

Planning Agreement

Lot 21 Old Wallgrove Road, Eastern Creek NSW 2766

Western Sydney Employment Area

Environmental Planning and Assessment Act 1979

Minister for Planning (ABN 38 755 709 681)

**GPT RE Limited (ACN 107 426 504) as trustee for the General Property Trust
(ABN 58 071 755 609)**

Table of contents

1.	Definitions and interpretation	4
1.1	Definitions	4
1.2	Interpretation	6
2.	Operation and application of this deed	7
2.1	Operation	7
2.2	Planning agreement under the Act	7
2.3	Application	7
3.	Application of sections 94, 94A and 94EF of the Act	7
4.	Development Contribution	7
4.1	Developer to provide Development Contribution	7
4.2	Special Infrastructure Contribution	7
4.3	Acknowledgement	8
5.	Interest	8
5.1	Interest for late payment	8
6.	Enforcement	9
6.1	Developer to provide security	9
7.	Registration	9
7.1	Registration of deed	9
7.2	Evidence of registration	9
7.3	Release and discharge of deed	9
7.4	Developer’s interest in Land	10
8.	Dispute Resolution	10
8.1	Not commence	10
8.2	Written notice of dispute	10
8.3	Attempt to resolve	10
8.4	Mediation	10
8.5	Court proceedings	10
8.6	Not use information	11
8.7	No prejudice	11
9.	GST	11
9.1	Definitions	11
9.2	Intention of the parties	11
9.3	Reimbursement	11
9.4	Consideration GST exclusive	11
9.5	Additional Amounts for GST	11
9.6	Non monetary consideration	11
9.7	Assumptions	12
9.8	No merger	12
10.	Assignment and transfer	12
10.1	Right to assign or novate	12
10.2	Right to transfer Land	12

- 11. Capacity..... 13**
 - 11.1 General warranties 13
 - 11.2 Power of attorney..... 13
 - 11.3 Trustee Developer 13
- 12. Reporting requirement..... 14**
- 13. General Provisions 15**
 - 13.1 Entire deed 15
 - 13.2 Variation 15
 - 13.3 Waiver..... 15
 - 13.4 Further assurances 15
 - 13.5 Time for doing acts 15
 - 13.6 Governing law and jurisdiction..... 15
 - 13.7 Severance..... 16
 - 13.8 Preservation of existing rights 16
 - 13.9 No merger..... 16
 - 13.10 Counterparts..... 16
 - 13.11 Relationship of parties..... 16
 - 13.12 Good faith 16
 - 13.13 No fetter 16
 - 13.14 Explanatory note..... 16
 - 13.15 Expenses and stamp duty 16
 - 13.16 Notices 17
- Schedule 1..... 18**
- Schedule 2..... 20**
- Schedule 3..... 21**
- Schedule 4..... 22**
- Schedule 5..... 24**
- Schedule 6..... 26**
- Schedule 7..... 29**

This deed is dated

Parties:

Minister

Minister for Planning (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales 2000

Developer

GPT RE Limited (ACN 107 426 504) of MLC Centre, Level 51, 19-29 Martin Place, Sydney, New South Wales 2000 **as trustee for the General Property Trust** (ABN 58 071 755 609)

Introduction:

- A** The Developer owns the Land and has the right to carry out the Development.
- B** A Development Application has been made to the Consent Authority in respect of the Development on behalf of the Developer.
- C** Clause 29 of the SEPP provides that the Consent Authority must not grant Development Consent to the Development unless the Secretary has certified in writing to the Consent Authority that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services referred to in clause 29 of the SEPP.
- D** The Developer has offered to enter into this deed with the Minister to secure the Development Contribution in order to enable the Secretary to provide the certification required by clause 29 of the SEPP.

It is agreed:

1. Definitions and interpretation

1.1 Definitions

In this **deed**, unless the context clearly indicates otherwise:

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

Address for Service means the address of each party appearing in Schedule 2 or any new address notified by any party to all other parties as its new Address for Service.

Authority means any Federal, State or local government or semi-governmental, statutory, judicial or public person, instrumentality or department.

Bank Guarantee means an irrevocable and unconditional undertaking:

- (a) by an Australian bank which is an eligible financial institution for the purposes of Treasury Circular NSW TC14/01 dated 24 January 2014 as amended, supplemented or substituted from time to time; and

- (b) on terms acceptable to the Minister, in the Minister's absolute discretion,

to pay the face value of that undertaking (being such amount as is required under this deed) on demand.

Base CPI means the CPI number for the quarter ending 31 March 2016.

Business Day means any day that is not a Saturday, Sunday, gazetted public holiday or bank holiday in Sydney, and concludes at 5 pm on that day.

Complying Development Certificate has the same meaning as in the Act.

Consent Authority has the same meaning as in the Act, being Blacktown City Council as at the date of this deed.

Construction Certificate has the same meaning as in the Act.

Contribution Amount means the amount of the monetary contributions to be paid by the Developer as described in Schedule 4.

CPI means the Sydney Consumer Price Index (All Groups) published by the Commonwealth Statistician for a given quarter, or if that index no longer exists, any similar index that the Minister specifies, in his or her sole discretion, for the purposes of this deed.

CPI Adjustment Date means 1 July 2017 and each anniversary of 1 July 2017 thereafter.

Current CPI means the CPI number for the quarter ending immediately before 31 March in the relevant adjustment year.

Development means construction and use of a warehouse and logistics facility, with warehousing, ancillary offices, loading areas, car parking and landscaping generally in accordance with Development Application No. DA-16-05259 which has been lodged with the Consent Authority.

Development Application has the same meaning as in the Act.

Development Consent has the same meaning as in the Act.

Development Contribution means the contribution to be provided by the Developer in accordance with Schedule 4.

Exempt Development has the same meaning as in the Act.

Explanatory Note means the note exhibited with a copy of this deed when this deed is made available for inspection by the public pursuant to the Act, as required by the Regulation.

General Register of Deeds means the land register maintained under the *Conveyancing Act 1919* (NSW) and so titled.

GST means any form of goods and services tax payable under the GST Legislation.

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

Land means the land described in Schedule 3 of this deed.

Minister means the Minister for Planning and includes the Secretary, or other officer of the Department of Planning and Environment and includes the Minister's nominee, whether nominated before or after the date of this deed.

Mediation Program means the Mediation Program of the Law Society of New South Wales as published on its website and as varied from time to time.

Net Developable Area means the net developable area of the Land as defined in Schedule 6 of this deed or as calculated having regard to any determination made in accordance with section 94EE of the Act with respect to the Land.

Real Property Act means the *Real Property Act 1900* (NSW).

Register means the Torrens title register maintained under the Real Property Act.

Regulation means the *Environmental Planning and Assessment Regulation 2000* (NSW).

Satisfactory Arrangements Certificate means a certificate issued by the Secretary that satisfactory arrangements have been made to contribute to the provision of regional transport infrastructure and services in accordance with clause 29 of the SEPP.

Secretary means the Secretary of the Department of Planning and Environment from time to time (or nominee, whether nominated before or after the date of this deed).

Security means a Bank Guarantee.

SEPP means the *State Environmental Planning Policy (Western Sydney Employment Area) 2009*

Tax means a tax, duty (including stamp duty and any other transaction duty), levy, impost, charge, fee (including a registration fee) together with all interest, penalties, fines and costs concerning them.

1.2 Interpretation

In this deed unless the context clearly indicates otherwise:

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, **the introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;

- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

2. Operation and application of this deed

2.1 Operation

This deed commences on the date that this deed is signed by all the parties.

2.2 Planning agreement under the Act

This deed constitutes a planning agreement within the meaning of section 93F of the Act and the parties agree on the matters set out in Schedule 1.

2.3 Application

This deed applies to:

- (a) the Land; and
- (b) the Development.

3. Application of sections 94, 94A and 94EF of the Act

The application of sections 94, 94A and 94EF of the Act are excluded to the extent stated in Schedule 1.

4. Development Contribution

4.1 Developer to provide Development Contribution

The Developer undertakes to provide to the Minister, or the Minister's nominee, the Development Contribution in accordance with the provisions of Schedule 4 to this deed.

4.2 Special Infrastructure Contribution

- (a) This clause applies where:
 - (i) the Minister determines a special infrastructure contribution (**SIC**) under section 94EE of the Act for a special contributions area that includes any part of the Land (**SIC Determination**); and

- (ii) the SIC Determination takes effect on or after the commencement of this deed, but before the Development Contribution has been paid in full.
- (b) If the SIC Amount for the Development authorised by the relevant Development Consent is less than the Contribution Amount that would otherwise be payable under this deed, then:
 - (i) the Developer is required to pay only the SIC Amount; and
 - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 4.1 and clauses 1(a), 2 and 3 of Schedule 4.
- (c) If the SIC Amount for the Development authorised by the relevant Development Consent is more than the Contribution Amount that would otherwise be payable under this deed for that stage, then:
 - (i) the Developer is required to pay only the Contribution Amount; and
 - (ii) that amount is to be treated as the relevant Contribution Amount for the purposes of clause 4.1 and clauses 1(a), 2 and 3 of Schedule 4.
- (d) Clause 4.2(b) applies only to a Contribution Amount that has not been paid and is not due and payable at the time the SIC Determination takes effect. To avoid doubt, the Minister is not required to refund or reimburse any part of the Development Contribution that was paid or that was due to be paid before that time.
- (e) In this clause 4.2, a reference to the SIC Amount for the Development authorised by the relevant Development Consent is a reference to the amount of the monetary contribution for the Development calculated in accordance with the SIC Determination, being the amount that would have been payable if the application of section 94EF of the Act had not been excluded by this deed and the Development Consent had been granted before the SIC Determination took effect.

4.3 Acknowledgement

The Developer acknowledges and agrees that, subject to section 93E of the Act, the Minister:

- (a) has no obligation to use or expend the Development Contribution for a particular purpose and has no obligation to repay the Development Contribution; and
- (b) in circumstances where the Development Contribution is transferred to any Authority, has not made any representation or warranty that the Development Contribution will or must be used for a particular purpose by that Authority.

5. Interest

5.1 Interest for late payment

- (a) If the Developer fails to pay a Contribution Amount (as indexed in accordance with Schedule 4) due to the Minister on the due date for payment, the Developer must also pay to the Minister interest at a rate of 2% above the loan reference rate charged by the Commonwealth Bank of Australia from time to time.
- (b) Interest is payable on the daily balance of amounts due from the due date for payment of those amounts until all outstanding amounts (including interest on those amounts) have been paid to the Minister.

6. Enforcement

6.1 Developer to provide security

The Developer has agreed to provide security to the Minister for the performance of the Developer's obligations under this deed by providing the Bank Guarantee to the Minister in accordance with the terms and procedures set out in Schedule 5.

7. Registration

7.1 Registration of deed

- (a) Within 10 Business Days of receiving a copy of this deed executed by the Minister, the Developer at its own expense is to take all practical steps and otherwise do anything to procure:
 - (i) the consent of each person, as required by the Registrar-General, who:
 - (A) has an estate or interest in the Land registered under the Real Property Act; or
 - (B) is seized or possessed of an estate or interest in the Land,to the registration of this deed on the title to the Land and to the terms of this deed; and
 - (ii) the execution of any documents;
 - (iii) the production of the relevant certificates of title; and
 - (iv) the lodgement of this deed in a registrable form at the Land and Property Information for registration by the Registrar-General in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act.
- (b) The Developer will take all practical steps and otherwise do anything to procure the registration of this deed within three months of the date of this deed in the relevant folio of the Register for the Land, or in the General Register of Deeds if this deed relates to land not under the Real Property Act, including promptly responding to any requisitions made by the Registrar-General in respect of this deed and/or any ancillary documents.

7.2 Evidence of registration

- (a) The Developer must provide the Minister with evidence of the lodgement of this deed pursuant to clause 7.1(a)(iv) within 10 Business Days of such lodgement at the Land and Property Information.
- (b) The Developer will provide the Minister with a copy of the relevant folio of the Register for the Land and a copy of the registered dealing containing this deed within 10 Business Days of registration of this deed.

7.3 Release and discharge of deed

The Minister agrees to do all things reasonably required by the Developer to release and discharge this deed with respect to any part of the Land upon the Developer satisfying all of its obligations under this deed in respect of that part of the Land.

7.4 Developer's interest in Land

The Developer represents and warrants that it is:

- (a) the owner of the Land; or
- (b) legally and beneficially entitled to become the owner of the Land and will become the legal and beneficial owner of the Land, prior to the date that this deed is required to be registered under clause 7.1 of this deed; and
- (c) legally and beneficially entitled to obtain all consents and approvals and to compel any person referred to in or contemplated by clause 7.1(a)(i) to assist, cooperate and to otherwise do all things necessary for the Developer to comply with its obligations under clause 7.

8. Dispute Resolution

8.1 Not commence

A party must not commence any court proceedings relating to a dispute unless it complies with this clause 8.

8.2 Written notice of dispute

A party claiming that a dispute has arisen under or in relation to this deed must give written notice to the other party specifying the nature of the dispute.

8.3 Attempt to resolve

On receipt of notice under clause 8.2, the parties must endeavour in good faith to resolve the dispute expeditiously using informal dispute resolution processes such as mediation, expert evaluation or other methods agreed by them.

8.4 Mediation

If the parties do not agree within 21 Business Days of receipt of notice under clause 8.2 (or any further period agreed in writing by them) as to:

- (a) the dispute resolution technique and procedures to be adopted;
- (b) the timetable for all steps in those procedures; or
- (c) the selection and compensation of the independent person required for such technique,

the parties must mediate the dispute in accordance with the Mediation Program. The parties must request the president of the Law Society of NSW or the president's nominee to select the mediator and determine the mediator's remuneration.

8.5 Court proceedings

If the dispute is not resolved within 60 Business Days after notice is given under clause 8.2 then any party which has complied with the provisions of this clause 8 may in writing terminate any dispute resolution process undertaken under this clause and may then commence court proceedings in relation to the dispute.

8.6 Not use information

The parties acknowledge the purpose of any exchange of information or documents or the making of any offer of settlement under this clause 8 is to attempt to settle the dispute. No party may use any information or documents obtained through any dispute resolution process undertaken under this clause 8 for any purpose other than in an attempt to settle the dispute.

8.7 No prejudice

This clause 8 does not prejudice the right of a party to institute court proceedings for urgent injunctive or declaratory relief in relation to any matter arising out of or relating to this deed.

9. GST

9.1 Definitions

Words used in this clause that are defined in the GST Legislation have the meaning given in that legislation.

9.2 Intention of the parties

The parties intend that:

- (a) Divisions 81 and 82 of the GST Legislation apply to the supplies made under and in respect of this deed; and
- (b) no additional amounts will be payable on account of GST and no tax invoices will be exchanged between the parties.

9.3 Reimbursement

Any payment or reimbursement required to be made under this deed that is calculated by reference to a cost, expense, or other amount paid or incurred must be limited to the total cost, expense or amount less the amount of any input tax credit to which any entity is entitled for the acquisition to which the cost, expense or amount relates.

9.4 Consideration GST exclusive

Unless otherwise expressly stated, all prices or other sums payable or consideration to be provided under this deed are GST Exclusive. Any consideration that is specified to be inclusive of GST must not be taken into account in calculating the GST payable in relation to a supply for the purposes of this clause 9.4.

9.5 Additional Amounts for GST

To the extent an amount of GST is payable on a supply made by a party under or in connection with this deed (the **GST Amount**), the Recipient must pay to the Supplier the GST Amount. However, where a GST Amount is payable by the Minister as Recipient of the supply, the Developer must ensure that:

- (a) the Developer makes payment of the GST Amount on behalf of the Minister, including any gross up that may be required; and
- (b) the Developer provides a Tax Invoice to the Minister.

9.6 Non monetary consideration

Clause 9.5 applies to non-monetary consideration.

9.7 Assumptions

The Developer acknowledges and agrees that in calculating any amounts payable under clause 9.5 the Developer must assume the Minister is not entitled to any input tax credit.

9.8 No merger

This clause does not merge on completion or termination of this deed.

10. Assignment and transfer

10.1 Right to assign or novate

- (a) Prior to a proposed assignment or novation of its rights or obligations under this deed, the party seeking to assign its rights or obligations (**Assigning Party**) must seek the consent of the Minister and:
 - (i) satisfy the Minister (acting reasonably) that the person to whom the Assigning Party's rights or obligations are to be assigned or novated (**Incoming Party**) has sufficient assets, resources and expertise required in order to perform the Assigning Party's obligations under this deed insofar as those obligations have been novated to the Incoming Party;
 - (ii) procure the execution of an agreement by the Incoming Party with the Minister on terms satisfactory to the Minister (acting reasonably) under which the Incoming Party agrees to comply with the terms and conditions of this deed as though the Incoming Party was the Assigning Party; and
 - (iii) satisfy the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.
- (b) The Assigning Party must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.1.

10.2 Right to transfer Land

- (a) The Developer must not sell or transfer to another person (**Transferee**) the whole or part of any part of the Land on which this deed remains registered under section 93H of the Act.
- (b) Notwithstanding clause 10.2(a) the Developer may sell or transfer the whole or any part of the Land to a Transferee if prior to the proposed sale or transfer the Developer:
 - (i) satisfies the Minister, acting reasonably, that the proposed Transferee has sufficient assets, resources and expertise required in order to perform any of the remaining obligations of the Developer under this deed or satisfies the Minister, acting reasonably, that the Developer will continue to be bound by the terms of this deed after the transfer has been effected;
 - (ii) procures the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, acting reasonably, under which the Transferee agrees to comply with the terms and conditions of this deed as though the Transferee were the Developer. The Minister acknowledges and agrees that the form of deed at Schedule 7 contains terms and conditions that are satisfactory to the Minister for the purposes of this clause 10.2(b)(ii); and
 - (iii) satisfies the Minister, acting reasonably, that it is not in material breach of its obligations under this deed.

- (c) The Developer must pay the Minister's reasonable legal costs and expenses incurred under this clause 10.2.

11. Capacity

11.1 General warranties

Each party warrants to each other party that:

- (a) this deed creates legal, valid and binding obligations, enforceable against the relevant party in accordance with its terms; and
- (b) unless otherwise stated, it has not entered into this deed in the capacity of trustee of any trust.

11.2 Power of attorney

If an attorney executes this deed on behalf of any party, the attorney declares that it has no notice of the revocation of that power of attorney.

11.3 Trustee Developer

- (a) GPT RE Limited (ACN 107 426 504) (**Trustee**) enters into this deed in its capacity as the trustee for the General Property Trust ABN 58 071 755 609 (**Trust**) constituted by a trust deed (**Trust Deed**), and in no other capacity.
- (b) The Trustee warrants that:
 - (i) it is the sole trustee of the Trust and no action has been taken to remove or replace it;
 - (ii) entry into this deed is for the benefit of the beneficiaries of the Trust and as trustee it is authorised and empowered under the Trust Deed to enter into and to perform its obligations and satisfy or discharge its liabilities under this deed;
 - (iii) it is not in breach of the Trust Deed;
 - (iv) it is entitled under the Trust Deed to be indemnified in full in respect of the obligations and liabilities incurred by it under this deed;
 - (v) it is not aware of any reason why the assets of the Trust would be insufficient to satisfy or discharge the obligations and liabilities incurred by it under this deed; and
 - (vi) it has the power under the Trust Deed to execute and perform its obligations and discharge its liabilities under this deed and all necessary action has been taken to authorise the execution and performance of this deed under the Trust Deed.
- (c) If the Trustee is replaced as the trustee of the Trust in accordance with the Trust Deed, then:
 - (i) the Trustee must procure that the replacement trustee to enter into a new deed with the Minister on the same terms as this deed;
 - (ii) the Minister and the Trustee (as outgoing trustee) must release each other from the requirement to observe and perform any future obligation under this deed; and
 - (iii) the Trustee as the outgoing trustee must pay the reasonable costs and expenses of the Minister in relation to entering into a new deed under this clause and the costs and expenses of registering any new deed on the title to the Land.

- (d) Subject to sub-clause (f) of this clause 11.3, liability arising under or in connection with this deed is limited and can be enforced against the Trustee only to the extent to which the Trustee, having sought indemnification to the maximum extent possible, is actually indemnified in respect of that liability out of the assets of the Trust. This limitation of the Trustee's liability applies despite any other provision of this deed and extends to all liabilities and obligations of the Trustee in any way connected with any representation, warranty, conduct, omission, agreement or transaction related to this deed.
- (e) No party to this deed or any person claiming through or on behalf of them will be entitled to:
 - (i) claim from or commence proceedings against the Trustee in respect of any liability in any capacity other than as the trustee of the Trust;
 - (ii) seek the appointment of a receiver, receiver and manager, liquidator, an administrator or any similar office-holder to the Trustee, or prove in any liquidation, administration or arrangement of or affecting the Trustee, except in relation to the assets of the Trust; or
 - (iii) enforce or seek to enforce any judgment in respect of a liability under this deed or otherwise against the Trustee in any capacity other than as Trustee of the Trust.
- (f) Notwithstanding any other provision of this deed, sub-clauses (d) and (e) of this clause 11.3 do not apply to any obligation or liability of the Trustee to the extent to which there is, in respect of that obligation or liability, whether under the Trust Deed or by operation of law, a reduction in the extent of the Trustee's indemnification, or loss of the Trustee's right of indemnification, out of the assets of the Trust as a result of Trustee's failure to properly perform its duties as trustee of the Trust.
- (g) Nothing in sub-clause (f) will make the Trustee liable for any claim for an amount greater than the amount which the Minister would have been able to claim and recover from the assets of the Trust in relation to the relevant obligation or liability if the Trustee's right of indemnification, out of the assets of the Trust had not been prejudiced by the failure of the Trustee to properly perform its duties.
- (h) The Trustee is not obliged to do or refrain from doing anything under this deed (including incur any liability) unless its liability is limited in the same manner as set out in sub-clauses (d) to (h) of this clause 11.3.

12. Reporting requirement

- (a) By 1 September each year or as otherwise agreed with the Secretary, the Developer must deliver to the Secretary a report for the period 1 July to 30 June of the preceding financial year which must include the following matters , as applicable:
 - (i) details of all Development Consents, Construction Certificates and Complying Development Certificates issued in relation to the Development;
 - (ii) a description of the status of the Development including a plan that identifies what parts of the Development have been completed, are under construction and are to be constructed;
 - (iii) a forecast in relation to the anticipated progression and completion of the Development;

- (iv) a compliance schedule showing the details of all Development Contributions provided under this deed as at the date of the report and indicating any non-compliance with this deed and the reason for the non-compliance; and
 - (v) when the Developer expects to lodge the next Development Application.
- (b) Upon the Secretary's request, the Developer must deliver to the Secretary all documents and other information which, in the reasonable opinion of the Secretary are necessary for the Secretary to assess the status of the Development and the Developer's compliance with this deed.

13. General Provisions

13.1 Entire deed

This deed constitutes the entire agreement between the parties regarding the matters set out in it and supersedes any prior representations, understandings or arrangements made between the parties, whether orally or in writing.

13.2 Variation

This deed must not be varied except by a later written document executed by all parties.

13.3 Waiver

A right created by this deed cannot be waived except in writing signed by the party entitled to that right. Delay by a party in exercising a right does not constitute a waiver of that right, nor will a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

13.4 Further assurances

Each party must promptly execute all documents and do every thing necessary or desirable to give full effect to the arrangements contained in this deed.

13.5 Time for doing acts

- (a) If:
 - (i) the time for doing any act or thing required to be done; or
 - (ii) a notice period specified in this deed,expires on a day other than a Business Day, the time for doing that act or thing or the expiration of that notice period is extended until the following Business Day.
- (b) If any act or thing required to be done is done after 5 pm on the specified day, it is taken to have been done on the following Business Day.

13.6 Governing law and jurisdiction

- (a) The laws applicable in New South Wales govern this deed.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

13.7 Severance

If any clause or part of any clause is in any way unenforceable, invalid or illegal, it is to be read down so as to be enforceable, valid and legal. If this is not possible, the clause (or where possible, the offending part) is to be severed from this deed without affecting the enforceability, validity or legality of the remaining clauses (or parts of those clauses) which will continue in full force and effect.

13.8 Preservation of existing rights

The expiration or termination of this deed does not affect any right that has accrued to a party before the expiration or termination date.

13.9 No merger

Any right or obligation of any party that is expressed to operate or have effect on or after the completion, expiration or termination of this deed for any reason, does not merge on the occurrence of that event but remains in full force and effect.

13.10 Counterparts

This deed may be executed in any number of counterparts. All counterparts taken together constitute one instrument.

13.11 Relationship of parties

Unless otherwise stated:

- (a) nothing in this deed creates a joint venture, partnership, or the relationship of principal and agent, or employee and employer between the parties; and
- (b) no party has the authority to bind any other party by any representation, declaration or admission, or to make any contract or commitment on behalf of any other party or to pledge any other party's credit.

13.12 Good faith

Each party must act in good faith towards all other parties and use its best endeavours to comply with the spirit and intention of this deed.

13.13 No fetter

Nothing in this deed shall be construed as requiring the Minister to do anything that would cause the Minister to breach any of the Minister's obligations at law and without limitation, nothing in this deed shall be construed as limiting or fettering in any way the discretion of the Minister in exercising any of the Minister's statutory functions, powers, authorities or duties.

13.14 Explanatory note

The Explanatory Note must not be used to assist in construing this deed.

13.15 Expenses and stamp duty

- (a) The Developer must pay its own and the Minister's reasonable legal costs and disbursements in connection with the negotiation, preparation, execution and carrying into effect of this deed.
- (b) The Developer must pay for all costs and expenses associated with the giving of public notice of this deed and the Explanatory Note in accordance with the Regulation.

- (c) The Developer must pay all Taxes assessed on or in respect of this deed and any instrument or transaction required or contemplated by or necessary to give effect to this deed (including stamp duty and registration fees, if applicable).
- (d) The Developer must provide the Minister with bank cheques, or an alternative method of payment if agreed with the Minister, in respect of the Minister's costs pursuant to clauses 13.15(a) and (b):
 - (i) where the Minister has provided the Developer with written notice of the sum of such costs prior to execution, on the date of execution of this deed; or
 - (ii) where the Minister has not provided the Developer with prior written notice of the sum of such costs prior to execution, within 30 Business Days of demand by the Minister for payment.

13.16 Notices

- (a) Any notice, demand, consent, approval, request or other communication (**Notice**) to be given under this deed must be in writing and must be given to the recipient at its Address for Service by being:
 - (i) hand delivered; or
 - (ii) sent by email; or
 - (iii) sent by prepaid ordinary mail within Australia; or
 - (iv) in the case of a Notice to be given by the Minister or Secretary, sent by email.
- (b) A Notice is given if:
 - (i) hand delivered, on the date of delivery but if delivery occurs after 5pm New South Wales time or a day that is not a Business Day, is taken to be given on the next Business Day;
 - (ii) sent by email:
 - (A) before 5 pm on a Business Day, on that day;
 - (B) after 5 pm on a Business Day, on the next Business Day after it is sent; or
 - (C) on a day that is not a Business Day, on the next Business Day after it is sent, and the sender does not receive a delivery failure notice; or
 - (iii) sent by prepaid ordinary mail within Australia, on the date that is 2 Business Days after the date of posting.

Schedule 1

Table 1 - Requirements under section 93F of the Act (clause 2.2)

The parties acknowledge and agree that the table set out below provides for certain terms, conditions and procedures for the purpose of the deed complying with the Act.

Requirement under the Act	This deed
<p>Planning instrument and/or development application – (section 93F(2))</p> <p>The Developer has:</p> <p>(a) sought a change to an environmental planning instrument.</p> <p>(b) made, or proposes to make, a Development Application.</p> <p>(c) entered into an agreement with, or is otherwise associated with, a person, to whom paragraph (a) or (b) applies.</p>	<p>(a) No</p> <p>(b) No</p> <p>(c) Yes</p>
Description of land to which this deed applies – (section 93F(3)(a))	See Schedule 3
Description of development to which this deed applies – (section 93F(3)(b))	See definition of Development in clause 1.1
Description of change to the environmental planning instrument to which this deed applies – (section 93F(3)(b))	Not applicable
The scope, timing and manner of delivery of contribution required by this deed – (section 93F(3)(c))	See Schedule 4
Applicability of sections 94 and 94A of the Act – (section 93F(3)(d))	The application of sections 94 and 94A of the Act is not excluded in respect of the Development.
Applicability of section 94EF of the Act – (section 93F(3)(d))	The application of section 94EF of the Act is excluded in respect of the Development.
Consideration of benefits under this deed if section 94 applies – (section 93F(5))	The Development Contributions to be provided by the Developer under the deed must not be taken into consideration in determining a contribution under section 94.
Mechanism for Dispute Resolution – (section 93F(3)(f))	See clause 8
Enforcement of this deed – (section 93F(3)(g))	See clause 6
No obligation to grant consent or exercise functions – (section 93F(10))	See clause 13.13

Table 2 – Other matters

Requirement under the Act	This deed
Registration of the Planning Agreement – (section 93H of the Act)	Yes (see clause 7)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a construction certificate is issued – (clause 25E(2)(g) of the Regulation)	Yes (see clause 3(a) of Schedule 4)
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before an occupation certificate is issued – (clause 25E(2)(g) of the Regulation)	No
Whether the Planning Agreement specifies that certain requirements of the agreement must be complied with before a subdivision certificate is issued – (clause 25E(2)(g) of the Regulation)	No

Schedule 2

Address for Service (clause 1.1)

Minister

Contact: The Secretary

Address: Department of Planning and Environment
Level 22, 320 Pitt Street
Sydney NSW 2000

Email: planningagreements@planning.nsw.gov.au

Developer

Contact: Joseph Ajaka

Address: c/- Level 51, MLC Centre
19 Martin Place
Sydney NSW 2000

Email: Joseph.Ajaka@gpt.com.au

Schedule 3

Land (clause 1.1)

Lot	Deposited Plan
21	1206129

Schedule 4

Development Contributions (clause 4)

1. Development Contributions

- (a) The Developer undertakes to provide the Development Contribution in the manner set out in the table below:

Development Contribution	Contribution Amount (subject to clause 2)	Timing
Contribution Amount - Cash contribution towards regional transport infrastructure and services	\$185,284 per hectare of Net Developable Area	Pursuant to clause 3 of this Schedule 4

- (b) The Minister and the Developer acknowledge and agree that the sum of the Contribution Amounts form the Development Contribution under this deed.

2. Calculation of the indexed value of a Contribution Amount

- (a) On each CPI Adjustment Date, the value of the Contribution Amount in clause 1(a) is to be adjusted by multiplying the Contribution Amount by an amount equal to the Current CPI divided by the Base CPI.

3. Payment of Contribution Amounts

- (a) The Developer must pay to the Minister or the Minister's nominee the Contribution Amount in respect of the Development:
- (i) before any Construction Certificate or Complying Development Certificate is issued for any part of the Development; or
 - (ii) if any part of the Development is to be carried out without the need for a Construction Certificate or a Complying Development Certificate, then both;
 - (A) before that Development is commenced; and
 - (B) before any application for a Construction Certificate or Complying Development Certificate is made in respect of that Development,
 whichever is earlier.
- (b) The parties agree that the requirement to make a payment under this clause is a restriction on the issue of the relevant Construction Certificate within the meaning of section 109F(1) of the Act and clause 146A of the Regulation.
- (c) For the avoidance of doubt, the Developer agrees that it must pay each Contribution Amount irrespective of whether:
- (i) it is the owner of the Land on the relevant due date for payment; or

- (ii) it is the applicant for the relevant Construction Certificate or Complying Development Certificate.

Schedule 5

Security terms (clause 6)

1. Developer to provide Security

- (a) In order to secure the payment or performance of the Development Contribution the Developer has agreed to provide the Security.
- (b) The Security must:
 - (i) name the "Minister for Planning" and the "Department of Planning and Environment ABN 38 755 709 681" as the relevant beneficiaries; and
 - (ii) not have an expiry date.

2. Security

- (a) At the time the Developer signs this deed, the Developer must provide the Security to the Minister having a face value amount of \$20,000 (**Security Amount**) in order to secure the Developer's obligations under this deed.
- (b) From the date of execution of this deed until the date that the Developer has provided the Development Contribution, the Minister is entitled to retain the Security.

3. Claims under Bank Guarantees

- (a) The Minister may:
 - (i) call upon the Security where the Developer has failed to pay a Contribution Amount for the Development on or after the date for payment under this deed; and
 - (ii) retain and apply such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed.
- (b) Prior to calling upon the Security the Minister must give the Developer not less than 10 Business Days written notice of his or her intention to call upon the Security.
- (c) If:
 - (i) the Minister calls upon the Security; and
 - (ii) applies all or part of such monies towards the Contribution Amount and any costs and expenses incurred by the Minister in rectifying any default by the Developer under this deed; and
 - (iii) has notified the Developer of the call upon the Security in accordance with clause 3(b) of this Schedule 5,

then the Developer must provide to the Minister a replacement Security to ensure that at all times until the date that the Security is released in accordance with clause 4 of this Schedule 5, the Minister is in possession of Security for a face value equivalent to the Security Amount.

4. Release of Security

If:

- (a) the Developer has satisfied all of its obligations under this deed secured by the Bank Guarantee; and
- (b) the whole of the monies secured by the Bank Guarantee has not been expended and the monies accounted for in accordance with clause 2 of this Schedule 5,

then the Minister will promptly return the Bank Guarantee (less any costs, charges, duties and taxes payable), or the remainder of the monies secured by the Bank Guarantee (as the case may be), to the Developer.

Schedule 6

Definition of Net Developable Area (Schedule 4)

1. The net developable area of a part of the Land is the area of land, in hectares, for the Development, subject to the other provisions of this Schedule 6. For the avoidance of doubt, the net developable area of a part of the Development includes any land that the proposed development authorises or requires to be used as a road or reserved or dedicated as a public road.
2. The net developable area does not include the area of any land that the proposed development reserves, dedicates or otherwise sets aside as, or for the purpose of, any of the following:
 - (a) school,
 - (b) TAFE establishment,
 - (c) emergency services facility,
 - (d) health services facility owned or operated by a public authority,
 - (e) golf course,
 - (f) passenger transport facility,
 - (g) place of public worship,
 - (h) public open space, including a public reserve (within the meaning of the Local Government Act 1993),
 - (i) drainage reserve (within the meaning of the Local Government Act 1993),
 - (j) public utility undertaking,
 - (k) bus depot,
 - (l) recreation area,
 - (m) existing roads to which works (such as widening) are required to be carried out;
 - (n) cemetery (within the meaning of the Cemeteries and Crematoria Act 2013),
 - (o) public amenities or public services, in connection with which development contributions have been imposed under section 94 or section 94A of the Act or may be imposed in accordance with a contributions plan approved under section 94EA of the Act,
 - (p) roads or other infrastructure in connection with which special infrastructure contributions have been, or may be, imposed in accordance with any Special Infrastructure Contributions Determination made under section 94EE of the Act.
3. The following areas of land are not to be included in the calculation of the net developable area:
 - (a) any area of land that is at or below the level of a 1:100 ARI (average recurrent interval) flood event, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the Development by virtue of it being at or below that level,

- (b) any area of land that is identified as public open space in a development control plan or in a contributions plan approved under section 94EA of the Act,
 - (c) any area of land that is within Zone E2 Environmental Conservation,
 - (d) any area of land within the curtilage of a building listed on the State Heritage Register,
 - (e) an area of land that is subject to an easement in favour of a public utility undertaking for the purpose of the supply of the utility service to the public as shown on the title to that land or as confirmed in writing by the public utility undertaking, if the Secretary is satisfied that the area is unsuitable for developing for the purposes of the development by virtue of the easement,
 - (f) any area of land that is within a public transport corridor (other than a road corridor) as shown on a Land Zoning Map for the purposes of an environmental planning instrument or a development control plan made under the Act, if the Secretary is satisfied that the area is unsuitable for development for the purposes of the development by virtue of it being within the public transport corridor.
4. The net developable area does not include the area of any lot in a proposed plan of subdivision that may be further subdivided (other than under a strata scheme) in accordance with the development consent relating to the subdivision.
5. The net developable area does not include the area of any lot in a proposed plan of subdivision that the Secretary has determined (in writing), at the Secretary's discretion and having regard to the relevant planning controls, will be further subdivided (other than under a strata scheme) in accordance with a future development consent for the purpose of the orderly development of the land for urban purposes in the future.
6. If a proposed lot contains an existing lawful habitable dwelling (being a dwelling that lawfully existed on the proposed lot at the date this Deed commences) and:
- (a) is no more than 0.1 hectare, the net developable area does not include the area of the lot, or
 - (b) is more than 0.1 hectare in area, the net developable area is reduced by 0.1 hectare, for the purpose of calculating the net developable area.
7. If a proposed lot is wholly within Zone E3 Environmental Management, Zone E4 Environmental Living or Zone R5 Large Lot Residential and is more than 0.1 hectare, that lot is taken to be 0.1 hectare for the purpose of calculating the net developable area.
8. The parties agree that the Secretary may make any determination required to be made for the purpose of calculating the net developable area in accordance with this clause and, for that purpose, may have regard to any information available at the time, such as construction plans and any measurements made by a registered surveyor of the land concerned.
9. In this Schedule 6, the following words or expressions have the same meanings as they have in the Standard Instrument (that is, the standard instrument for a principal local environmental plan prescribed by the Standard Instrument (Local Environmental Plans) Order 2006):
- (a) emergency services facility,
 - (b) health services facility,

- (c) passenger transport facility,
- (d) place of public worship,
- (e) public utility undertaking,
- (f) recreation area,
- (g) school.

10. In this Schedule, a reference to:

- (a) a land use zone is a reference to a land use zone specified in the Standard Instrument and to a land use zone that is equivalent to any such land use zone, and
- (b) curtilage of a building listed on the State Heritage Register is a reference to the curtilage of that building, or the site of that building, as specified or described in the listing of the building on the State Heritage Register kept under Part 3A of the Heritage Act 1977, and
- (c) a “strata scheme” means a reference to a strata scheme as that term is defined in the Strata Scheme (Freehold Development) Act 1973 or a leasehold strata scheme as that term is defined in the Strata Scheme (Leasehold Development) Act 1986.

Schedule 7

Form of Deed of Novation (clause 10.2(b)(ii))

THIS DEED OF NOVATION IS MADE ON THE _____ day of _____

BETWEEN

The Minister for Planning (ABN 38 755 709 681) of Level 15, 52 Martin Place, Sydney, New South Wales 2000 ("Minister")

AND

GPT RE Limited (ACN 107 426 504) of MLC Centre, Level 51, 19-29 Martin Place, Sydney, New South Wales 2000 as trustee for the **General Property Trust** (ABN 58 071 755 609) ("Transferor")

AND

[Drafting Note: insert details of Transferee] ("Transferee")

BACKGROUND

- A** The Transferor and the Minister are parties to the 'Planning Agreement Lot 21 Old Wallgrove Road, Eastern Creek NSW 2766' dated **[Drafting Note: insert date of Planning Agreement]** (the "Planning Agreement").
- B** The Transferor has entered into an agreement to transfer the Land to the Transferor.
- C** Clause 10.2 of the Planning Agreement requires the Transferor to, among other things, procure the execution of an agreement by the Transferee with the Minister on terms satisfactory to the Minister, under which the Transferee agrees to comply with the terms and conditions of the Planning Agreement as though the Transferee were the Developer.
- D** This deed is entered into in accordance with the terms of clause 10.2(b)(ii) of the Planning Agreement.

OPERATIVE PROVISIONS

1. Definitions

Unless the context otherwise requires, any capitalised term which is defined in the Planning Agreement and which is not defined in this Deed, has the same meaning as defined in the Planning Agreement. In this deed:

Effective Time means the date that the Land is transferred to the Transferee.

2. Interpretation

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

- (a) a reference to **this deed** or another document means this deed or that other document and any document which varies, supplements, replaces, assigns or novates this deed or that other document;
- (b) a reference to **legislation** or a **legislative provision** includes any statutory modification, or substitution of that legislation or legislative provision and any subordinate legislation issued under that legislation or legislative provision;
- (c) a reference to a **body** or **authority** which ceases to exist is a reference to either a body or authority that the parties agree to substitute for the named body or authority or, failing agreement, to a body or authority having substantially the same objects as the named body or authority;
- (d) a reference to the **introduction**, a **clause**, **schedule** or **annexure** is a reference to the introduction, a clause, a schedule or an annexure to or of this deed;
- (e) **clause headings**, **the introduction** and the **table of contents** are inserted for convenience only and do not form part of this deed;
- (f) the **schedules** form part of this deed;
- (g) a reference to a **person** includes a natural person, corporation, statutory corporation, partnership, the Crown or any other organisation or legal entity;
- (h) a reference to a **natural person** includes their personal representatives, successors and permitted assigns;
- (i) a reference to a **corporation** includes its successors and permitted assigns;
- (j) a reference to a right or obligation of a party is a reference to a right or obligation of that party under this deed;
- (k) an **obligation** or **warranty** on the part of 2 or more persons binds them jointly and severally and an obligation or warranty in favour of 2 or more persons benefits them jointly and severally;
- (l) a requirement to do any thing includes a requirement to cause that thing to be done and a requirement not to do any thing includes a requirement to prevent that thing being done;
- (m) **including** and **includes** are not words of limitation;
- (n) a word that is derived from a defined word has a corresponding meaning;
- (o) **monetary amounts** are expressed in Australian dollars;
- (p) the singular includes the plural and vice-versa;
- (q) words importing one gender include all other genders;
- (r) a reference to a thing includes each part of that thing; and
- (s) neither this deed nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting.

3. Novation

On and from the Effective Time, the Planning Agreement is novated from the Transferor to the Transferee, with the effect that:

- (a) the Transferee replaces the Transferor under the Planning Agreement and becomes the party to the Planning Agreement;
- (b) a reference in the Planning Agreement to the Transferor is to be read as a reference to the Transferee;
- (c) the Transferee is entitled to all rights and benefits under the Planning Agreement to which, but for this deed, the Transferor would have been entitled at and after the Effective Time; and
- (d) the Transferee must perform all obligations and discharge all liabilities under the Planning Agreement which, but for this deed, the Transferor would have been required to perform or discharge at and after the Effective Time.

4. Release by Minister

With effect from the Effective Time, the Minister releases the Transferor from all obligations and liabilities under or in respect of the Planning Agreement to be performed or discharged at or after the Effective Time.

5. Release by Transferor

With effect from the Effective Time, the Transferor releases the Minister from all obligations and liabilities under the Planning Agreement to be performed or discharged at or after the Effective Time.

6. Obligations and liabilities arising before the Effective Time

Nothing in this deed releases the Transferor or the Minister from any obligation or liability under the Planning Agreement arising before the Effective Time.

7. Confirmation of Deed

The Minister and the Transferee confirm the terms of the Planning Agreement as varied by this deed.

8. Notices

Any notice or communication to or by a party to this deed or the Planning Agreement must be:

- (a) sent to the Minister or to the Transferor in the manner required by clause 13.16 of the Planning Agreement;
- (b) sent to the Transferee in the manner set out in clause 13.16 of the Planning Agreement, except that the address for service of notices to the Transferor specified in Schedule 2 of the Planning Agreement, is substituted with:

"Contact: **[Drafting Note: insert contact name of Transferee]**

Address: **[Drafting Note: insert address of Transferee]**

Email: **[Drafting Note: insert email address of Transferee]**"

9. Counterparts

This deed may be executed in any number of counterparts and by the parties on separate counterparts. Each counterpart constitutes the deed of each party who has executed and delivered that counterpart.

10. Costs

The Transferor shall reimburse the Minister for the costs and disbursements of the Minister in connection with:

- (a) the preparation, negotiation or execution of this deed; or
- (b) the placing of any document on notification relating to this deed

11. Stamp duty etc

The Transferor must pay any stamp, transaction, registration, financial institutions, bank account debit and other duties and taxes (including fines and penalties) which may be payable or determined to be payable in relation to the execution, delivery, performance or enforcement of this deed or any payment or receipt or other transaction contemplated by this instrument of novation.

12. Entire Agreement

This deed contains everything the parties have agreed on in relation to the matters it deals with. No party can rely on an earlier document, or on anything said or done by another party (or by a director, officer, agent or employee of that party) before this instrument of novation was executed.

13. Governing law and jurisdiction

This deed is governed by and must be construed according to the law applying in New South Wales.

Execution page

Executed as a deed.

[Drafting Note: Insert execution block for the Minister]

[Drafting Note: Insert execution block for the Transferor]

[Drafting Note: Insert execution block for the Transferee]

Execution page

Executed as a deed

Signed, sealed and delivered for and on behalf of the **Minister for Planning**, in the presence of:

.....
Signature of witness

.....
Signature of the Minister for Planning or delegate

.....
Name of witness in full

.....
Name of the Minister for Planning or delegate

.....
Address of witness

Executed by GPT RE Limited ACN 107 426 504 in accordance with section 127 of the *Corporations Act 2001* as trustee for the **General Property Trust ABN 58 071 755 609**:

.....
Signature of director

.....
Signature of director/secretary

.....
Name of director in full

.....
Name of director/secretary in full