing the final certificate as soon as practicable.
 - (c) The Parties must comply with all directions given by the expert in relation to the resolution of the dispute and must within the time period specified by the expert, give the expert:
 - (i) a short statement of facts;
 - (ii) a description of the dispute; and
 - (iii) any other documents, records or information which the expert requests.

5.8 Expert may commission reports

- (a) Subject to paragraph (b):
 - (i) the expert may commission the expert's own advisers or consultants (including lawyers, accountants, bankers, engineers, surveyors or other technical consultants) to provide information to assist the expert in making a determination; and
 - (ii) the Parties must indemnify the expert for the cost of those advisers or consultants in accordance with clause 5.6(e) of this deed.
- (b) The Parties must approve the costs of those advisers or consultants in writing prior to the expert engaging those advisers or consultants.

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5.9 Expert may convene meetings

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

5.10 Other courses of action

If:

- (a) the Parties cannot agree in accordance with clause 5.4 to refer the matter to mediation or determination by an expert; or
- (b) the mediation referred to in clause 5.5 has not resulted in settlement of the dispute and has been terminated and the Parties have not agreed to refer the matter to expert determination within 5 Business Days after termination of the mediation;

then either Party may take whatever course of action it deems appropriate for the purpose of resolving the dispute.

5.11 Confidentiality of information provided in dispute resolution process

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

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

5.12 Final determination of expert

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

5.13 Costs

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

5.14 Urgent relief

This clause 5 does not prevent a Party from seeking urgent injunctive or declaratory relief.

6. Dealings with this deed

6.1 Assignment

Until the completion of the Development, the Developer cannot assign, novate, charge, encumber or otherwise deal with its rights and obligations under this deed, or attempt or purport to do so unless the Developer:

- (a) gives Council no less than 10 Business Days notice in writing of the proposed assignment, charge, encumbrance or novation of its rights or obligations under this deed;
- (b) procures that the assignee or novatee provides to Council replacement security in favour of Council, in a form reasonably satisfactory to Council, in place of any such security provided by, or required to be provided by, the Developer which has not then been released; and
- (c) the Developer procures that any assignee or novatee of the Developer's rights and obligations under this deed promptly executes a deed in favour of Council whereby:
 - (i) the assignee or novatee becomes contractually bound with Council to perform the Developer's obligations and have the benefit of the Developer's rights under this deed; and
 - (ii) the assignor or the novator (as the case may be) is released from its obligations under this deed.

6.2 Consequences of assignment

Within 10 Business Days of the Developer complying with its obligations under clause 6.1, Council must execute and return to the Developer the deed referred to in clause 6.1(c) so that the Developer is released from its obligations under this deed.

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6.3 Related Body Corporate

Despite clause 6.1, the Developer may assign its rights and obligations under this deed to a Related Body Corporate of the Developer without obtaining Council's consent, but notice of the assignment must be given to Council.

7. GST

7.1 Definitions

In this clause:

Adjustment Note has the meaning given by the GST Law.

Consideration has the meaning given by the GST Law.

GST has the meaning given by the GST Law.

GST Amount means in relation to a Taxable Supply the amount of GST payable in respect of the Taxable Supply.

GST Group has the meaning given by the GST Law.

GST Law has the meaning given by the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Input Tax Credit has the meaning given by the GST Law and a reference to an Input Tax Credit entitlement of a Party includes an Input Tax Credit for an acquisition made by that Party but to which another member of the same GST Group is entitled under the GST Law.

Margin Scheme has the meaning given by the GST Law.

Taxable Supply has the meaning given by the GST Law excluding the reference to section 84-5 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and (except where expressly agreed otherwise) excluding a supply in respect of which the supplier chooses to apply the Margin Scheme in working out the amount of GST on that supply.

Tax Invoice has the meaning given by the GST Law.

7.2 GST to be added to amounts payable

If GST is payable on a Taxable Supply made under, by reference to or in connection with this deed, the Party providing the Consideration for that Taxable Supply must also pay the GST Amount as additional Consideration. This clause does not apply to the extent that the Consideration for the Taxable Supply is expressly agreed to be GST inclusive. Unless otherwise expressly stated, prices or other sums payable or Consideration to be provided under or in accordance with this deed are exclusive of GST.

7.3 Tax Invoice and Adjustment Note

No payment of any amount pursuant to this deed, and no payment of the GST Amount where the Consideration for the Taxable Supply is expressly agreed to be GST inclusive, is required until the supplier has provided a Tax Invoice or Adjustment Note (as the case may be) to the recipient.

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7.4 Liability net of GST

Any reference in the calculation of Consideration or of any indemnity, reimbursement or similar amount to a cost, expense or other liability incurred by a Party, must exclude the amount of any Input Tax Credit entitlement of that Party in relation to the relevant cost, expense or other liability.

7.5 GST obligations to survive termination

This clause will continue to apply after expiration or termination of this deed.

8. Miscellaneous

8.1 Choice of Law

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

8.2 Further assurance

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

8.3 Force Majeure

- (a) In this clause 8.3, **force majeure**, means any physical or material restraint beyond the reasonable control of the Party claiming the force majeure and includes, without limitation, fire or industrial disputes.
- (b) If a Party is unable by reason of force majeure to carry out wholly or in part its obligations under this deed (other than an obligation to transfer land or make a payment), it must:
 - (i) give to the other Party prompt notice of the force majeure with reasonably full particulars; and
 - (ii) suggest an alternative method, if any, of satisfying its obligations under this deed.
- (c) If a Party is unable to satisfy its obligations under this deed by an alternative method, the obligations of the Parties so far as they are affected by the force majeure are then suspended during continuance of the force majeure and any further period as may be reasonable in the circumstances.
- (d) The Party giving such notice under this clause must use all reasonable effort and diligence to remove the force majeure or ameliorate its effects as quickly as practicable.
- (e) The Parties agree that any costs associated in ameliorating a force majeure event will be apportioned, if necessary, in such manner as may be fair and reasonable.
- (f) The Parties agree that this force majeure provision does not apply to an obligation of a Party to transfer land or to pay money.
- (g) If the Parties are unable to agree on the existence of an event of force majeure or the period during which the obligations of the Parties are suspended during the continuance of the force majeure, that dispute must be referred for determination under clause 5.

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8.4 Notices

Any notice, request, demand, consent or other communication given or made under this deed:

- (a) must be in writing and signed by the sender or the person duly authorised by the sender;
- (b) must be addressed and delivered to the intended recipient at the address or fax number below or the address or fax number last notified by the intended recipient to the sender after the date of this deed:

- (i) to Council Willoughby City Council
PO Box 57
Chatswood NSW 2057
Fax No.(02) 9411 8309

- (ii) to the Developer Lindsay Bennelong Developments Pty Limited
PO Box 7105
Baulkham Hills BC, NSW 2153
Fax No.(02) 9841 0300

- (c) will be taken to be duly given or made when delivered, received, or left at the above address or fax number. If delivery or receipt occurs on a day that is not a Business Day in the place to which the notice is sent or is later than 4pm (local time) at that place, it will be taken to have been duly given or made at the commencement of business on the next Business Day in that place.

PART 2 – The rights and obligations of Council and the Developer

9. Development Contributions

- (a) In accordance with this deed, the Parties agree that the Developer must:
- (i) undertake the Community Sporting and Recreation Facility Works [**Allens note: Annexure D now references a proposed layout for the sports facilities and spaces that can be used for other permanent or temporary facilities such as a café, community centre or retail space**] in accordance with clause 13; and
 - (ii) undertake the Car Park Works in accordance with clause 14
- (together, the **Development Contributions**).
- (b) The Contributions and obligations imposed on the Developer in this deed are in place of and exclude the application of sections 94 and 94A (but not the application of section 94EF) of the Act to the Development.

10. Transfer of the Sports Amenities Lots

10.1 Transfer of Title

[Allens note: clause subject to review by WCC]

- (a) The Developer has agreed to build on part of Lot 6 of the Land:
- (i) the Community Sporting and Recreation Facility described in clause 13; and
 - (ii) the car parking for the Community Sporting and Recreation Facility described in clause 14,
- (together the **Sports Amenities**)
- (b) The Owner agrees to register the title for the Sports Amenities as separate stratum in Lot 6 of the Land (the **Sports Amenities Lots**).
- (c) The Owner agrees to transfer of title of the Sports Amenities Lots to Council.
- (d) Completion of the transfer of title of the Sports Amenities Lots will be subject to the title the Sports Amenities Lots being registered. The Owner will use its best endeavours to have the title in the Sports Amenities Lots registered within a reasonable time from completion of the Sports Amenities.
- (e) At any time after Practical Completion of the Sports Amenities and prior to completion of the transfer of title of the Sports Amenities Lots; Council may request and the Owner shall grant, on terms mutually agreeable to the parties, an irrevocable licence permitting Council occupy and operate the Sports Amenities.
- (f) The Owner and the Developer will not be liable for any claim, loss or damage of Council arising from any delay to completion of the transfer of title of the Sports Amenities Lots.

Planning Agreement

10.2 Use and dealings with the Sports Amenities Lots

- DRAFT**
- (a) Council agrees that the Sports Amenities Lots will be used for the purpose of a sport and recreation facility, community centre and car parking in accordance with this deed for a minimum period of 20 years from the date of the issue of a final occupation certificate for the sport and recreation facility described in 13.1.
 - (b) Council agrees that any lease or licence of any part of the Sports Amenities Lots will be consistent with and not detract from the Sports Amenities Lots being used for the purpose of a community sporting and recreation facility.
 - (c) Council agrees to not sell, exchange or otherwise dispose of all or any part of the Sports Amenities Lots for a period of 20 years from the date of the issue of a final occupation certificate for the sport and recreation facility described in 13.1.
 - (d) Council agrees to execute any reasonable documents that the Developer or Owner may require to permit either to register over the Sports Amenities Lots a document which further records the rights granted to them by this clause.
 - (e) The Developer or Owner may lodge a caveat against the Sports Amenities Lots in relation to the rights granted under this clause.
 - (f) A caveat lodged in accordance with clause 10.2(e) will lapse upon 20 years from the date it is registered.

10.3 Option Land

- (a) If the Developer has not completed the Sports Amenities within the time required by Annexure D the Owner agrees to grant to Council for the sum of \$1 a call option for the purchase of the Option Land (**Option Land Call**).
- (b) The Option Land is:
 - (i) the freehold title of Lot 3 (the call option in respect of this land expires on the completion of the sale of the freehold title of Lot 3);
 - (ii) the freehold title of Lot 61 (as shown on the Plan in Annexure A) (the call option in respect of this land commences on the date of completion of the sale of the freehold title of Lot 3 and expires on the date of registration of the stratum title for the car park to the Community Sporting and Recreation Facility); and
 - (iii) the stratum title for the car park for the Community Sporting and Recreation Facility (the call option in respect of this land commences on the date of registration of the stratum title of the car parking for the Community Sporting and Recreation Facility and expires on completion of the transfer of title of the Sports Amenities Lots under clause 10 of this deed).
- (c) Council agrees to grant to the Owner for the sum of \$1 a put option to require the Council to purchase the Option Land (**Option Land Put**).
- (d) Council may exercise the Option Land Call and accept the Option Land within 18 months of the issue of a certificate of Practical Completion by the Independent Certifier for the final building erected by the Developer pursuant to the Development Consent.

Planning Agreement

- (e) The Owner may exercise the Option Land Put at any time within the period of 1 month of the expiration of the time provided by clause 10.3(d).

10.4 Use and dealings with the Option Land

- (a) [Allens note: does LBD require restrictions on the use of the Option Land after exercise of the option for example will:

- Council be able to do what it likes with the land or must it use it as per the Development Consent; or
- should the proceeds of sale of the Option Land be put towards the Sports Facility?]

10.5 Fees

Council must pay: [Allens Note: WCC reviewing stamp duty costs]

- (a) all stamp duty costs of the Owner in relation to the transfer of the title to Council of the Option Land and/or the Sports Amenities Lots; and
- (b) all reasonable ongoing fees associated with the title to the Option Land and/or Sports Amenities Lots, including any community levies, as assessed by a suitably qualified expert.

11. Not used

Not used.

12. Not used

Not used.

13. Community Sporting and Recreation Facility

13.1 Community Sporting and Recreation Facility Works

The Developer must procure the construction of the Community Sporting and Recreation Facility Works in accordance with the specifications and within the timeframe set out in Annexure D.

[Allens note: Annexure D now references a proposed layout for the sports facilities and spaces that can be used for other permanent or temporary facilities such as a café, community centre or retail space.]

13.2 Fit Out and Equipment

- (a) Council is responsible for the procurement of the design and fit out and all associated costs, except as provided in Annexure D.
- (b) Council is responsible for the provision and installation of all equipment used in the Community Sporting and Recreation Facility.

Planning Agreement

13.3 Fees

Council must pay all ongoing fees associated with the Community Sporting and Recreation Facility.

13.4 Gross Floor Area

Council agrees that the GFA of the Community Sporting and Recreation Facility must not be taken into account in relation to the calculation of the total gross floor area of the **Remainder**.

14. Car Parking for the Community Sporting and Recreation Facility

14.1 Car spaces

The Developer must design and build 177 car parking spaces on Lot 6 of the Land in accordance with the Planning Proposal providing car spaces to support the use of the Community Sporting and Recreation facility described in 13.1.

15. Practical Completion of the Works

- (a) The Developer must give Council 10 Business Days notice of the anticipated date of Practical Completion of the Works.
- (b) Within 5 Business Days after service of the Developer's notice under clause 15(a) the Developer and Council must jointly inspect the Works and note any defect in or unsatisfactory work forming part of the Works requiring attention before Practical Completion of the Works can be achieved (**Further Work**).
- (c) Once either:
 - (i) the completion of the Further Work has occurred in the reasonable opinion of the Developer; and
 - (ii) in the opinion of Council or its agent, the works are complete, except for minor defects,then the Developer must procure the Independent Certifier to issue a certificate stating that Practical Completion of the Works has been reached and specifying the date on which it was reached. The certificate issued by the Independent Certifier must contain an acknowledgement from the Independent Certifier that it is recognised that Council will rely upon the certificate.
- (d) The Developer will use its best endeavours to provide to Council all as-built drawings and operations manuals necessary to operate the Works within 3 months of the date of Practical Completion as certified in clause 15(c).
- (e) The Developer will provide Council with a bank guarantee the amount of which is equivalent to the value of all outstanding defects at the date of Practical Completion as valued by an independent Quantity Surveyor appointed by Council. The bank guarantee is to be used solely for the rectification of any outstanding defects identified at the date of Practical Completion but not rectified by the date 12 months from the date of Practical Completion.

Planning Agreement

16. Guarantee

- (a) If the Developer has not provided the Development Contributions to Council prior to a Bond Delivery Date, the Developer must lodge with Council bonds or guarantees for an amount that is equal to the Bond Value at the relevant Bond Delivery Date.
- (b) For example, the Bond Value required prior to the issue of the final occupation certificate for the second building on the Land is the value of A_2 and not the value of $A_1 + A_2$.

Bond Delivery Date	Bond Value (A_n)
Issue of final occupation certificate for first building on the Land.	A_1
Issue of final occupation certificate for second building on the Land.	A_2
Issue of final occupation certificate for third building on the Land.	A_3
Issue of final occupation certificate for fourth building on the Land.	A_4
Issue of final occupation certificate for fifth building on the Land.	A_5

- (c) The Bond Value at any given Bond Delivery Date is to be calculated in accordance with the following formula:

$$A_n = \left[\frac{D}{C} \times B \right] - E$$

where:

A_n = the Bond Value at the relevant Bond Delivery Date

B = the sum of the approved GFAs for all buildings for which a final occupation certificate has been issued, including the approved GFA of the building referred to at the relevant Bond Delivery Date.

C = the total approved GFA for the Development

D = the Total Bond Amount, being \$20 million

E = the value of the relevant Option Land, calculated in accordance with clause 16(d).

Planning Agreement

- DRAFT**
- (d) The Parties agree that the Developer will procure a valuation prior to each Bond Delivery Date for the relevant Option Land by an Independent Valuer as agreed by the Parties, at the cost of the Developer.
 - (e) Each bond or guarantee must be expressed to be for the performance by the Developer of its obligations under this deed in relation to the relevant Works and must be in a form reasonably acceptable to Council.
 - (f) Each bond or guarantee must be given by a bank within the meaning of the *Banking Act 1959 (Cth)*, or a bank constituted by a Law of the Commonwealth.
 - (g) If Council calls on the bond or guarantee, it must use the funds to carry out or complete the Works and for this purpose Council may enter upon the Land.
 - (h) The funds released under the bond or guarantee, or so much of them as have not been applied in accordance with clause 16(g) will be returned by Council to the Developer within 10 days of Practical Completion of the Works.
 - (i) If any part of the Land is sold:
 - (i) for development by others that part shall be considered complete for the purpose of the Bond Delivery Date and Bond Value calculations;
 - (ii) for development by the Developer the GFA for that part will not be included in the calculation of the Bond Value until the development on that part is completed and a certificate of Practical Completion has been issued by the Independent Certifier.

Planning Agreement

EXECUTED and delivered as a deed

The Common Seal of Willoughby City Council was hereto affixed
on day of
pursuant to resolution no.
made on day of :

General Manager

Mayor

Print Name

Print Name

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Lindsay Bennelong Developments Pty Limited:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Gore Hill Developments No 1 Pty Limited:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Planning Agreement

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Gore Hill Developments No 2 Pty Limited:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Executed as a deed in accordance with
section 127 of the *Corporations Act 2001* by
Gore Hill Developments No 3 Pty Limited:

Director Signature

Director/Secretary Signature

Print Name

Print Name

Planning Agreement

Annexure A

Registered Plan DP270714

PLAN FORM 4

LOCATION PLAN
(SHEET 1 OF 1 SHEETS)
BR 9756

NAME OF DEVELOPMENT, IF ANY
"GORE HILL TECHNOLOGY BUSINESS PARK"

ADDRESS FOR SERVICES OF NOTICE
219-247 PACIFIC HIGHWAY AKTARPOH 2054

DP270714 P

SHEET 1 OF 1 SHEETS 1

FOR REFERENCE TO ADDITIONAL SHEETS SEE SCHEDULE BELOW

REGISTERED: 15-11-2013

THIS SHEET IS BEING SUBMITTED FOR REVIEW TO SHOW THE CURRENT SUBDIVISION PATTERNS OF THE SCHEME. FOR DETAILS OF SUBDIVISION PATTERNS AND ADDITIONAL AND REPLACEMENT SHEETS AMEND SEE SCHEDULE BELOW.

COUNCIL'S APPROVAL No: 22011 / 221
DATE: 22-11-2013

COUNCIL CLERK'S SIGNATURE:

SURVEYOR'S SIGNATURE: M. S. S. S.
DATE:

SCHEDULE OF CHANGES TO BE SCHEME

LIT No. DETAILS SHEET No.

15 13 DP 12 11 10 9 233037

STREET

2 3 4

101 DP 1075784

CAMPBELL

6

7 (COMMUNITY LOT)

8 DP 444493

5

PACIFIC

HIGHWAY

RE: 9446.21 / 200210

azzs A0124536676v6 205861937 19.2.2014

Planning Agreement

Annexure B

Draft sub-division plan Lot 6

PLAN FORM 4

LOCATION PLAN
(SHEET 1 OF 1 SHEETS)
BR 1758

NAME OF DEVELOPMENT, IF ANY
"GORE HILL TECHNOLOGY BUSINESS PARK"

ADDRESS FOR SERVICE OF NOTICE
790-247 PACIFIC HIGHWAY ARTARMON 2064

COMMUNITY PLAN
SHEET 1 OF SHEETS 3

FOR REFERENCE TO ADDITIONAL SHEETS SEE SCHEDULE BELOW

REGISTERED:

THIS SHEET IS BEING SUBMITTED UP-DATED TO SHOW THE CURRENT SUBDIVISIONAL POSITION OF THE CORNER FOR DETAILS OF SUD UP-DATES AND ADDITIONAL AND RELEVANT LANDS ADDRESS CORNER BEARS.

COUNCIL'S APPROVAL No.:
DATE:
COUNCIL CLERK'S SIGNATURE:

SURVEYOR'S SIGNATURE:
DATE:

SCHEDULE OF CHANGES TO BE SCHEME

LOT NO. DETAILS SHEET NO.

101
DP 1075184

1
(COMMUNITY LOT)

8
DP 444493

5

2

3

4

61

62

STREET

CAMPBELL

PACIFIC

HIGHWAY

Grid F

Proposed Lane

PROPOSED
SUB DIVISION
LOT 6
2 lots
into
61
62
lot 1

SURVEYOR'S REFERENCE: 44338 (DP1)

Note: Surveyor will produce draft of this plan 20/2/14

Planning Agreement

Annexure C

Drawing Schedule

The Community Sporting and Recreational Facility, including associated car parking is as detailed on plans prepared by Leffler Simes Architects project 3402-9. Copies of the plans are bound separately.

The drawings are;

SK220B

SK207G

SK208F

SK209C,

SK210C,

SK218C,

SK201D,

SK202E,

SK213D

SK214D

SK217D

SK215C

SK212E

SK221A

SK222A

All dated 19 November 2013.

Annexure D

Community Sporting and Recreation Facility Works

Proposed Scope of Works	Notes on Works	Construction Value of Works	Timing of Works
- Gore Hill Community Sporting & Recreational Facility Base Building Specification Final Issue dated 18 February 2014 and the drawings listed in Annexure C provides: - an indicative layout of the community sporting and recreation facility building; - spaces for Council to provide retail, café and community facilities; and - proposals as to finishes	- The Community Sporting and Recreation Facility must be accessible for persons with a disability in accordance with the provisions of Willoughby Development Control Plan. - The Developer will use reasonable endeavours to ensure that the Community Sporting and Recreation Facility can be used for its intended purpose.	\$24,811,000	The community sporting and recreation facility will be completed within 18 months of the issue of an occupation certificate for the final building erected by the Developer pursuant to the Development Consent.

Annexure E

Site Plan

